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RELIGIOUS FREEDOM IN TURKEY

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Introduction.

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative Status before the United Nations Economic and Social Council¹. The purpose of this report is to raise concerns regarding the limitation of human rights in the Republic of Turkey [hereinafter Turkey] for the 2014 Universal Periodic Review (UPR). These limitations primarily stem from the Turkish government's unwillingness to fully adopt treaties that protect religious freedom and from the government's adherence to policies that restrict its citizens' ability to express their faith.

Turkey's Reservations to International Treaties Severely Limit the Treaties' Effectiveness in Protecting Religious Freedom.

2. Turkey is a party to both the International Covenant on Civil and Political Rights (ICCPR)² and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³. However, Turkey's reservations to these treaties allow the Turkish government to continue to adopt and exercise policies that limit religious freedom in direct contradiction to the treaties' object and purpose.

Turkey's Reservation of Article 27 of the ICCPR Allows Turkey to Limit the Religious Freedom of Minorities.

3. Article 27 is a crucial tool for protecting the religious freedom of minorities as it provides that religious "minorities shall not be denied the right, in community with the other members of their group . . . to profess and practise their own religion"⁴. In ratifying the ICCPR, Turkey reserved the right "to interpret and apply the provisions of Article 27 . . . in accordance with the related provisions and rules of the Constitution"⁵. While Turkey's Constitution does not expressly limit religious freedom, Turkey has adopted several policies that diminish an individual's ability to practise his faith when that individual belongs to a religious minority⁶. During the 2010 UPR, Turkey refused to support the recommendation that it withdraw its

¹NGO Branch, U.N. Dep't of Econ. & Soc. Affairs, Consultative Status for the European Centre for Law and Justice (2007), <http://esango.un.org/civilsociety/> (accessed by searching "European Centre for Law and Justice" in the iCSO Database).

²*Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, UNITED NATIONS TREATY COLLECTION, (7 Mar. 2014, 5:03 PM), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

³*Status of Treaties, Ch. IV Human Rights, 3. ICESCR Status*, UNITED NATIONS TREATY COLLECTION, (7 Mar. 2014, 5:03 PM), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

⁴International Covenant on Civil and Political Rights art. 27, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁵*Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, *supra* note 2.

⁶*Infra* ¶ 4.

reservation of Article 27⁷. Despite this prior refusal, it is imperative that the Working Group on the UPR continue to urge Turkey to withdraw its reservation. Such a withdrawal would show the sincerity of Turkey's desire to protect religious freedom and would force Turkey to eliminate or reconsider several policies that, as discussed below, limit minorities' religious freedom.

Contrary to Article 27 of the ICCPR, Turkish Laws Limit the Ability of Religious Minorities to Practise their Faith.

4. The right to establish places of worship is integral to religious minorities' ability to practise their faith⁸. Yet, as the Norwegian Helsinki Committee found in their most recent report on religious freedom in Turkey, there are 670 buildings being used for worship that have been denied "place of worship" status⁹. 598 of the buildings that have been denied "place of worship" status are houses of worship for the Alevi minority. Based on the opinion of Turkey's Directorate of Religious Affairs, many of the Alevi's applications are denied because "the places of worship [for] Muslims are mosques"¹⁰. Therefore, those who belong to the unrecognized Alevi religious minority are prevented from worshiping in their own facilities because they are considered Muslims for whom the only recognized place of worship is a mosque¹¹.

5. Additionally, faith groups cannot obtain "legal personality" and thus are unable to buy property, hold title to property, or press claims in court as a community¹². In theory, individuals from a faith group can register an association or foundation for the group¹³, but the utility of these vehicles is significantly restricted in reality¹⁴. For instance, Turkey's civil code prevents foundations from being formed with the purpose of supporting a particular religious community¹⁵. The only exception allowed is for religious foundations previously established under the 1923 Lausanne Treaty which precludes newer faith groups from creating foundations¹⁶. Therefore, the foundation vehicle is not a viable alternative to legal personality for faith groups. An association is considered by some to be a better option than a foundation, but this vehicle is also inadequate. Associations are often hampered by significant bureaucratic

⁷Rep. of the Working Group on the Universal Periodic Review, Human Rights Council, 15th sess., 17 June 2010, ¶ 103.2 U.N. Doc. A/HRC/15/13 [hereinafter 2010 UPR].

⁸Human Rights Committee, General Comment 22, 48th sess., 1993, art. 18 ¶ 4, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 35 U.N. Doc. HRI/GEN/1/Rev.1.

⁹NORWEGIAN HELSINKI COMM., *THE RIGHT TO FREEDOM OF RELIGION OR BELIEF IN TURKEY 25 (2013)*, available at <http://inancozgurlugirisimi.org/wp-content/uploads/2014/01/NHC-I%CC%87O%CC%88G-FoRB-Report-Eng.pdf>.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.* at 27.

¹³Mine Yildirim, *TURKEY: Religious Freedom Survey, January 2014*, FORUM 18 NEWS SERVICE (16 Jan. 2014), http://www.forum18.org/archive.php?article_id=1916.

¹⁴Eur. Comm'n for Democracy Through Law, *Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to Use the Adjective "Ecumenical"*, ¶¶ 37-41, 82nd Sess., Op. No. 535/2009 (2010), available at http://www.mfa.gr/images/docs/ellinotourkiko/gnomodotisi_epitropis_venetias.pdf.

¹⁵Yildirim, *supra* note 13.

¹⁶*Id.*

obstacles¹⁷, subject to broad regulations formulated for other types of associations, and may even be restricted by Turkey’s Constitution if the government interprets it as prohibiting associations formed specifically for religious purposes¹⁸.

6. Faith groups that cannot obtain legal personality risk having their property confiscated because the groups cannot show legal ownership of property¹⁹. For example, because the Catholic Church could not obtain legal personality, when Turkey’s Treasury Department confiscated the Church’s Izmir Santa Maria Church in 2013, the government would not return the building because the Church could not show legal ownership²⁰. In April 2012, the Turkish government did return fifty-seven previously confiscated buildings to non-Muslim “foundations”, but groups like the Catholic Church have been consistently excluded from such acts because the Catholic Church is not officially recognized in Turkey²¹. For instance, in 2012, Catholics demanded a return of nearly 200 buildings, but met with little success²². Besides stripping ownership from Church groups, the government’s refusal to return these properties often results in irreparable damage to the properties²³. As United States House of Representatives Foreign Affairs Committee Chairman, Ed Royce, recently noted, once these confiscated properties are under Turkish control, they are frequently “converted to mosques, storehouses, and casinos, or irreparably damaged by looting and vandalism”²⁴. The Working Group on the 2010 UPR recommended that Turkey take “all necessary measures to find a solution to [the difficulties] non-Muslim communities are facing . . . in enjoying their property rights”²⁵. At that time, Turkey indicated it had already “applied” that recommendation²⁶. Since the loss of minorities’ places of worship still continues, it is imperative that the Working Group discuss this situation again, inquire as to the number of churches and places of worship which have been confiscated and, if appropriate, request that the confiscated properties be returned to the religious minority groups from which they were taken.

Turkey’s Reservation to Article 13 of the ICESCR Allows Turkey to Limit Minorities’ Religious Freedom.

7. In ratifying the ICESCR, Turkey made a reservation to paragraph 3 of Article 13²⁷, similar to the reservation it made to the ICCPR²⁸. Article 13 broadly governs a child’s right to

¹⁷*Id.*

¹⁸Eur. Comm’n for Democracy Through Law, *supra* note 14, at ¶ 43.

¹⁹NORWEGIAN HELSINKI COMM., *supra* note 9, at 27.

²⁰Yildirim, *supra* note 13.

²¹*Turkey: Catholics Demand Return of 200 Buildings*, ANSAMED (19 Apr. 2012, 4:26 PM), http://ansamed.ansa.it/ansamed/en/news/sections/generalnews/2012/04/19/Turkey-Catholics-demand-return-200-buildings_6744532.html.

²²*Id.*

²³*Bill Calling for Report on Turkey’s Stolen Churches Introduced*, ARMENIAN WEEKLY (31 Mar. 2014), <http://www.armenianweekly.com/2014/03/31/bill-calling-for-report-on-turkeys-stolen-churches-introduced>.

²⁴*Id.*

²⁵2010 UPR, *supra* note 7, at ¶ 102.25.

²⁶Rep. of the Working Group on the Universal Periodic Review, Human Rights Council, 15th sess., 17 Sept. 2010, ¶ 56 U.N. DOC. A/HRC/15/13/Add.1 [hereinafter 2010 UPR Addendum].

²⁷*Status of Treaties, Ch. IV Human Rights, 3. ICESCR Status*, *supra* note 3 (reserving the right not to respect the liberty of parents to ensure that their children’s religious and moral education conforms with their own convictions).

²⁸*Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, *supra* note 2.

education, and Paragraph 3 provides that the signing government “undertake to have respect for the liberty of parents . . . to choose for their children schools . . . to ensure the religious and moral education of their children in conformity with their own convictions”²⁹. The 2010 UPR Report only briefly mentioned the education of minorities and did not address the issue of this reservation³⁰. The Working Group on the UPR should urge Turkey to withdraw this reservation and encourage Turkey to grant increased liberty to parents in educating their children.

Contrary to Article 13 of the ICESCR, Turkish Laws Limit the Ability of Parents to Provide for their Children’s Religious and Moral Education.

8. The Turkish government controls religious education in Turkey and requires students to take compulsory Religious Culture and Knowledge of Ethics (RCKE) classes³¹. While Turkish law allows for exemptions from such classes, these exemptions are only allowed for those whose identification cards indicate that the child belongs to another minority religion, such as Christianity or Judaism³². The problem in limiting the exemptions in this way is that some religious minorities are not permitted to have their religion registered on their identification and thus cannot obtain an exemption. For example, one Christian high-school student was ineligible for the exemption because her father was an atheist, even though the student and the mother were Christian³³. Since her father was an atheist, this student’s identification card displayed the default religion, Islam. The student was therefore required to continue in the class³⁴. It is important that religious minority students be able to obtain these exemptions because sometimes bullying by Muslim students occurs in these classes and often “their [non-Muslim] beliefs are disrespected”³⁵. One high school student recounted an argument with her teacher who told her that “[t]he New Testament says Mary had relations with Allah”³⁶. When the student disagreed, the teacher yelled, “[b]ecome a Muslim, I’m calling you to Islam”³⁷. In that case, the student’s father was successful in getting an exemption for his daughter³⁸, yet many parents frequently face difficulties in obtaining these exemptions³⁹. In one instance, a student’s family made a formal request to be exempted from the Islamic religious class but when threatened by the school administration that they would “leave her back a grade”, the student had to continue to take the

²⁹International Covenant on Economic, Social and Cultural Rights art. 13, 16 Dec. 1966, 996 U.N.T.S. 3, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

³⁰2010 UPR, *supra* note 7, at ¶ 102.31.

³¹Mine Yildirim, *TURKEY: Is It Possible to Manifest Religion or Belief in Teaching and Education?*, FORUM 18 NEWS SERVICE (20 Aug. 2014), http://www.forum18.org/archive.php?article_id=1867.

³²ASS’N OF PROTESTANT CHURCHES COMM. FOR RELIGIOUS FREEDOM & LEGAL AFFAIRS, “A THREAT” OR UNDER THREAT?: LEGAL AND SOCIAL PROBLEMS OF PROTESTANTS IN TURKEY 39 (2010) [hereinafter PROBLEMS OF PROTESTANTS IN TURKEY], http://www.olir.it/areetematiche/233/documents/rapporto_minoranze_turchia.pdf.

³³*Id.* at 40.

³⁴*Id.*

³⁵*Id.* at 39–40.

³⁶*Id.* at 39.

³⁷*Id.*

³⁸*Id.*

³⁹*Id.* at 40.

class and tests⁴⁰. The Working Group should urge Turkey to liberalize its exemption policy so that non-Muslims are able to receive exemptions from these mandatory classes without hardship.

Turkey’s Treatment of the Greek Orthodox Church Violates International Treaties and Limits the Church’s Ability to Practise its Beliefs.

9. As a party to the ICCPR, Turkey must ensure that “everyone [has] the right to freedom of thought, conscience and religion,” which includes the freedom “to manifest [] religion or belief in worship, observance, practice, and *teaching*”⁴¹. Turkey is also a party to the Treaty of Lausanne which specifically grants non-Muslims the ability “to establish, manage and control . . . any schools and other establishments for instruction and education”⁴². However, many non-Muslim religious institutions have no means of training clergy⁴³ since the Turkish government prohibited private higher education in 1971. This is a significant obstacle for religious minorities because they are unable to train native future leaders for their congregations, thus limiting the availability of individuals who can become priests. For example, after the Turkish government closed the only seminary for the Greek Orthodox Church⁴⁴, the Church has been unable to train native priests and must rely on foreign priests who are required to “leave Turkey every few months to request visa renewals” due to “deliberately-designed” visa restrictions⁴⁵. This problem is further frustrated by the fact that the Turkish government maintains a veto right on the election of the Ecumenical Patriarch of Constantinople, the most important leader of the Greek Orthodox Church, and requires that every candidate put forward be a Turkish citizen⁴⁶. Because of the Church’s inability to educate and train priests in Turkey, there are fewer and fewer individuals who are able to fulfill the essential role of Patriarch⁴⁷. The recommendation was made during the 2010 UPR that Turkey solve the problem of the training of non-Muslim clergy⁴⁸. Turkey claimed that measures “continue to be taken” to address this issue⁴⁹, but little, if any, progress has been made⁵⁰. The Working Group should urge Turkey to allow religious minorities the ability to educate their own priests.

⁴⁰*Id.*

⁴¹ICCPR, *supra* note 4, at art. 18 (emphasis added).

⁴²Treaty of Lausanne art. 40, 24 July 1923, <http://www.mfa.gov.tr/lausanne-peace-treaty.en.mfa>.

⁴³PROBLEMS OF PROTESTANTS IN TURKEY, *supra* note 32, at 29.

⁴⁴Yasemin Çongar, *Patriarch Asks Turkey to End Stalemate Over Shuttered Seminary*, AL-MONITOR (19 Aug. 2013), <http://www.al-monitor.com/pulse/originals/2013/08/halki-island-orthodox-church-turkey.html>.

⁴⁵Elizabeth Prodromou, *Rome and Constantinople, A Tale of Two Cities: The Papacy in Freedom, the Ecumenical Patriarchate in Captivity*, BERKLEY CENTER FOR RELIGION, PEACE & WORLD AFFAIRS, <http://berkeleycenter.georgetown.edu/rfp/essays/rome-and-constantinople-a-tale-of-two-cities-the-papacy-in-freedom-the-ecumenical-patriarchate-in-captivity> (last visited 28 May 2014).

⁴⁶*Id.*

⁴⁷Çongar, *supra* note 44.

⁴⁸2010 UPR, *supra* note 7, at ¶¶ 102.25, 102.30.

⁴⁹2010 UPR Addendum, *supra* note 25, at ¶¶ 50, 55.

⁵⁰Çongar, *supra* note 44.

Conclusion.

10. While Turkey generally grants freedom to religious and ethnic minorities and has ratified important international treaties that support this freedom, the Working Group on the UPR should urge Turkey to withdraw its reservations to the ICCPR and the ICESCR. Withdrawing these reservations is an important step to ensuring that religious and ethnic minorities are treated equally under the law and that their rights are protected. The Working Group should also discuss the situation of religious minorities' access to places of worship. During its 2010 review, the Working Group recommended that Turkey solve the difficulties that religious minorities face with respect to property ownership, and Turkey indicated that it had already addressed this issue. Yet, despite Turkey's assurances, the problem still remains. As a result, the Working Group should inquire as to the number of churches and places of worship which have been confiscated and, if appropriate, request that these properties be returned to the religious minorities from which they were taken. Furthermore, the Working Group should address religious minorities' ability to raise their children according to their own religious and moral beliefs. The Working Group should urge Turkey to relax its exemption policy for religious education in order to eliminate difficulties non-Muslims face in receiving exemptions. Regarding the Greek Orthodox community, the Working Group should request that Turkey allow the Church to train and educate its own native priests in its own seminary in accordance with international human rights norms and the treaties to which Turkey is a party.