

**United Nations Human Rights Council
Universal Periodic Review
Turkey**

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The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom in Turkey as a contribution to the Universal Period Review of UN member-state Turkey.

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The Becket Fund is a nonprofit, public interest law firm protecting the religious freedom of people of all faiths. Our clients have included Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians.

I. Social/Geographic/Political Context

The Anatolian territory of modern Turkey has been home to the Hittites, the Persians, the Greeks, the Romans, the Byzantines, the Ottomans, and the Turks. Following the breakup of the Ottoman Empire after World War I, a struggle for independence was led by Mustafa Kemal Atatürk and his Young Turks. In 1923, Atatürk began to transform Turkey into what he hoped would be a truly modern country. In 1928, parliament removed the constitutional provision stating that “the religion of the Turkish state is Islam,” and in 1937, a provision was added to declare the secular nature of the state.¹ Atatürk eliminated the canonical tithe tax and also attacked the traditional fez and veil. In an effort to enforce Atatürk’s notion of secularism and moderate Islamist influences, the Turkish Republic created public institutions such as the Department of Religious Affairs (Diyamet), which was tasked with all matters related to faith, religion, and theology, and today controls all Muslim affairs.²

II. Constitutional Analysis and Legal Framework

With strong references to the legacies of Atatürk and his reforms in the 1920s, the Turkish Constitution of 1982 makes specific provisions for the free exercise of religion but also guarantees the protection of a “secular” state. In Article 2, the Turkish Constitution states that Turkey is a “democratic, *secular*, and social state governed by the rule of law.”³ The constitution provides for the freedom of conscience and worship. However, Article 14 subordinates these freedoms to the maintenance of “secularism.”⁴

As a member of the United Nations, Turkey has agreed to the principles expressed in the Universal Declaration of Human Rights. In 2003, Turkey ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which states that States Parties shall take all appropriate measures to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women.”⁵ As a member of the Organization for Security and Cooperation in Europe, Turkey is party to the Helsinki Final Act of 1975, which states that “participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.”⁶ Turkey is also a signatory

¹ DOUGLAS A. HOWARD, *THE HISTORY OF TURKEY* 23-32, 73-90, 93, 97-98 (Greenwood Press 2001).

² OMER TASPINAR, *The Old Turks’ Revolt* FOREIGN AFFAIRS 86.6, 119 (2007). In 1925, parliament banned the wearing of the fez, but did not place limitations on the veil. No such limitations existed until 1982, when a Council of Higher Education decision banned the veil in schools. The new Turkish Republic proceeded to eliminate the caliphate, Islamic education and law, Sufi orders, and the Arabic alphabet. In their place, Western education, laws, and holidays were adopted. *Id.* Although Atatürk set in motion the foundation of a modern democratic Turkish Republic, the evolution of the Turkish state and the relationship between the state and religion have been tumultuous. Having been entrusted with the protection of the secular state by Atatürk himself, the military has taken upon itself the performance of a number of coups in order to protect the secular character of the state. Both the military and the bureaucracy are known for their Kemalist political leanings, but the elected government has recently been controlled by the Justice and Development Party (AKP), which has Islamist roots, but is now viewed by many as a reformist party with a platform of promoting economic liberalism and accession into the European Union. Out of a population of over 70 million people, 99 percent of the population are Muslims, most of whom subscribe to the Sunni Hanafi school. However, there are at least 10 million Alevi and around 500,000 Shiites. Smaller minorities include Orthodox Christians, Baha’is, Jews, Yezidis, Protestants, Jehovah’s Witnesses, and Chaldean Christians.

³ TÜRKİYE CUMHURİYETİ ANAYASASI [TCA] [Constitution] art. II (Turk.) (Emphasis added) In addition, Article 4 prohibits the amendment of Article 2. *Id.* at art. IV.

⁴ *Id.* at art. XIV.

⁵ Convention on the Elimination of All Forms of Discrimination against Women, art. 10, Dec. 18, 1979, 1249 U.N.T.S. 13 (1979).

⁶ Organization for Security and Cooperation in Europe (OSCE), Final Act of the Conference on Security and Cooperation in Europe, art. VII, Aug. 1, 1975, 14 I.L.M. 1292, available at <http://www1.umn.edu/humanrts/osce/basics/finact75.htm>.

to the European Convention on Human Rights (European Convention).⁷ Finally, at the conclusion of World War I, the Ottoman Empire signed the Lausanne Treaty, in which Articles 39-41 directly pertain to the equal treatment of religious minorities.⁸

III. Religious Freedom Violations

Despite a relatively strong constitution and numerous international commitments to religious freedom, religious individuals and communities continue to face serious legal and normative challenges to the peaceful manifestation and expression of their beliefs in Turkey.

A. Restrictions on Religious Expression

However, the Turkish state, informed by the Atatürk reforms of the 1920s, continues to place restrictions on outward public expressions of religion, whether they be religious attire or speech.

Restrictions on Religious Attire

The legal history of regulating dress in Turkey began in 1925 with passage of the Hat Law, which banned the wearing of the fez—a traditional hat associated with conservative, religious men.⁹ Similar legislation was introduced to modify the traditional use of turbans. Initially, the law made no reference to the dress of women.¹⁰ Martial law followed the military coup of 1980.¹¹ A Council of Higher Education decision in 1982 prohibited students from wearing the veil.¹² A ban became strictly enforced in 1997 subsequent to a military ultimatum. In February of 2008, Parliament, under the AKP government, passed legislation to amend the constitution such that students would be permitted to wear headscarves in universities. Legislators reasoned that the ban was serving to deny some citizens access to a university education.¹³ On June 5, 2008, the Constitutional Court of Turkey struck down the amendment, citing the constitutional requirement of secularity.

The ban applies to all universities, but is enforced arbitrarily.¹⁴ For example, one woman was allowed to sit an exam while wearing a headscarf, but received a grade of 0 on the exam because

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, Europ. T.S. No. 5 [Hereinafter European Convention].

⁸ Treaty of Peace Between the Allied Powers and Turkey (Treaty of Lausanne) arts. 39 - 41, July 24, 1923, 28 L.N.T.S. 11.

⁹ Resmî Gazete Tarihi 230, Vol. 3, Nov. 25, 1925.

¹⁰ Atatürk himself believed that women would adjust to modern dress on their own, independent of the law. He stated that “[t]he religious covering of women will not cause difficulty... This simple style [of head covering] is not in conflict with the morals and manners of our society.” Atatürkism, Volume 1 (Istanbul: Office of the Chief of General Staff, 1982), 126.

¹¹ Cemal Karakas, *Turkey: Islam and Laicism Between the Interests of State, Politics, and Society*, PEACE RESEARCH INSTITUTE FRANKFURT No. 78 (2007) [Hereinafter *Turkey: Islam and Laicism*].

¹² Ozlem Denli, “Between Laicist State Ideology and Modern Public Religion: The Head-Cover Controversy in Contemporary Turkey” in *Facilitating Freedom of Religion or Belief: A Deskbook*, ed. Tore Lindolm, W. Cole Durham, Jr., Bahia G. Tahzib-Lie, 502.

¹³ Turkish military and judicial leaders, on the other hand, believe that the ban is necessary to prevent Islamist elements from using their influence to gain power in the government. “There is a threat from reactionary forces here and every measure must be taken against it,” according to Gen Yasar Buyukanit, the Army Chief of Staff. Sarah Rainsford, *Headscarf Issue Challenges Turkey*, BBC NEWS, Nov. 7, 2006, available at <http://news.bbc.co.uk/2/hi/europe/6122010.stm>.

¹⁴ The Becket Fund supported Leyla Sahin, a medical student at the University of Istanbul who was unable to attend courses and exams as a result of wearing the Muslim headscarf. Sahin brought her case to the ECHR, which rejected it on the basis that

where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women are being taught and applied in practice, it is understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned and so consider it contrary to such values to allow religious attire, including, as in the present case, the Islamic headscarf, to be worn.

Sahin v. Turkey, Eur. Ct. H.R. App. No. 44774/98, ¶ 116 (Nov. 9, 2006). Sahin had no alternative but to pursue her medical studies in Vienna.

she had failed to follow the regulations regarding attire.¹⁵ The ban also extends well beyond the realm of education. Merve Kavakçı, a Turkish Parliamentarian, was ejected from Parliament and stripped of her seat and citizenship for wearing the headscarf in session. In *Kavakçı v. Turkey*,¹⁶ the European Court of Human Rights ruled on the basis of the people's right to vote that this was a violation of the European Convention.¹⁷ Additionally, women wearing the headscarf have been denied medical care in Turkish hospitals, even for procedures unrelated to the patient's head. The problem resides not only in official policies, but the normative effects of the policies have on social prejudices. One 69-year-old woman with a severe stomachache was turned away from a hospital even though she was willing to remove her headscarf for the examination.¹⁸

Restrictions on Religious Speech: Insulting Turkishness Law

According to Article 219 of the Penal Code, religious authorities are prohibited from "reproaching or vilifying" the Government in the context of their religious duties.¹⁹ Until April 2008, Article 301 of the Penal Code made it a crime to "insult Turkishness." Under this law, over 700 individuals were convicted, including Nobel Laureate Orhan Pamuk who was charged for discussing the Armenian genocide.²⁰ In 2006, two Christians, who had converted from Islam, were charged with insulting Turkishness and inciting hatred against Islam.²¹ In 2008, Parliament amended the Penal Code, which now makes it a crime to insult the "Turkish nation."²²

Restrictions on Religious Speech: Religious Education

The Diyanet oversees all Muslim activities, including sermons and publications.²³ The Diyanet is responsible for the maintenance of Turkey's 77,500 mosques and also oversees imams and muftis, who are civil servants.²⁴ Until recently, the Diyanet distributed the same Friday sermon to every mosque in the country.²⁵ After recent changes under Ali Bardakoglu, president of the Diyanet, Friday sermons are now more decentralized, but the Diyanet, a government agency, remains the central source of theological teaching and instruction, which ultimately limits the freedom of worship, speech, and association of Muslims in Turkey.²⁶ In 1982, religious education in public schools became compulsory for Muslims; in 1990, Armenians, Jews, and Greek Orthodox minorities were exempted from this law as minorities mentioned in the Lausanne Treaty.²⁷

In 1971, the Turkish government nationalized all institutions of higher education, including religious schools. In 1971, the Turkish government closed the Theological School of Halki (Halki

¹⁵ *Bir 'Bone' Sınavda Bütün Do_ruları Götürdü*, ZAMAN ONLINE, May 15, 2009, available at <http://www.zaman.com.tr/haber.do?haberno=848163>.

¹⁶ Eur. Ct. H.R. App. No. 71907/01 (Apr. 5, 2007).

¹⁷ *Id.* at ¶ 46.

¹⁸ *Ninesi ya_ındaki hastayı 'ba_örtülü' diye muayene etmedi*, ZAMAN ONLINE, Oct. 12, 2009, available at <http://www.zaman.com.tr/haber.do?haberno=900669&title=ninesi-yasındaki-hastayı-basortulu-diye-muayene-etmedi>.

¹⁹ U.S. DEPARTMENT OF STATE, 2009 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM available at <http://www.state.gov/g/drl/rls/irf/2009/130299.htm> (2009) [hereinafter 2009 IRF REPORT].

²⁰ *Turkey Parliament Eases Free Speech Law*, USA TODAY, Apr. 30 2008, http://www.usatoday.com/news/world/2008-04-30-turkey-freespeech_N.htm.

²¹ See 2009 IRF REPORT.

²² Parliament Approves 301 Amendment, Eyes on Implementation, TURKISH DAILY NEWS, May 1, 2008, available at <http://www.turkishdailynews.com.tr/article.php?enewsid=103289>. The law also requires the Minister of Justice to approve Article 301 prosecutions before offenders are publicly charged. *Id.*

²³ See *Turkey: Islam and Laicism*.

²⁴ See 2009 IRF Report.

²⁵ Colin McMahon and Catherine Collins, *State Comes 1st, Mosque 2nd in Turkey's System*, CHICAGO TRIBUNE, Oct. 24, 2004, available at <http://www.chicagotribune.com/news/watchdog/chi-0410240391oct24,0,809416,full.story>.

²⁶ Interview with Ali Bardakoglu, Apr. 24, 2009.

²⁷ RELIGIOUS FREEDOM IN THE WORLD 403 (Paul A. Marshall ed., Rowman & Littlefield Publishers 2008). The content of these classes is mostly restricted to Sunni teachings, but in 2008 after a ruling from the European Court of Human Rights, the curriculum was expanded to accommodate Alevi teachings. After students have completed the compulsory eight years of secular public school, they may attend private *imam hatip* schools, where they are taught Muslim theology in addition to the core high school curriculum. However, graduates from *imam hatip* schools are disadvantaged in application to institutions of higher education because they are considered vocational. 2009 IRF Report.

Seminary). The Halki Seminary is the Ecumenical Orthodox Patriarchate's only theological school in Turkey. Its closure means that the Orthodox community cannot train Turkish believers, severely limiting their ability to name an administrative law that is a Turkish-born Turkish citizen, a requirement of the foundations law, *infra*.²⁸

B. Freedom of Association and Property Rights

All Muslim properties in Turkey belong to the state and are administered by the Diyanet. Non-Muslim properties are governed by the foundations law. Turkey's regulation of religious properties and entities strongly impedes the ability of non-Muslim communities from owning and using property and enjoying freedom of association or worship.²⁹

Registration and Property Rights of Minority Religions

In 1935, a new Law on Foundations subjected all non-Muslim institutions, including churches, schools, and hospitals, to the regulations of the General Directorate of Foundations (GDF).³⁰ Today the GDF continues to regulate all religious groups and their affiliated property, which allows the state directly to intervene with the functioning and internal relations of these institutions.

Under what is known as the 1936 Declaration and subsequent to the Law on Foundations, foundations were asked to file a declaration of property.³¹ As part of the democratization process after the 1950s, various court decisions allowed non-Muslim foundations to acquire real estate.³² In practice, non-Muslim properties did not face major problems until the Cyprus crisis in the mid-1960s between Greece and Turkey, when, targeting the Greek community, the GDF asked foundations to present statutes which would demonstrate proofs of legal ownership. Non-Muslim foundations established with imperial edicts during the Ottoman period could not produce this proof. All properties that had been acquired after 1936 were either returned to the previous owner or confiscated by the state without compensation. In 1974, the High Court of Appeals upheld the GDF actions in a case brought by Foundation of the Balikli Greek Hospital, and described non-Muslim Turkish citizens as non-Turks, a status that supposedly disqualified them from acquiring property as a legal entity.³³ Hundreds of minority properties, including Orthodox foundations³⁴ and Jewish foundations,³⁵ were seized by the Turkish government in the decision's aftermath. Non-Muslim communities are thus severely limited in their property, assembly, and association rights.

²⁸ *Id.* Aggravating the Patriarchate's difficulties is the lack of an official means of communication with the Turkish government for the purpose of redressing the Patriarchate's legal claims.

²⁹ See ICCPR General Comment 22 states that the ICCPR's protection of freedom of worship extends to the building of places of worship. See UN High Comm'r for Human Rights, HRC., General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18), (July 30, 1993).

³⁰ During the Ottoman period, foundations were established through imperial edicts, which practice applied to all religious communities. Dilek Kurban and Kezban Hatemi, *THE STORY OF AN ALIEN(ATION): REAL ESTATE OWNERSHIP PROBLEMS OF NON-MUSLIM FOUNDATIONS AND COMMUNITIES IN TURKEY 9-10* (Tesev Publications 2009) [hereinafter Kurban and Hatemi]. The 1923 Treaty of Lausanne granted non-Muslim foundations autonomy to meet their educational, religious, social, health-related and charitable needs. However, the new Civil Code written in 1926 excluded non-Muslims from provisions approving the establishment of new foundations. *Id.* at 10. The Treaty of Lausanne was never fully implemented in Turkey, where the only religious minorities recognized were those of the Armenians, Greeks and Jews.

³¹ *Id.* at 14.

³² The 1961 Constitution revoked this right.

³³ General Board of the High Court of Appeals, 8 May 1974, E. 1971/2-820, K.1974/505 ("Legal entities established by non-Turkish individuals are prohibited from acquiring immovables. Legal entities are more powerful than natural persons, therefore the state may face certain dangers and various problems may occur if their right to acquire immovables is not restricted.").

³⁴ Kurban and Hatemi, at 47. According to the Orthodox Patriarchate, the government has seized almost 1000 immovable properties belonging to Orthodox foundations (schools, churches, orphanages, etc.). In 2005 the ECHR awarded one of these seized buildings back to the Ecumenical Patriarchate, but this award has never been enforced, and the building remains in the ownership of the Turkish government. *Fener Rum Patrikligi (Ecumenical Patriarchate) v. Turkey*, Eur. Ct. H.R. (July 8, 2008).

³⁵ Kurban and Hatemi at 18 n. 44.

Today, religious groups, like all organizations, can obtain legal standing by registering as an association or foundation.³⁶ Registration of associations is substantially less burdensome than foundations; however, an association has fewer legal protections (for example, it can be closed by the provincial governor's office, whereas foundations can only be closed by court order, which provides greater protection). The Civil Code also provides that associations may not discriminate on the grounds of religion, ethnicity, or race, which impede the associational and expressive freedom of religious groups to function as theological institutions or otherwise serve the needs of particular religious communities. In February, 2008, Turkey passed a new foundation law that made it possible for organizations to redeem their property from the state, but not from third parties who may have acquired it.³⁷ The foundation law also requires that a Turkish citizen be the administrative leader of any foundation,³⁸ which has caused particular problems for the Ecumenical Patriarchate, which is not permitted to maintain a seminary in Turkey to train Turkish believers.

Cemeteries

The 1930 Municipality Law transferred ownership of all cemeteries from religious groups to the municipalities. In later years, this was applied to non-Muslim foundations in contravention of Article 42 of the Treaty of Lausanne. The control of cemeteries was supposed to be left to their communities but in practice, non-Muslims have not been able to exercise this control.³⁹ This particularly touches the right of religious groups to freedom of association.

Legal Personality for Religious Entities

Because non-Muslim organizations do not have legal personalities, and are at the mercy of any regulations the Turkish government should choose to impose upon it. The Turkish government has further disregarded the Patriarchate's rights to speech and association by refusing to recognize the "Ecumenical" Status of the Patriarchate, claiming that it represents only the tiny Greek community in Turkey.⁴⁰ The Ecumenical Patriarchate also has no recourse to petition the government for changes to its policy regarding the election of the Patriarch.

In the past three years, Turkish regulations regarding religion on identity cards have improved, giving converts from Islam the right to change the religion on their cards or even leaving the space blank by sending a letter to the local authorities.⁴¹

IV. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Turkey. Of particular importance are restrictions on religious attire, the Turkish state's attitudes towards minority religions, regulations of religious education, and restrictions on religious property. We additionally suggest that the UNHCR urge the Turkish government to establish a framework for dialogue and negotiations with the Ecumenical Patriarchate, other minority religious communities, and Muslim women affected by the headscarf ban in order to address their grievances in access to education, healthcare, livelihoods, public safety, and property rights.

³⁶ The GDF recognizes 161 "minority community foundations," which grandfathered in from the Ottoman Empire. But since 1936, religious groups cannot register as minority community foundations and gain the legal rights held by such foundations. See 2009 IRF Report.

³⁷ *Minority Foundation Law Not Satisfactory, Says TESEV*, TODAY'S ZAMAN, Feb. 5, 2008, available at <http://www.todayzaman.com/tz-web/detaylar.do?load=detay&link=133287>.

³⁸ See 2009 IRF REPORT.

³⁹ Kurban and Hatemi at 13. For example, "Even individuals excommunicated by the religious administration of their communities were buried in community cemeteries with the decision of municipal administrations, which completely ignored the will of the churches." *Id.*

⁴⁰ See 2009 IRF REPORT.

⁴¹ U.S. DEPARTMENT OF STATE, 2008 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM available at <http://www.state.gov/g/drl/rls/irf/2008/108476.htm> (2008)