inanç özgürlüğü girişimi

Norwegian Helsinki Committee

REPORT 2022

AN APPEAL TO MOVE **FORWARD** FROM ASPIRATIONS TO ACTIONS

MONITORING REPORT ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF IN TURKEY

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An Appeal to Move Forward from Aspirations to Actions:
Monitoring Report on the Right to Freedom of Religion or Belief in Turkey

Norwegian Helsinki Committee's Freedom of Belief Initiative

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Norwegian Helsinki Committee (NHC) is an Oslo based human rights organization established in 1977 and works internationally to improve the protection of human rights in practice. To this end the NHC's activities include monitoring and reporting, human rights training and supporting civil society and democratic structures. NHC's work is based on the human rights instruments adopted in the context of United Nations, Council of Europe and the Organization for Security and Cooperation in Europe.

Freedom of Belief Initiative works to improve the protection of the right to freedom of thought, conscience and religion for all in Turkey since 2011. To this end the Initiative's activities include monitoring and reporting, making recommendations and advocacy. The project is supported by the Norwegian Embassy.

Dr. Mine Yıldırım is an activist researcher and leads the Freedom of Belief Initiative. She completed her PhD at AAbo Akademi University Institute for Human Rights in Finland. Her book *The Collective Dimension of Freedom of Religion or Belief – A Case Study on Turkey* was published by Routledge in 2017. She holds an M.A. degree in Human Rights and Civil Liberties at the Faculty of Law from Leicester University, UK and a BA degree from Marmara University in Turkey. Has participated as a researcher in national and international projects. Most recently, in 2021, she authored the report *Strengthening the Protection of Freedom of Religion or Belief in Western Balkans: A Roadmap for Parliamentarians*. She is the co-recipient of the 2016 Stefanus Prize with her work in the field of freedom or belief. Currently, she is a member of the OSCE/ODIHR Panel of Experts on Freedom of Religion or Belief. She is the author of many publications in the field of freedom of religion or belief.

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Acronyms

AKP	Justice and Development Party
AYM	Turkish Constitutional Court
CHP	Republican People's Party
CIMER	Presidential Communication Centre
CoE	Council of Europe
CRC	Convention on the Rights of the Child
DIB	Presidency of Religious Affairs
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political rights
MEB	Ministry of National Education
MHP	National Movement Party
OSCE	Organization for Security and Cooperation in Europe
RCE	Religious Culture and Ethics
TCK	Turkish Penal Code
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
VGM	General Directorate of Foundations

1. Executive summary

*An Appeal to Move **Forward** from Aspirations to Actions – Monitoring Report on the Right to Freedom of Religion or Belief in Turkey, 2022* covers key legislative, judicial, and administrative developments on the right to freedom of religion or belief between April 2019 and December 2021 in Turkey. The report identifies discrepancies with international human rights standards and makes recommendations for public authorities to seek corrective action. The report systematically:

- examines legislative, judicial and administrative acts regarding the main components of right to freedom of religion or belief;
- covers intersecting issues between the right to freedom of religion or belief and the right to education and freedom of association;
- provides an overview of key challenges to women's rights to freedom of religion or belief;
- examines compliance and identifies gaps between the standards established by international human rights law and Turkish law and practice;
- makes recommendations on necessary measures to better align the aforementioned.

Religious or belief communities, along with individuals and communities of non-belief, persevere in their efforts to advocate for freedom of religion or belief and to pursue dialogue and legal remedies. The issues and responses described in this report strongly attest to the resilience and determination of individuals and communities, who have been subjected to injustice and inequality, to constructively pursue justice and equality.

Turkey's long-standing freedom of religion or belief issues remain unresolved. This is despite Turkey's significant human rights obligations as a party to core human rights treaties. Resolving these issues will require a multi-thronged effort on the part of the executive, legislature and judiciary. Were the judiciary to consistently apply constitutional and international human rights standards pertaining to the protection of the right to freedom of religion or belief, individuals and religious or belief communities could access justice. Critical individual applications concerning freedom of religion or belief claims, such as conscientious objection to military service and the compulsory Religious Culture and Ethics lessons, have been pending for a prolonged period. The delay has weakened the Turkish Constitutional Court's capacity as an effective domestic remedy. The reexamination of legislation pertaining to freedom of religion or belief, with the aim to bring it into compliance with international human rights, is an objective of the Ministry of Justice's 2021 Human Rights Action Plan. While the objective holds vast potential to pave the way for corrective action, it remains yet to be fulfilled.

Adherence to the decisions of international human rights compliance control mechanisms remains critical. Actual enforcement of these judgments and decisions, however, lags far behind. When implemented, these will have a far-reaching impact on the

protection of the right to freedom of religion or belief for all in Turkey. The implementation of the general measures set out in key European Court of Human Rights (ECtHR) judgments would provide a significant improvement in the protection of freedom of religion or belief in Turkey. These judgments concern, among others, Turkey's compulsory Religious Culture and Ethics lessons, conscientious objection to military service, and the status of places of worship. The ECtHR also held that the denial of provision of resources from the Presidency of Religious Affairs to the Alevi community for public religious services was incompatible with the European Convention on Human Rights (ECHR). In addition, relevant United Nations (UN) mechanisms have issued their views on communications regarding conscientious objection and the use of the headscarf. It is imperative that measures are taken for effective enforcement.

Atheists, deists, and agnostics encounter daily infringement on their right to freedom of thought and belief in the workplace, family, and the education system. Atheist, deist and agnostic parents and students do not have the right to exemption from the compulsory religious instruction in the Religious Culture and Ethics lessons. Those who express criticism of religion or belief in general, or of specific interpretations, especially those of Islam, face complaints and risk being prosecuted under the Turkish Penal Code. This is done specifically under Article 216 (3): public degrading of religious values of a section of the population. Article 216(3) has not been applied to protect minorities against hateful or defamatory speech.

The lack of recognition of the right to conscientious objection to military service is in direct contradiction to international human rights law. Administrative and criminal punitive measures are applied to conscientious objectors who are categorised as draft evaders or deserters. The non-recognition of the right to conscientious objection to military service constitutes a violation of the right to freedom of religion or belief. This has been found in several ECtHR judgments and in one UN Human Rights Committee (HRC) view, but has yet to be addressed. In addition, this non-recognition infringes on several human rights of conscientious objectors. These include the right to participate in public life in areas such as standing for elections and voting, freedom of movement, the right to education and the right to the opportunity to gain a living.

Substantial restrictions on the collective dimension of the right to freedom of religion or belief, especially in conjunction with the right to association, persist as colossal obstacles to the enjoyment of these rights and the principle of equality. Restrictions limit the legal status of places of worship and associative rights including the acquisition of legal entity status. Substantial interference, in the internal affairs of religious or belief communities, persists related to organisation, the appointment of religious leaders and the use of titles. Turkish authorities must take urgent legislative and administrative measures to provide appropriate remedies.

No religious or belief community in Turkey has a legal personality, as such. Religious or belief groups and their representative institutions, such as Patriarchates or the Chief Rabbinate, lack legal entity status and, as such, cannot access the court system, open bank accounts, buy property or officially employ their own religious officials and provide social security for them. Individuals belonging to religious or belief groups organise themselves as associations or establish foundations with religious intent, though these are also subject to limitations. Important restrictions continue to hamper the associative capacity of the non-Muslim community foundations. The foundations' board elections have been obstructed since 2013. As a result, the functioning of the community foundations and the beneficiary communities continue to be paralyzed and weak. These community foundations administer and fund non-Muslim community properties such as church and

synagogue buildings, schools, hospitals, and other charitable work. They constitute a lifeline for these communities.

Added restrictions were imposed through Turkey's adoption of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction which amended the Law on Associations (No. 2860) and Law on Aid Collection. The Venice Commission found that Law. No. 7262 is not compatible with international human rights standards and constitutes a risk for civil society organisations. This includes those with religious intent.

Acquiring place of worship status remains an ongoing challenge for several religious communities. This is particularly true for the Alevi, Jehovah's Witnesses and Protestant communities. The kingdom halls of Jehovah's Witnesses, the churches of the Protestant community and the *cemevis* of the Alevi community are in particularly precarious positions due to this lack of the official place of worship status. The public authorities have systematically denied place of worship status to these sites in disregard to relevant ECtHR judgments. Establishing a non-discriminatory process through legislative and administrative amendments for the acquisition of place of worship status, and ensuing benefits, are long overdue measures.

Protection of worship places is an integral part of the state obligation to protect the right to manifest religion or belief in worship. Many religious buildings are on the verge of ruin and at risk of being lost even though they are officially registered as cultural heritage sites by the Cultural Heritage Preservation Regional Boards under the umbrella of the Ministry of Culture and Tourism. Furthermore, **the impact of past loss of properties and associated foundations belonging to a wide range of religious or belief groups continues to be a scar in need of attention. For non-Muslim communities, the process of returning community foundation property unjustly taken has not been completed; the damage has yet to be fully remedied.** During the reporting period the Hagia Sophia Museum and the Chora Museum were converted into mosques. Both Hagia Sophia and Chora were originally built as churches, converted into mosques during the Ottoman period, and then converted into museums during the Republican Period. Addressing past actions, which have impacted multiple religious communities, in a manner that is both compatible with relevant human rights law and that meets the obligation of the state to observe neutrality, remains a challenge.

The rights associated with the appointment of religious officials are among the rights of religious or belief communities to autonomy over their internal affairs. In Turkey, legislation and practise concerning the appointment of religious leaders is not uniform. The President appoints the President of the Diyanet. Provincial *muftis*, and *imams* working in Sunni mosques are appointed by the Presidency of Religious Affairs. As a result, there is no mechanism for mosque communities to participate in the appointment processes. **No measures have been taken to eliminate interference in the internal affairs of the Armenian Orthodox, Jewish, and Greek Orthodox communities in the appointment of religious leaders.** This is despite the finding of the Turkish Constitutional Court that the interference in the latest election of the Armenian Patriarch was not prescribed by law. The court held that it was a violation of Article 24 of the Turkish Constitution, which protects the freedom of religion and conscience.

Glaring inequalities in the legal restrictions facing training religious personnel other than Sunni Muslim religious personnel and in public resources allocated to the training of Sunni Muslim religious personnel versus the denial of resources to the training of other religious personnel, have not been remedied. Religious communities, such as the

Alevi community, Greek Orthodox Patriarchate, Armenian Patriarchate and Protestant community, have been unable to train religious staff within Turkey. Measures, to ensure the right to manifest religion or belief in teaching, to protect the right to train religious officials for all religious communities and to enable all religious or belief groups to open educational institutions to train their own religious officials, are long overdue. **Turkish authorities have continued to issue travel restrictions targeting Christian foreigners. These restrictions interfere with several human rights including freedom of religion or belief, the right to fair trial, freedom of movement, and protection of aliens against unlawful expulsion.** This practice also impacts the Protestant community since, not being permitted to train their own teachers, they rely on foreign religious workers.

Public funding of religious services is provided solely for the Sunni Islamic community. This is in contradiction with the prohibition of discrimination and with the state's obligation to observe the principle of equality. The ECtHR (Grand Chamber) judgment on *İzzettin Doğan and Others v. Turkey* includes significant findings for the Alevi community and beyond. As a result of the denial of public religious services, requested by the Alevi applicants, and the non-recognition of the Alevi faith by the state, Alevis are unable to fully exercise their right to freedom of religion or belief. The enforcement of this judgment is critical to ensuring all religious or belief communities are protected equally in their exercise of the right to freedom of religion or belief. This inequality was exacerbated during the Pandemic. Since religious or belief communities could not gather in person, the collection of donations was impacted.

The child's right to freedom of thought, conscience and religion, their right to participation, as well as parents' rights to raise their children in line with their own philosophical or religious views, are subject to systematic interference in Turkey's public education system. **The mandatory Religious Culture and Ethics (RCE) lessons, including the exemption mechanism, the optional religion courses, Islamic religious practises in schools and high school placement exam, constitute substantial interference in the protection of, among others, the child's right to freedom of religion or belief.** The ECtHR judgments *Hasan and Eylem Zengin v. Turkey* (2007) and *Mansur Yalçın and Others v. Turkey* (2014) are yet to be enforced.

Women across different religious or belief communities face significant obstructions to free will in the exercise of their human rights, including freedom of religion or belief. Some of the central findings of this report demonstrate that women continue to be especially vulnerable in their homes, women are prone to pressures from secular and religious segments of society and women often feel compelled to live double lives. Furthermore, men continue to exercise a monopoly over the interpretation of religious dogma and religious offices. Decision-making processes in religious or belief communities also remain dominated by men. The report highlights the cases of *Fatma Yavuz, Zeyneb Duygu Ağbayır* and *Zeynep Çetinkaya* in which women who publicly took- a critical stance against the denigration of women in the name of religion have had to face resulting repercussions. Women within religious or belief communities remain agents of change. An example of this is the members of the Women in Mosques Campaign who seek to improve the place of women in mosques. It is imperative that public authorities, religious or belief communities and civil society address the obstacles facing women's full enjoyment of the right to freedom of religion or belief.

Government measures taken in response to the Covid-19 Pandemic posed challenges to freedom of religion or belief globally; the consequences have been substantial. Places of worship were closed and collective worship was restricted for extended periods of time. The measures taken in relation to the Covid-19 Pandemic, starting in March 2020,

impacted believers and religious or belief communities in different ways. These included restrictions on access to places of worship, the right to manifest religion or belief in worship, observance of religious holidays, participation in rituals associated with certain stages of life, including *bar mitzvahs,* funeral rituals, gathering in homes for worship, organising community activities and teaching religion or belief. The differentiated measures taken to address the impact of the Pandemic affected religious or belief communities differently. While more guidance and accommodation were provided for mosques, other religious or belief communities were not given specific guidance. Accommodation lagged and was not on a par. Deep systemic inequalities became even more apparent during the Pandemic. As always, public resources continued to be available to mosques and those benefiting from these public services but not to other religious or belief communities. However, communities who could not gather in person could not collect donations and experienced a significant decrease in income. **As a result, the blatant inequality between the communities benefiting from religious services funded with public resources through the Presidency of Religious Affairs, and other communities, became even more apparent.** In addition, women and girls had to stay at home and often lost the freedom they found outside the home in practising their religion or belief along with other rights.

2. Purpose and methodology

*An Appeal to Move **Forward** from Aspirations to Actions – Monitoring Report on the Right to Freedom of Religion or Belief in Turkey, 2022,* covers key legislative, judicial, and administrative developments on the right to freedom of religion or belief between April 2019 and December 2021 in Turkey. The report identifies discrepancies with international human rights standards and makes recommendations to seek corrective action. Analysis is based on international human rights standards applicable to the right to freedom of religion or belief. **The terms religion and belief are broadly understood to include theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.** Key interdependent rights, including the freedom of association, the right to education and principles of equality and non-discrimination, are also discussed.

This report aims to:

- systematically examine legislative, judicial and administrative acts regarding the right to freedom of religion or belief;
- cover intersecting issues between the right to freedom of religion or belief and the right to education and freedom of association;
- check for compliance and identify gaps between the standards established by international human rights law and Turkish law and practice;
- make recommendations on necessary measures to better align the aforementioned.

We used a threefold methodology of data-collection, interview, and media survey. To begin, we collected data based on Turkish national law-making processes and relevant court proceedings. Interviews were conducted with more than 50 individuals from diverse religious or belief groups, atheist and deist groups, relevant non-governmental organisations, experts and human rights defenders in Istanbul, Ankara, Izmir, Malatya, Elazığ, Mardin and Diyarbakir. Interviews were performed in person where possible, by telephone and by email correspondence. In addition to the above, systematic surveys of the media provided important data. This report uses initials for most interviewees, at their request, and withholds other identifying information to protect their privacy and security.

Chapter nine, *Women and freedom of religion or belief*, adopts a gender lens in monitoring the right to freedom of religion or belief. While it is a goal of the project to mainstream this gender lens, it is fitting to identify and highlight unique challenges faced by women in a separate chapter. In addition to desk-based research, more than 25 women from a wide range of religious or belief backgrounds were interviewed. The women included students, activists, homemakers, researchers, teachers, social workers, and religious workers some of whom work in the public sector. Including LGBTI+ individuals in the context of this monitoring work has been challenging and therefore the findings are limited to women. Future reports would benefit from further field research, covering diverse contexts of religion, belief and non-belief; on women's and LGBTI+ individuals' experiences.

United Nations
Human Rights Council

3. Legal framework

3.1 International law

Freedom of thought, conscience or religion is a fundamental human right protected under international human rights law. Universal and regional conventions and political documents guarantee this right. Article 18 of the United Nations Universal Declaration of Human Rights (UDHR),[1] Article 18 of the United Nations International Covenant on Civil and Political Rights (ICCPR),[2] and Article 9 of the ECHR protect everyone's right to freedom of thought, conscience and religion.

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his [sic] religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. 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 for the protection of the rights and freedoms of others.[3]

The 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. The terms "belief" and "religion" are to be broadly construed.[4]

1 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 18.

2 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, RES 2200A (XXI), entry into force 23 March 1976, Article 18.

3 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 9.

4 UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4.

The protection of the right to freedom of religion or belief is closely tied to the protection of all human rights since all human rights are indivisible and interdependent. Freedom of religion or belief is connected to multiple rights, including the guarantees of freedom of expression and freedom of association, in terms of both the letter and the spirit of these articles. The right to education confers a duty on states, in the exercise of their functions in relation to education, to respect the right of parents to ensure that such education and teaching is in conformity with their own religious and philosophical convictions. This is also an important component of the legal framework of the right to freedom of religion or belief.

The United Nations (UN) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is an important milestone in terms of establishing the collective dimension of international norms on the freedom of religion or belief.[5]

As a participating state in the Organization for Security and Co-operation in Europe (OSCE), Turkey has a wide range of political commitments to freedom of religion and belief.[6] In addition, the Treaty of Lausanne[7] includes critical provisions on the protection of non-Muslim minorities in Turkey.

Turkey is party to core human rights treaties, however it made significant reservations to these treaties.[8] Within the UN human rights protection scheme, Turkey entered an interpretative declaration on Article 27 of the ICCPR. Turkey reserved the right to interpret and apply the provision on the protection of ethnic, religious or linguistic minorities. This was done in accordance with the related provisions and rules of the Turkish Constitution and the Treaty of Lausanne.[9] Turkey is also a party to the ICESCR with reservations to Article 13 (3), the right to education.[10] Turkey refuses to meet the Article 13's obligation to "have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities" Turkey does not allow guardians to ensure that their children's religious or moral education conforms to their own convictions. Turkey does not uphold Article 13 (4). Turkey has ratified the CRC with reservations to Article 17, 29 and 30,[11] reserving the right to interpret and apply the provisions of said articles according to the letter and spirit of the Turkish Constitution and the Treaty of Lausanne.

Turkey is party to two of the Council of Europe's core human rights treaties, amongst others. These are the European Convention on Human Rights,[12] and the European Social Charter.[13] Turkey ratified Protocol I of the ECHR, but it placed a reservation on Article 2 which protects the right to education. Article 2 also creates an obligation on the part of the state to "respect the rights of parents to ensure such education and teaching

5 UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55.

6 For a complete collection of the OSCE commitments on freedom of religion or belief see OSCE Commitments on Freedom of Religion or Belief.

7 The Treaty of Peace with Turkey, signed at Lausanne on 24 July 1923, was concluded between the British Empire, France, Italy, Japan, Greece, Romania, and the Serb-Croat-Slovene State, and representatives of the government of the new Turkish State.

8 Convention Against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), Convention on Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC).

9 Ratified on 23 September 2003.

10 Ratified on 23 September 2003.

11 Provisions, respectively, dealing with the right to access to information, the right to education and the protection of minorities. Turkey ratified CRC on 4 April 1995.

12 Ratified on 18.05.1954.

13 Ratified on 24.11.1989.

in conformity with their own religious and philosophical convictions". Turkey objected to this on account of Law No. 430 on the unification of education.[14] Turkey is party to neither the European Charter for Regional or Minority Languages nor the Framework Convention for the Protection of Minorities.

» **Turkey should lift all its reservations to international human rights treaties.**

» **Turkey should ratify the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of Minorities.**

International human rights compliance control mechanisms have given decisions and recommendations on critical freedom of religion or belief issues. These have not been implemented, however. If implemented, these would have a far reaching impact on the protection of the right to freedom of religion or belief for all in Turkey. The implementation of the general measures set out in ECtHR judgments regarding Turkey's compulsory Religious Culture and Ethics lessons, conscientious objection and the status of places of worship would provide a significant improvement in the protection of freedom of religion or belief in Turkey. The ECtHR also held that the denial of provision of resources from the Presidency of Religious Affairs to the Alevi community for public religious services was incompatible with the ECHR. The UN HRC, too, has issued its views on communications regarding conscientious objection and the use of headscarf issues; it is imperative that measures are taken to address HRC's findings.

» **Turkish authorities should enforce the ECtHR judgments and HRC Views on freedom of religion or belief cases and take general measures to prevent similar violations from happening, without delay.**

3.2 Domestic law

This section provides an overview of the Turkish constitutional and legislative framework applicable to the right to freedom of religion or belief and key international and constitutional cases.

Article 24 of the Constitution of the Republic of Turkey protects the freedom of religion and conscience:

> Everyone has the freedom of conscience, religious belief, and conviction. Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14.
>
> No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his [or her] religious beliefs and convictions. Religious and moral education and instruction shall be conducted under State supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.
>
> No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest fi influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.[15]

14 For Turkey's reservation see Article 3 of the Law in the Official Gazette.

15 The Constitution of the Republic of Turkey, 1982.

Article 25 stipulates that "everyone has the freedom of thought and opinion" and that "no one shall be compelled to reveal his/her thoughts or opinions" and "nor be blamed or accused of his/her thoughts and opinions."[16]

Article 10 of the Constitution enshrines equality for all before the law, regardless of language, race, skin color, sex, political views, philosophical beliefs, religion, confession, or similar grounds. The Article states that administrative bodies and state organs are, in all their operations, to treat all citizens equally and in accordance with these principles.

Under Turkey's Constitution, International human rights treaties that Turkey has duly ratified supersede domestic legislation.[17] Therefore, in circumstances where provisions of international human rights treaties conflict with Turkish law, international human rights treaty provisions should have effect. This supersession, however, is rarely applied.

In March 2021, the Human Rights Action Plan aimed, within one year, to review domestic legislation and practice in light of international human rights standards to guarantee freedom of religion and conscience in broadest terms.[18] At the time of this publication, however, no information has been shared on the status of this objective with the public.

In addition to the constitutional provisions, there are also several laws and regulations which contain provisions affecting the right to freedom of religion or belief in Turkey and need review:

- The Turkish Civil Code
- The Law on Associations
- The Law on Foundations
- The Law on Assembly and Demonstrations
- The Law on Zoning and Construction
- The Turkish Penal Code
- The Basic Law on National Education
- The Law on Private Educational Institutions
- The Law Closure of Dervish Lodges, Hospices, and Shrines, and on the Prohibition and Repeal of Certain Titles
- The Law on the Prohibition of Certain Garments
- The Law on the Establishment and Duties of the Presidency of Religious Affairs

In 2012, the process of individual application to the Constitutional Court mechanism was introduced to the Turkish legal system. As a result, the Turkish Constitutional Court (henceforth AYM) has become a critical new actor that could, and should, lead to important changes related to freedom of religion or belief and interrelated rights.[19] Since 2012, however, the AYM has delivered only a small number of decisions on freedom of religion and conscience. Applications regarding key issues of freedom of religion or belief are still pending review. Some of these applications still awaiting review address the right to conscientious objection, the status of *cemevi* and compulsory Religious Culture and Ethics lessons. A notable example, within the reporting period, of successful review under this process of individual application is that of *Levon Berç Kuzukoğlu and Ohannes Garbis*

16 *Ibid.*

17 Article 90 of the Turkish Constitution.

18 Ministry of Justice, Human Rights Action Plan Objective, 4.3.a., April 2021.

19 A table of the individual applications on the right to freedom of religion and conscience can be found here.

The Turkish Constitutional Court

Balmumciyan. On 22 May 2019 the AYM made important findings on the interferences in the internal affairs of religious or belief communities.[20] The applicants had complained that the state's refusal of the request they made for the election of a Patriarch violated their right to freedom of religion. AYM found that the interference was not prescribed by law and in violation of Article 24 of the Constitution.

- **Legislation and practice should be reviewed with a view to bring them in compliance with international human rights law as indicated in the Human Rights Action Plan (2021).**
- **The AYM should process the pending individual applications on freedom of religion or belief speedily and in compliance with international human rights standards.**
- **Domestic courts should consistently apply international human rights treaty provisions where domestic legislation conflicts with the latter, in line with Article 90 of the Turkish Constitution.**

20 AYM, 22 May 2019, Individual Application No. 2014/17354, Levon Berç Kuzukoğlu and Ohannes Garbis Balmumciyan.

Credit: Evrensel

Conscientious objector and human rights activist Zana Aksu was sentenced to 18 months in prison and a fine of 10 thousand TL for "violating the military law" in 2021.

4. Freedom of thought, conscience or religion

4.1 The freedom to have or change one's religion or belief

The freedoms to have or change a religion or belief or not to believe are absolute and cannot be limited.[21] Under the Turkish legal system, conversion is not prohibited. Despite these legal guarantees, in practice having a religion or belief other than the one considered acceptable to their family, social network and greater society, puts an individual's rights at risk. The individual may face discrimination and prosecution when they are vocal about their religious or philosophical views. Two examples of this follow.

Individuals from diverse religious backgrounds, atheists and agnostics report pressure from their family, social network, workplace, and religious or belief community. A recent survey on current trends in Turkey sheds light on biased attitudes prevalent in society. The survey was carried out in 26 cities representing Turkey. Individuals were asked to what degree they would or would not want to have a person of a different religion as their neighbour. 57.3 % of respondents said they would not want to have an atheist, 43.9% said they would not want a Christian, 37.1% said they would not want a Jew, 21.3% said they would not want to have an Alevi and 16.2% said they would not want to have a devoutly religious (*dindar*) person as a neighbour.[22]

There is also widespread concern regarding the risk of discrimination based on one's religion or belief in the workplace. Interviewees frequently report that they feel compelled to comply with "acceptable norms". Practicing Muslims fear discrimination in secular workplaces; non-Sunni Muslims fear discrimination in conservative and some secular workplaces. Atheists report that they do not feel comfortable being open about their identity as atheists in the workplace because of fear of dismissal. The resulting pressure obliges people to lead double lives. The risk of workplace discrimination is an impediment to the exercise of the right to have a religion or belief.

21 UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 3.

22 Kadir Has University Turkey Research Group and Global Academy, *Türkiye Eğilimleri - 2021*, 4 January 2022, p.121.

» **Public authorities should take steps to understand the challenges to the right to freedom of religion or belief in the family, religious or belief communities and workplaces. Appropriate multi-thronged responses should be developed to address these challenges.**

» **The education system should be strengthened to address deeply embedded prejudices toward different religious or belief communities.**

Article 216(3) of the Turkish Penal Code (TCK) and its application constitute important challenges to the right to have a religion or belief, including non-belief.[23] Those who are critical of religion or belief or of certain interpretations, especially of Islam, face complaint and risk being prosecuted under the TCK. This is done specifically under Article 216 (3): public degrading of religious values of a section of the population. The Venice Commission in its Opinion of 2016 assessed the compatibility of Article 216 (3) with international human rights law standards. The opinion drew attention to the CoE Parliamentary Assembly Recommendation 1805 (2007) on *Blasphemy, religious insults and hate speech against persons on grounds of their religion*, stated that, "national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence".[24] Article 216(3) "should not be applied to punish blasphemy but limited to cases of religious insult that intentionally and severely disturbs [sic] public order and calls for public violence."[25]

The Ministry of Justice 2020 statistics on Article 216, while not specifically indicating judicial proceedings on Article 216(3) provide some insight into the use of this provision.[26]

TABLE 1: THE MINISTRY OF JUSTICE 2020 STATISTICS ON ARTICLE 216

Article 216	Total	Men	Women
Number of imprisonment sentence decisions rendered for accused persons	94	88	6
Number of decisions of judicial and administrative fine rendered for accused persons	45	43	2
Number of suspensions of imprisonment decisions rendered for accused persons	19	17	2

There is a strong trend in Turkey to apply Article 216 (3) solely in the context of Islam and not in the context of insult or hatred against other religions or beliefs.

Erol Mütercimler, a journalist and academic was sentenced to a 10-months prison sentence on grounds of insulting graduates of the Islamic Imam Hatip schools in a political talk show under Article 216 of the Turkish Penal Code.[27] The enforcement of the prison sentence was postponed.

Several Boğaziçi University students were prosecuted under Article 216(3) because of their artwork. Prof. Melih Bulu was appointed as the President of Boğaziçi University in a Presidential Decree issued on January 1, 2021. The appointment of Bulu sparked severe criticism amongst the students and academicians of the university as well as in the

23 *Türk Ceza Kanunu* (Turkish Penal Code) Law No. 5237, 26 September 2004.

24 Venice Commission Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), para. 42.

25 *Ibid*, para. 48.

26 Ministry of Justice Judicial Statistics 2020.

27 Istanbul 12th Criminal Court of First Instance, 19 April 2021.

broader academic community.[28] As part of the protests demanding a rectoral election, an exhibition was organised by students. Members of an Islamic studies student group shared a targeting tweet about a piece of artwork featuring an image of the *Kaaba* with a depiction of *Shahmaran* and LGBTI+ flags around it, aiming to criticise the perception of gender. Following the exhibition, students were detained after being targeted by government officials and media.[29] A prison sentence of up to three years is requested for the students for "inciting hatred and insulting religious values", under Article 216 of the TCK. Of the seven students on trial, two were detained and one was under house arrest until the first hearing.[30] The trial process is ongoing.[31]

Article 216(3) is not applied to protect minorities against hateful or defamatory speech.

The representatives of the Association for Atheism state that individuals frequently call the Association's telephone line and leave insulting messages; complaints to the public prosecutor's office do not lead to results.[32]

The Jewish community is frequently targeted in social media with insults, hatred, and defamation. Despite complaints from the community, public authorities and social networks such as Twitter and Facebook have not addressed these issues.

The Jewish community condemned Cemil Kandemiroğlu's post using the term 'Jewish' synonymously with traitor and dishonourable, and wishing God's damnation on the Jewish people, on Twitter on 18 June 2021 and filed a complaint with the public prosecutor.[33]

» **Article 216(3) should be formulated more restrictively as to the definition of the term "degrading", since expressions that offend or shock, which are protected under Article 10 ECHR, can fall under the term "denigrating" in paragraph (3) which may be given a very broad meaning.**

» **Article 216(3) provision should not be applied to punish blasphemy or criticism of religion.**

28 Bianet, *Boğaziçi University protests mark one year since Erdoğan's rector appointment*, January 3, 2022.

29 Duvar English, *Turkish gov't uses protests at Boğaziçi University to attack LGBT rights with Islamist discourse*, January 31, 2021.

30 Uluslararası Af Örgütü, *Boğaziçi Üniversitesi Sergi Davası*, March 17, 2021.

31 Evrensel, *Boğaziçi öğrencilerinin duruşması 9 Şubat 2022'ye ertelendi*, November 17, 2021.

32 Telephone interview with the former head of the Association for Atheism, April 2021.

33 The Jewish Community official Twitter post said: "Necessary legal proceedings have been initiated against the persons who committed crimes by publicly inciting and encouraging the people, who use our faith as treason, to enmity and grudge against the Jews, and a criminal complaint was filed with the prosecutor's office." - our translation.

4.2 The right not to declare one's religion or belief

No one shall be forced to declare their beliefs.[34]

The chip-enabled national identity cards include a field for religion. People may record their religion or belief in this field "according to their preference" or leave it blank. Authorised public officials can view the information recorded in the chip. Information on individuals' beliefs is considered qualified personal data (sensitive) and therefore this information must be protected in accordance with the Personal Data Protection Law. Only authorised public officials may view this information. Ultimately, however, **their ability to see a listing of a religion other than Islam, or a blank field, presents the risk of discrimination on the basis of religion or belief.**

Furthermore, for Jewish and Christian students, there is a real risk of discrimination. They are compelled to reveal their religion or belief. These students, to benefit from the right to an exemption from the compulsory Religious Culture and Ethics courses, cannot leave the religion field blank in their identity records. The Ministry of National Education's (MNE) Directorate General of Religious Education wrote a memorandum to provincial governors on in 2015 ordering that to be exempt from the RCE classes, students receiving education in elementary and middle schools, other than schools for religious minorities, would have to have their religions recorded on their identity documentation in the religion section.[35] Children with a blank religion field in their records are required to take RCE classes. Therefore, individuals are caught between being forced to declare their religion and being forced to take the RCE class.

As the ECtHR found in the *Sinan Işık v. Turkey* judgment, **recording citizens' religions—voluntarily or involuntarily—in population records or identity cards, is incompatible with the person's right to not declare their religion.**[36] The effective enforcement of this judgment requires the field for religion to be completely removed from personal records.

- The religion field in population records must be removed.
- Until the field for religion is removed from official documents, individuals must be permitted to express a religion or belief in the manner they choose. In order for this to include worldviews such as atheism and agnosticism, they should not have to choose from a list of limited options.
- Christian and Jewish students wishing to exercise their right to exemption from the RCE course should not be forced to forfeit their equal right to leave the religion field of their identity documents blank. Their statement to this effect should be sufficient for exemption.

4.3 Freedom from coercion to act in a manner contrary to one's beliefs

Conscientious objection to military service

The right to conscientious objection to military service is protected as a right within the scope of the right to freedom of thought, conscience, and religion.[37]

Despite Turkey's obligations under international human rights law, the right to conscientious objection to military service is not recognized. The Law on Conscription and the Military Criminal Law constitute the basis for compulsory military service, and the draft evader and deserter status, resulting in administrative and criminal punitive

34 ECtHR, *Sinan Işık v. Turkey*, No. 21924/05, 2 February 2010.

35 General Directorate of Religious Educations Circular, 3 February 2015.

36 Sinan Işık, *See above* 34, para. 34.

37 ICCPR Article 18 and ECHR Article 9.

measures, applies to conscientious objectors.[38] In the above bodies of legislation, no reference is made to conscientious objection to military service or alternative civilian service.

The UN and CoE human rights compliance control mechanisms have found Turkey in violation of the right to freedom of religion or belief by not recognizing the right to conscientious objection to military service.

In one case, *Atasoy and Sarkut v. Turkey,* the UN Human Rights Committee (HRC) examined the complaints filed by two Jehovah's Witnesses who objected to the absence of an alternative service in Turkey. The HRC found Turkey in violation of Article 18(1) of the ICCPR and held that the prosecution and sentences ensuing the defendants' objection to military service constituted an infringement on their freedom of conscience which violated Article 18(1).[39]

In addition, the ECtHR found violations to the right to freedom of religion or belief, along with other human rights, in applications on the basis of conscientious objection to military service in the following cases: *Ülke v. Turkey, Buldu and Others v. Turkey, Enver Aydemir v. Turkey, Erçep v. Turkey, Feti Demirtaş v. Turkey, Savda v Turkey, Tarhan v. Turkey*.[40]

The ECtHR' key findings are

Inhuman or degrading treatment

The domestic legal framework is not sufficient for those who refuse to wear uniform and/or perform military service on grounds of conscience or religion and the ensuing interminable series of prosecutions and convictions are disproportionate to the aim of ensuring the performance of military service. The series of prosecutions and convictions aim at repression of intellectual personality, break the resistance and will and the compulsion to lead a clandestine life, and amount almost to "civil death". They are incompatible with the punishment regime of a democratic society. (*Ülke*)

Cumulatively, the acts concerned constitute inhuman or degrading treatment within the meaning of Article 3. (*Ülke, Savda, Feti Demirtaş, Buldu and others, Enver Aydemir, and Tarhan*)

Violation of freedom of thought, conscience and religion

There is a lack of an effective and accessible procedure in Turkey to assess whether conscientious objectors are entitled to conscientious objector status. This absence is a violation of Article 9 of the ECHR. (*Erçep, Savda, Feti Demirtaş, Buldu and others, and Tarhan*)

Absence of the option of alternative service

The system of compulsory military service in Turkey imposes on its citizens an obligation having potentially serious consequences for conscientious objectors. The system does not allow any exemption on grounds of conscience and gives rise to the imposition of heavy criminal penalties. Thus, the interference to the applicants' human rights stems from both the multiple convictions of the applicants and from the absence of the option of alternative service. (*Ercep, Feti Demirtaş, Tarhan*)

38 Law on Conscription [*Askeralma Kanunu*] No. 7179, 25 June, 2019 Official Gazette 30813, 26 June 2019; Military Criminal Law [*Askeri Ceza Kanunu*] Law No. 1632, 22.05.1930, Official Gazette No. 1520, 15.06.1930.

39 UN Human Rights Committee, *Atasoy and Sarkut v Turkey*, UN Doc CCPR/C/104/D/1853-1854/2008, 19 June 2012.

40 ECtHR, *Osman Murat Ülke v. Turkey*,. 39437/98, 24 April 2006; ECtHR, *Feti Demirtas v. Turkey*, No. 5260/07, 17 January 2012; ECtHR, *Erçep v. Turkey*, No. 5260/07, 22 February 2012; ECtHR, *Halil Savda v. Turkey*, No. 42730/05, 12 June 2012; ECtHR, *Mehmet Tarhan v. Turkey*, No. 9078/06, 12 July 2012.

Violation of the right to a fair trial

The trial and conviction of civilian conscientious objectors by military courts constitutes a violation of Article 6 (1) of the ECHR. (*Erçep, Savda, Buldu and Others, and Feti Demirtaş*)

The tracking and administrative fines applicable to draft evaders and deserters are described in the Law on Conscription.[41] When the administrative monetary fine issued against a conscientious objector is finalised, criminal proceedings begin based on the Military Criminal Law. Following this, every official record issued, when a conscientious objector is apprehended, becomes a criminal case. Conscientious objectors can be fined several times due to the long period of finalisation of the fines. The administrative monetary fines can amount to a substantial sum.

Several human rights are impeded by the lack of recognition of the right to conscientious objection to military service, the addition of the evader status to an objector's official records and the ensuing punitive consequences. This non-recognition limits an individual's right to participate in public life in areas such as standing for elections and voting, freedom of movement, the right to education, and the right to the opportunity to gain a living.

Participation in public affairs and the right to vote – Under Article 67(1) of the Constitution, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum. However, 67(5) stipulates that, "privates and corporals at arms, cadets, ... shall not vote". Despite the ECtHR judgments on the human rights violations experienced by conscientious objectors, and the Turkish authorities' obligations to eliminate the consequences of these violations, conscientious objectors' statuses as "soldier" and "deserter" persist and they are prohibited from the voting process. As a result of these records in the database, **the right of conscientious objectors to vote and be election observers is violated.**[42]

As stated above, every citizen has the right to be elected under Article 67 of the Constitution. To be eligible for election as a member of parliament, however, under Article 76 of the Constitution, one must be exempt, deferred from or have fulfilled military service. **Since conscientious objectors' statuses are flagged as having unfulfilled military service, they are not eligible to stand for elections.**

Freedom of movement – Article 23 of the Constitution protects everyone's freedom of movement. However, under Article 26 (1) of the Law on Conscription, draft evaders, evaders, and deserters are reported to the Ministry of Interior which then apprehends them in order to enforce their performance of military service. Following apprehension, they are taken to the nearest conscription branch or released, handed an official record, and instructed to submit to the nearest Conscription Branch within 15 days under Article 36(2).[43]

The General Information Gathering system (*Genel Bilgi Toplama*, GBT), used by police officers to access information on people, helps officials identify draft evaders and deserters, be they conscientious objectors or not, and implement punitive consequences of these statuses. The information in the GBT system includes an individual's status related to military service obligations, criminal records or records of suspected offences.

41 Law on Conscription [*Askeralma Kanunu*] No. 7179, 25 June, 2019 Official Gazette 30813, 26 June 2019.

42 For more details please see the cases of conscientious objectors (Osman Murat Ülke and Murat Demiroğlu) from Association for Conscientious Objection's report Conscientious Objection to Military Service in Turkey Report, p. 45.

43 *Supra* 38, Law on Conscription.

Passport or identity checks, including those at hotels and on bus rides, are done through the GBT system. When the authorities identify individuals as evaders or deserters, either on the road or at a hotel, they are apprehended, and taken to a police station or military branch or an official record is issued. A conscientious objector is subject to this treatment as long as the system shows that he has not fulfilled his military service. **As a result, conscientious objectors avoid travel to prevent apprehension. They are subject to restriction of their right to freedom of movement.**

The right to education – Under Article 41(1) of the Law on Conscription, the high-school or university registration of students who have not fulfilled their military service - taking into account their right to postponement for a certain period of time - is frozen. **Those whose registration has been suspended this way cannot benefit from public-funded bursary or student accommodation.**

The right to the opportunity to gain one's living – Articles 48 and 49 of the Constitution protect everyone's right to work.

Article 41 (2) of the Law on Conscription stipulates that evaders and draft evaders must not be employed in civil service or the private sector and threatens prosecution to those who employ them. Article 48 (6) of the Law on Civil Servants also stipulates that to qualify for a civil servant position one must be under no obligation to fulfil military service.[44] Under Article 75 (1) of the Military Criminal Code, employers who do not terminate employment of a person considered an evader or draft evader upon the receipt of an official notification from the Government will be sentenced to imprisonment from three months to one year.Upon repeated offence the sentence is increased from one to three years.[45] This is applicable to all employment opportunities in the private and public sector, and includes municipalities, banks and associations and professional organisations working for public benefit. **Punitive measures applicable to employers for employing persons denoted in the system who appear as evaders and draft evaders result in significant restrictions on conscientious objectors' opportunities to earn their living.**

Prohibition of torture, inhuman and degrading treatment and right to respect for private life – **The above illustrates pervasive and consistent interference in several fundamental human rights.** This interference paralyses the lives of conscientious objectors and continues to constitute "civil death". This amounts to a breach of Article 3 of the ECHR as well as a violation of Article 8, in particular the protection of the physical and mental integrity of an individual. The latter is evident in the interferences in the various human rights discussed above.

The Case of Sefer Bileçen

Mor Yakup Monastery Priest Sefer (Aho) Bileçen has been convicted of "aiding a member of a terrorist organization" for giving food to People's Defence Force (HPG) member – an act that he remarked was motivated by his faith. He was sentenced to two years and one month in prison in April 2021 by the 4th Chamber of Mardin Criminal Court for aiding a terror organization.[46] Bileçen appealed to the ruling and there is currently no decision to arrest him. Bileçen had been previously detained. During that detention he share the following with the members of the Urfa Bar Association's Human Rights Commission and shared the following message via his attorneys:

44 Law on Civil Servants [*Devlet Memurları Kanunu*] No 657, 14 July 1965, Official Gazette No 12056, 23 July 1965.

45 *Supra* 38, Military Criminal Code.

46 Bianet, *Mor Yakup Church priest Aho Bileçen sentenced to prison*, 7 April 2021.

> *I would give [food] no matter who came to my door. I need to do it religiously and philosophically. I cannot lie as I am a priest. I did it not in order to aid an organisation, but due to my faith. Philosophically, I cannot tip off, either. It is also religiously the case. I do not leave the monastery anyway.*

- **Conscientious objection to military service must be recognized as a constitutional right, without delay.**
- **Legislation on conscientious objection to military service should be drafted in compliance with international human rights law.**
- **An independent and impartial decision-making body should be established to examine conscientious objection claims. Special consideration must be given to the requirement not to discriminate against conscientious objectors based on the nature of their religion or belief.**
- **Steps should be taken to provide an alternative service option for conscientious objectors who request it. This option must be provided as an alternative to conscientious objection. It should be genuinely civilian in nature, neither deterrent nor punitive, and non-discriminatory in effect.**
- **All criminal proceedings against conscientious objectors should be ended and compensation should be provided. In the case of conscientious objection, all convictions, for disobedience, draft evasion, desertion or public statements should be expunged from criminal records.**
- **Statistics should be kept on conscientious objection applications. These should include the number of conscientious objectors, monetary fines, criminal investigations and convictions delivered in connection to conscientious objectors and shared with the public.**
- **Measures should be taken to ensure that the applicants are free from the risk of further prosecution and the obligation of compulsory military service and can fully enjoy their political, civil, economic, social and cultural rights. To this end, domestic laws, in particular the Law on Conscription, the Military Criminal Law, the Law on Civil Servants and the Criminal Code, should be reviewed. This should be done with an aim to remove all restrictions imposed on conscientious objectors in the exercise of their rights to be elected and to elect, their right to education, opportunities to earn a living and freedom of movement.**
- **The Turkish Constitutional Court should follow the ECtHR jurisprudence which recognizes the right to conscientious objection to military service as a fundamental human right. The numerous individual applications pending at the AYM should be addressed without delay.**
- **International human rights compliance control mechanisms should keep the right to conscientious objection to military service on relevant agendas.**
- **Relevant international human rights compliance control mechanisms should follow up on UNHRC Opinion on *Atasoy and Sarkut v. Turkey* and UPR recommendations and continue to keep the *Ülke* group of cases on an enhanced supervision track.**

Credit: Michael Benanav

Acquiring place of worship status remains an ongoing challenge for several religious communities, particularly for the Alevi, Jehovah's Witnesses and Protestant communities.
Semah during an Alevi worship.

5. Freedom to manifest one's religion or belief in worship, teaching, practice and observance

5.1 The right to manifest one's religion or belief in worship

5.1.1 Access to places of worship

Women continued to face challenges having equal access to mosques. This issue will be covered more extensively in chapter nine of this report.

At a mosque in Istanbul's Üsküdar province a man did not allow a woman to enter the mosque on grounds that the woman would be acting against the Prophet Mohammed's Hadith.[47] Reportedly, the woman left the premises after the security personnel arrived at the scene. The Association for the Woman and Democracy (KADEM) made a statement saying that interfering with women's access to mosques constitutes a threat to women's presence in the public sphere.[48]

» Women's equal access to mosques should be ensured by the Presidency of Religious Affairs.

The Turkish public authorities began taking measures to control the Covid-19 Pandemic in March 2020. **These measures had human rights implications, most notably, limitations on freedom of movement, closure of schools and transitioning to online teaching at schools and universities, restrictions on business opening hours, cessation of prison and detention visits, closure of places of worship, and the introduction of strict curfews.**

Turkey applied differentiated legal and practical measures to combat the impact of the pandemic. But these resulted in various restrictions on human rights.[49] Differentiated regulations, applied to individuals based on their age, restricted the movement of

47 Sabah, *Camiye girmek isteyen kadınları içeri sokmadılar*, 1 May 2021.

48 *Ibid.*

49 Çalı, B. and Turkut, E., Year one: Reflections on Turkey's legal responses to the COVID-19 Pandemic, Verfassungs Blog, 16 March 2021.

Credit: AA

Syriac Christmas ritual during the Covid-19 pandemic in Mardin.

individuals above the age of 65 and under the age of 20.[50] Measures were also applied differently, whilst some public gatherings in closed and open spaces were banned, others were permitted.

Religious activities typically involve the gathering of groups of individuals. Since public gatherings are hot spots for the spread of viral infections, including Covid-19, preventive measures related to Covid-19 were imposed on religious gatherings. This impacted the ability of individuals and communities to manifest their religion or belief across Turkey.

The measures taken in relation to the Covid-19 Pandemic impacted believers and religious or belief communities in different ways. These included restrictions on accessing places of worship and the conduct and attent religious services. Since the beginning of the Pandemic, curfews were imposed, These affected access to places of worship of different religious or belief communities differently.

> *The public authorities' approach to lockdown measures once again made us think that non-Muslim communities are forgotten, as if such citizens don't exist. We had to take account of the guidance given to mosques and have not received guidance for churches. The frequent Sunday curfews meant that Christians could not gather in churches. It would have been good if there was an exception for Christians. They considered how to accommodate Friday prayers at mosques, however, did not think about others. –* ***Kayra Akpınar, co-leader of the Pera Diriliş Kilisesi (Pera Resurrection Church, Istanbul)***

On 16 March 2020 the Ministry of Interior, in compliance with measures taken by the Presidency of Religious Affairs to prevent the increase in the infection rate of the Covid-19 Pandemic, sent a circular to the 81 provincial governors informing them that, as of 16 March 2020, noon, afternoon and Friday prayers were suspended in all mosques and masjids across the country until the epidemic was brought under control.[51]

50 *Ibid.*

51 Anadolu Ajansı, *Diyanet İşleri Başkanı Erbaş: Cami ve mescitlerde cemaatle namaza ara verilecek*, 16.3.2020.

During the period when mosques were closed, communities that worship in other places of worship also closed their places of worship. Some started gathering for collective worship in virtually and in hybrid forms. For example, the Yeniköy Tiferet Israel Sinagog met every morning to perform *Shahrit tefila* prayers and in the evenings *Minha* and *Arvit* prayers were broadcasted live on Zoom.[52] The Greek Orthodox Patriarchate provided virtual prayer services during Advent and Christmas in 2020. The following Easter 2021, an in person worship service was held with a limited number of participants under the "new normal".[53] Baptism and other special rituals were performed with a small group of members which was then broadcasted live *via* online applications.

For communities where Eucharist - the consumption of bread and wine as a sacrament - is an essential part of their worship, such as the Latin Catholic Church, the virtual gatherings were not suitable.[54] Therefore, when in person gatherings became possible the sacrament was distributed using tongs and observing physical distance.[55] The Istanbul Syriac Kadim Church clergy, reportedly, was given permission to travel to their church and provide Sunday service while broadcasting it live on their social media accounts in December 2020.[56]

The practice in Protestant churches varied; some moved their weekly Sunday church services to week day evenings, some continued solely with online gatherings.[57] A common challenge, expressed by a number of interviewees, was that the virtual assemblies were open only to members of the congregations and visitor attendance was thus very limited.

The *cemevi* assemblies were also impacted by these measures. *Cemevis* are connected to associations and each *cemevi* made their own decision on whether to close or not.[58] **Generally, the *cemevis* were opened for funerals and then gradually for *cem* as well. The differentiated restrictions negatively impacted *cem* attendance.** The *cem* worship takes place in the evenings and since the curfew often started at 21:00, this time was not convenient for believers to join the *cem* after work and return home by 21:00. The rules for 65+ allowed them to be outside between 10:00-13:00 therefore, they could not join the *cem* even when it was performed.

The Ministry of Interior did not publish a general guidance for worship places. However, a circular prepared together with the Presidency of Religious Affairs was issued by the Ministry of Interior on 23 May 2020 on collective worship in mosques and *mesjid*.[59] Accordingly, noon, afternoon and Friday prayers were allowed as of 29 May 2020. Friday prayers were only allowed in certain mosques. The Governorships then determined the mosques and *masjids* where Friday prayers would be allowed in their provinces and published lists which included the number of people who would be allowed to worship.[60]

Other religious communities did not receive specific guidance from public authorities for their places of worship. This resulted in uncertainty which impacted religious communities differently. Among others, the Jewish Rabbinate and Armenian Patriarchate prepared their own guidance document applicable to their places of worship.

52 Şalom, *Yeniköy Sinagogu COVID-19 günlerinde de yahidlerini yalnız bırakmadı*, 27 May 2020.

53 Interview with Laki Vingas, the Chair of the Yeniköy Panayia Rum Ortodoks Kilisesi Vakfı, 9 December 2020.

54 Interview with Claudio Monge and Luca Refatti, priests at Saint Peter and Saint Paul Church, Istanbul, 18 December 2020.

55 *Ibid.*

56 CNNTurk, *Ana Haber*, 6 December 2020.

57 Interviews with the General Secretary of the Association of Protestant Churches, Pera Diriliş Kilisesi, Bursa Protestan Kilisesi, 19 July 2021.

58 Interview with Doğan Bermek from Alevi Düşünce Ocağı, 14 December 2020.

59 *Cami ve Mescidlerde Cemaatle İbadet Edilmesi Genelgesi*, 22 May 2020.

60 BBC in Turkish, *Camiler açılıyor: Hangi önlemler alındı, uyulacak kurallar neler?*, 28 May 2020.

For the Protestant Churches, a guide was prepared by the Protestant Churches Association and sent to the church leaders to help guide them in adapting to the post-lockdown period and to prevent the spread of the disease among church members.[61] The guide explains the hygiene rules to be followed in churches to help eliminate the risk of infection.

Şişli, Ortaköy and Caddebostan synagogues were opened in Istanbul on 13 June 2020. According to the rules that the Turkish Jewish Community described as the "new normal", only those with reservations could enter the synagogues, and a maximum of 15 male and 5 female Yahids were allowed in each prayer service.[62] Moreover, they imposed their own additional restrictions announcing that people over the age of 65 would not be able to enter synagogues for a while, even if the Scientific Committee granted permission.

In 2021, many churches were able to celebrate Easter under the "new normal" with adaptations. Some of these adaptations involved limiting the number of participants and using outside spaces, including the Greek Orthodox Patriarchate in Istanbul.[63]

The public authorities have shown great understanding and have been helpful with our churches throughout the Pandemic. - ***A representative of the Syriac Christian community***

In the fall of 2020, the Ministry of Interior's circular of 18 November 2020 set in place weekend curfews and provided for exemptions only for funerals with limited attendance.[64] **The weekend curfews resulted in a disproportionately higher restriction on religious communities that gather for worship at the weekends, such as the Jewish and Christian communities.**

The government guidance for religious activity centred on mosques and masjid, accommodation of Islamic prayers and holidays. Others developed their own guidance, taking cues from the guidance given by the authorities to the general public and mosques and *masjid*. Gradually, however, as questions were asked and guidance requested, references to *cemevi* and *dedes* were added to guiding documents. For example, The Ministry of Interior's Frequently Asked Questions document, when describing the exemptions on the curfew imposed on those over the age of 65, indicated that persons aged 65 and over who carry out religious activities in *cemevis* (*dedes,* association/foundation managers, etc.) were exempt from the restrictions imposed on these age groups without obtaining any permission to go to and from *cemevis* during the periods and days when curfews are imposed on weekdays and weekends.[65]

A notable exception in the application of the restrictions was the opening of the Hagia Sophia as a mosque on 24 July 2020. Around 350,000 people gathered and reportedly many in attendance ignored regulations regarding social distancing and masking.[66] Furthermore, thousands attended indoor and outdoor Ramadan prayers at Istanbul's Hagia Sophia despite a Covid-19 full lockdown on 13 May 2021, the day that marked the end of the holy fasting month of Ramadan.[67]

During a three day lockdown on 23-25 April 2021, an exception was made for the Friday

61 Interview with Umut Şahin General Secretary of the Association of Protestant churches, 10 December 2021.

62 Hyetert, *Sinagogların Yeniden Açılışıyla İlgili Yahid Duyurusu*, 10 June 2020.

63 Greek Orthodox churches in Mersin and Hatay celebrated Easter in May 2021.

64 Ministry of Interior Circular No 20077, 18.11.2020.

65 https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/illeridaresi/Haberler/Covid-19/SIKCA-SORULAN-SORULAR-07122020.pdf

66 Arab News, *Hagia Sophia prayers 'sparked Turkey's new COVID-19 cases'*, 12 August 2020.

67 Daily Sabah, *Muslims welcome Eid at Istanbul's Hagia Sophia in 1st prayer in decades*, 13 May 2021.

Credit: AFP

The opening of the Hagia Sophia as a mosque on 24 July 2020.

prayers and these were allowed in mosques nearest to one's residence.[68] This could not be easily applied to other places of worship since their relative sparsity means they are often not within walking distance.

5.1.2 Places of worship and status

The interior construction work on the Syriac community's church building in Istanbul is ongoing and the building is expected to be opened for worship in 2022.[69] When opened, the church will be one of the rare new churches opened after the establishment of the Turkish Republic. The church is located on land that belonged to the Latin Catholic Church and was part of an Italian cemetery which had been confiscated by the city.

Challenges to acquiring place of worship status

Acquiring place of worship status remains an ongoing challenge for several religious communities, particularly for the Alevi, Jehovah's Witnesses and Protestant communities. The kingdom halls of Jehovah's Witnesses, the churches of the Protestant community and the *cemevis* of the Alevi community are particularly in a precarious position because they lack the place of worship status. The existence of these places of worship are relatively new to Turkey; they do not have a long historical presence. The public authorities have systematically denied the place of worship status to these sites. As a result, these communities cannot benefit from the tax and other benefits that accompany the place of worship status. Furthermore, by carrying out worship activities in premises that do not have the place of worship status, communities are left at the mercy of the authorities. As an example, not having the legal place of worship status was the determining factor for the closure of three churches during the Pandemic. **Most churches lacking the place of worship status were not closed, but these three Istanbul churches were closed.** This indicates that not having the legal place of worship status creates vulnerability and makes these communities susceptible to unfettered administrative interference. The risk of interference cannot be dismissed. The Association of Protestant Churches has reported that

68 BBC in Turkish, *23 Nisan ve hafta sonu sokağa çıkma yasağı başladı: Cuma namazı 'en yakın camide' serbest*, 22 April 2021.

69 Email correspondence with Sait Susin, 1 February 2022.

very few of their members' 182 fellowships/churches have the place of worship status. Reportedly, when such churches "introduce themselves to the authorities as a church, they receive warnings that they are not legal and may be closed down".[70] This is the situation for Protestant Churches. The situation is even more grim for Alevi and Jehovah's Witnesses; the place of worship status has never been granted to a *cemevi* or kingdom hall.

The denial of the place of worship status to the *cemevi* and Jehovah's Witnesses kingdom halls has been the subject of multiple domestic and international court cases. The ECtHR judgment of 2016 on the *Association for Solidarity with Jehovah's Witnesses v. Turkey* observed that reliance on "the good will of the authorities" does not amount to a "solution to the problem".[71] The ECtHR found that, "In fact, even if religious gatherings in some places are permitted or only de facto tolerated by the national authorities, the risk of interference by the authorities can never be ruled out."[72] The court observed that "the impugned measures deprived the applicants of the opportunity to have a place allotted for their religious practice. Recalling that Article 9 of the Convention guarantees "the freedom to manifest one's religion collectively (...)", the court stated that "this right will be emptied of its essence if a religious community does not have a place to perform their worship".[73]

The ECtHR held that the denial decision had a direct impact on the applicants' freedom of religion and that these decisions could not be regarded as either proportionate to the legitimate aim pursued or necessary in a democratic society.[74] The court also took note of the third-party intervention made by the Freedom of Belief Initiative stating that "the cases reported by the party involved … were not contested by the Government, and the review of the present case, in particular, show that the administrative authorities were strict and even strict with regard to the practice of certain minority practices, inter alia, the practices of Jehovah's Witnesses. It allows it to be determined that they tend to take advantage of the above-mentioned provisions to impose prohibitive conditions".[75]

In the case of *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey,* the request that, as a place of worship entitled to the payment of lighting costs, the state cover Yenibosna *Cemevi*'s lighting cost was rejected.[76] This request was denied on the grounds that "*cemevis* are not places of worship".[77] The ECtHR found a violation of the prohibition against discrimination contained in Article 14, in conjunction with Article 9. To date, no legislative or administrative measures have been taken by the Government to comply with this important judgment.[78] Several domestic court decisions have accepted the objection of Alevi associations to the electricity bills issued, however they have not led to effective measures to prevent similar violations from happening. They do not set a precedent that all courts must follow, and they are not binding for the cases of *cemevis* beyond those party to these specific cases. **To be able to benefit from the exemptions for the electricity bills, every *cemevi* would have to pursue judicial remedies.** This would be a costly, burdensome, and lengthy process. Not every *cemevi* would have the human and financial resources to go through this process.

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70 Association of Protestant Churches, Rights Violations Report 2020, 2021.

71 ECtHR, Association for Solidarity with Jehovah's Witnesses and Others v. Turkey, No 36915/10 and 8606/13, para. 107, 24 May 2016.

72 *Ibid.*

73 *Ibid,* para. 90.

74 *Ibid,* para. 108.

75 *Ibid,* para. 106. Author's translation from the Turkish text.

76 ECtHR, *Cumhuriyetçi Eğitim ve Kültür Merkezi Foundation v. Turkey*, No. 32093/10, 2 December 2014.

77 *Ibid.*

78 Our submission to the CoE Committee of Ministers outlines the measures that need to be taken and the shortcomings of the Turkish Government's Action Plan.

Despite several favourable judgments, the Government remains therefore under a positive obligation to put in place a non-discriminatory, clear, foreseeable, and easily accessible process for accessing benefits applicable to places of worship.

Attempts to officially recognize *cemevi* as places of worship have not been successful in the reporting period. On January 22, 2020, CHP Muğla Deputy Mürsel Alban submitted a law proposal on the status of *cemevis* as places of worship to the Turkish Grand National Assembly with no result.[79] Similarly, a vote taken at the Istanbul Greater City Municipality General Assembly on the proposal of the CHP and İyi Party to recognize *cemevi* as places of worship was voted down with the votes of the AKP and MHP.[80]

- A non-discriminatory process should be put in place through legislative and administrative amendments for the acquisition of place of worship status and ensuing benefits.
- The systemic obstacles impeding the recognition of *cemevi*, Protestant churches and kingdom halls should be removed, without delay.
- An inclusive and transparent process of consultation should be pursued to identify the best procedure for the acquisition of the place of worship status and benefits that this status confers.
- ECtHR judgments *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey* and *Izzettin Doğan and Others v. Turkey* should be enforced without delay.

5.1.3 Protection of religious sites

Protection of worship places is an integral part of the state obligation to protect the right to manifest religion or belief in worship. Furthermore, safeguarding the cultural and natural heritage of religious interest is essential. It preserves this heritage for religious worship and observance of rituals. It also prevents the loss of cultural heritage and identity.

The UNESCO Cultural Heritage Convention of 1972 constitutes the legal basis for the international protection of cultural heritage. It refers to both cultural heritage and natural heritage.[81] Both of these may have a religious interest. In Turkey, thousands of historical religious sites and buildings remain at the risk of being completely lost.

The examples of good practices below demonstrate steps that can be taken to document cultural heritage sites with a view to highlight potential risk they face and the need for protection.

Civil society organizations' good practices:

- ***Anadolu Kültür Mirasını Koruma Derneği*** **(Anatolian Cultural Heritage Preservation Association) carries out documentation work in order to document the current status of monuments that are not used today and are in danger of being lost. This practice emphasises the need for urgent protection of historical buildings at risk and facilitates decision-making processes by transferring scientific information to the authorities.[82]**
- **The Hrant Dink Foundation has created an interactive online map of thousands of sites by documenting structures such as monasteries, churches, chapels, schools, synagogues, nursing homes, hospitals, orphanages and cemeteries belonging to Armenian, Greek, Jewish and Assyrian communities throughout Turkey.[83]**

79 Cumhuriyet, *CHP Muğla Milletvekili Mürsel Alban'da cemevleri için kanun teklifi*, 22 January 2020.

80 Duvar English, *AKP, MHP councillors vote down proposal to recognize cemevis as places of worship*, 16 January 2020.

81 UNESCO, Cultural Heritage Convention, 1972.

82 http://kmkd.org/belgeleme-ve-mimari-miras

83 Cultural Heritage Map: https://hrantdink.org/tr/faaliyetler/projeler/kulturel-miras/1469-harita

Credit: AA

The first ritual in Diyarbakir Armenian Catholic Church after 100 years.

Many religious buildings are on the verge of ruin and at risk of being lost even though they are officially registered as cultural heritage sites by the Cultural Heritage Preservation Regional Boards under the umbrella of the Ministry of Culture and Tourism.

According to the Law on the Protection of Cultural and Natural Assets,[84] buildings such as madrasas, which have many religious characteristics; cupolas, tombs and inscriptions, mosques, masjids, *musallas,* prayer places; dervish lodges and lodges; cemeteries, synagogues, basilicas, churches, monasteries; complexes, old monuments and wall ruins are examples of immovable cultural assets. The Ministry of Culture and Tourism coordinates the registration process of immovable cultural heritage, and the registration is done by regional protection councils.[85] In the case of immovable cultural and natural properties belonging to foundations that are under the management or control of the General Directorate of Foundations (*Vakıflar Genel Müdürlüğü,* hereafter VGM), natural assets are identified and inventoried by the VGM.[86] Registering a structure as cultural heritage in need of protection, however, does not result in protection. Instead it adds the requirement of the approval of regional protection councils for any work that needs to be done on these properties. The statistics published by the Ministry of Culture and Tourism indicated that as of the end of 2020 there were **10,705 religious buildings** requiring protection in Turkey.[87] Istanbul 1,374, Izmir 468, Konya 450 and Bursa 441.

The Diyarbakır Ermeni Surp Küçük Kilise Hıdır İlyas Surp Gregos Church is on the verge of destruction. Even though the building was registered as a first group cultural heritage site in 2010, the Ministry of Tourism and Culture has informed the Freedom of Belief Initiative that following an inspection carried out in 2021 "it has been determined

84 Article 6, *Kültür ve Tabiat Varlıklarını Koruma Kanunu* [Law on the Protection of Cultural and Natural Assets] Law No. 2863, 21 July 1983, Official Gazette No 18113, 23 July 1983.

85 *Ibid*., Article 7.

86 These may include mosques, tombs, caravanserais, madrasah inns, baths, masjids, zaviyes, public fountains, mevlevihanes, fountains and similar immovable property. Many religious communities have lost their ownership of their community foundations to which most religious properties are attached/belong. These community foundations have been taken over and are controlled and managed by the VGM.

87 https://kvmgm.ktb.gov.tr/TR-44799/illere-gore-korunmasi-gerekli-tasinmaz-kultur-varligi-i-.html

Credit: AA

After 40 years, the first Hanukkah celebration in Gaziantep Şahinbey Synagogue was held in December 2019. The restored Synagogue may be used for religious services with prior permission.

that the registered church has been damaged ..., the survey, restitution and restoration projects that will form the basis for the comprehensive repair of this cultural property are to be prepared immediately by the owner and forwarded to our Board".[88] According to the Church Foundation board member Gaffur Türkay, after 2015, basalt stones in the church were stolen and the church became a place for drug and substance users.[89]

The Chamber of Architects Ankara Branch made a statement on 10 March 2021 saying that the construction of shops in the historical district of Ulus in Ankara has continued despite the discovery of the remains of human bones.[90] There had been an Armenian and Catholic cemetery in the area where the bones were found, and bones had been taken by the Museum of Anatolian Civilizations for examination. The Chamber of Architects called on the Protection Council to intervene; however at the time of the writing of this report a protection order has yet to have been issued.

The Surp Sarkis Giragos Hıdır İlyas Church, a property of the foundation by the same name, is recorded by the Ministry of Culture as 1st Group cultural heritage and has been under restoration carried out by the VGM.[91] The church was damaged in 2015 and has not been in use since. It is hoped that it will be opened for worship for Easter 2022.

The VGM publishes on its website the completed and ongoing restoration of worship places used by "citizens of different religions". These places of worship belong to foundations of which control and management has been taken over by the VGM from their original owners.

The table below shows the year of completion and the current usage of the places of worship that have been restored by the VGM in the last decade. All of these places of worship originally belonged to community foundations of non-Muslim communities. These community foundations were, however, seized and have been controlled and managed

88 Response by the Ministry of Culture and Tourism to an information request no. 2103794918, 30 July 2021.

89 Telephone interview with Gafur Türkay, July 2021.

90 Media Section of the Chamber of Architects Ankara Branch Statement, 10 March 2021.

91 *Supra* 88.

TABLE 2: PLACES OF WORSHIP RESTORED BY THE VGM

Restored Places of Worship	Completion of Restoration	Current Use
Edirne Centre Synagogue (The Great Synagogue)	2015	May be used for religious services with prior permission.
Balıkesir Gökçeada Aya Nikola Church	-	May be used for religious services with prior permission.
Balıkesir Gökçeada Ayamarina Greek Ortodox Church	-	May be used for religious services with prior permission.
Hatay İskenderun Syriac Catholic Church	2010	Allocated to the Syriac Catholic Foundation for religious services with a decision of the VGM Assembly.
Hatay İskenderun Greek Catholic Church	2018	Allocated to the Antakya Rum Catholic Foundation with a decision of the VGM Assembly.
Diyarbakır Sur Armenian Protestant Church	2017	No information could be obtained.
Diyarbakır Sur Armenian Catholic Church	2021	It was allocated to Dicle University to be used in education and cultural services for 10 years; provisions grant priority to the Armenian Catholic community when they request usage for rituals.
Gaziantep Nizip Fevkani Church	2020	It was used as a mosque, then for storage, current use has not been determined. Debate continues on whether to turn the building into a mosque or an exhibition venue with a touristic purpose.
Gaziantep Şahinbey Synagogue	2021	May be used for religious services with prior permission.
Balıkesir Ayvalık Cunda Taksiyarhis (Ayanikola) Church	2014	Decision of the General Assembly of Foundations to allocate to the use of the M. Rahmi Koç Museum, 2011.
Hatay Arsuz Mar Yuhanna Church	2017	Used for religious services by local Christians in summer months.
Hatay Yayladağı Greek Orthodox Church	2018	No information could be obtained.
Antalya Alanya Hıdırellez (Saint George) Church	2015	Allocated to Alanya Municipality by decision of the VGM Assembly.
Çanakkale Gökçeada Kaleköy Monastery	2012	No information could be obtained.
Bursa Osmangazi French Church	2017	The church is being used by several Christian communities in Bursa with permission.
Edirne Center Italian Church	2015	The building is used as a cultural centre.
Istanbul Fatih Aya Yorgi (Rum Ortodoks) Church	2017	May be used for worship with permission.
Adıyaman Center Mor Petrus - Mor Pavlus Church	2010	Allocated by the Regional Foundations Directorate for use by the Adıyaman and Surrounding Cities Syriac Metropolitan Church.
Kilis Merkez Synagogue	2020	May be used for worship purposes with the permission of the VGM.
Istanbul Fatih Kastoria Synagogue	Ongoing	Is planned to be used as a cultural centre.
Ongoing Restoration of Places of Worship		
Istanbul Fatih Turisina Monastery (and Library)		
Istanbul Beyoğlu Sina Baldukyasko (Terra Santa) Church		
Istanbul Beşiktaş Andonyan Monastery		
Places of Worship - Restoration Project in Development		
Hatay Samandağ Yoğunoluk Village Armenian Church		

by the VGM since their seizure. The reasons for the seizure include, but are not limited to, the decrease in the non-Muslim communities linked to the community foundations in question. These community foundations are seized (*mazbut*) foundations. A recent individual application to the AYM challenged the seizure of the *Edirnekapı Aya Yorgi Rum Ortodoks Kilisesi* Foundation. The community contested the refusal to return the seized foundation to them and claimed that the seizure violated property rights and freedom of religion and conscience.[92] The AYM, however, held that the application was inadmissible on the grounds that, regarding property rights, the AYM did not have jurisdiction *ratione temporis* and, regarding the right to freedom of religion and conscience, the application was manifestly ill-founded.[93] Few of these are allocated to affiliated religious communities through a long-term arrangement. Several are used for religious services occasionally by religious communities with prior permission from VGM. Several are used for purposes other than their original purpose.

» **A process should be put in place to ensure that religious communities participate in the decisions about the use of places of worship that are currently under the control of the General Directorate of Foundations.**

» **Legislative amendments should be made to transfer ownership to the affiliated religious communities of places of worship and foundations linked to them.**

Sacred sites of the Munzur Valley

The Munzur Goezes landscape project initiated by the Tunceli Governorship and Fırat Development Agency raised important issues concerning cultural rights. It also raised questions on the collective dimension of freedom of religion or belief especially regarding the connection of a religious community to land and the right to manifest religion or belief in worship. The stated purpose of the project was to remove visual pollution without touching the natural attributes of Munzur Goezes.[94] Although the project had originally planned to use mainly wood, steel bridges were to be built over the Munzur. One of the two parking lots was planned to have been built right next to the goezes and the project included the addition of camping stand units, sacrifice and picnic areas.[95] At the start of construction in August 2020, the use of construction equipment into the goezes and the laying of concrete stairs elicited strong reactions from the local community. The plan included the addition of an entrance fee to access the goezes.

The Munzur Goezes landscape project has been viewed as an attempt to destroy the indigenous culture by several local cultural and environmental associations. Tunceli residents reacted to this initiative through press statements, petition campaigns, holding a cem and forming a human chain.[96] These protests were met with investigations. High fines were imposed on those who opposed the project. The Federation of Dersim Associations repeatedly drew attention to the landscaping project and stated that plans were done without consulting the public and civil society organisations. DEDEF emphasised that the project did not comply with the principal decisions regarding the 1st degree natural sites, and said, "Munzur caves are sacred to the people of the region and the Alevi Kızılbaş belief."[97]

92 AYM, 4 April 2019, Individual Application No. 2015/15815, Haralambos Sakati, Karlo İrakli Tarinas, and Yani Stavridis.

93 *Ibid.*

94 Bianet, *Danıştay Munzur Gözeleri projesini iptal etti*, 19 February 2021.

95 *Ibid.*

96 Bianet, *DEDEF: Munzur özgürdür, özgür akacak*, 21 October 2020.

97 Cumhuriyet, *Munzur Gözeleri'nde tepki çeken peyzaj projesinin ihalesi iptal*, 20 February 2021.

Credit: Michael Benanav

The Munzur River, one of the most sacred places for Alevis of the region.

The Alevis of Munzur express deep connection to the sacred sites scattered in and around Munzur. They are documented and described through the work of The Traditional Cultures Project.

Many are minor, such as special trees or boulders where people go to pray, which are known only to residents of certain villages.[98] Other, more significant, and widely known sites, called *ziyarets*, are generally major geographical features, such as mountains, rivers, and caves and the springs are viewed as important sacred sites to visit akin to pilgrimage sites.[99]

The tender for the landscape project was cancelled by the 13th Department of the Council of State.[100] The Ankara Branch of the Chamber of Architects had objected to the project. The 13th Chamber of the Council of State stated that the defendant administration's reasons for making a tender with an exceptional bargaining method were not sufficient for the tender. Furthermore, it was stated that it is necessary for the public interest to ensure openness and competition to meet the needs in an appropriate and timely way. Therefore, the bargaining method was found to be incompatible with the law since the conditions specified in Article 21/b of Law on Public Procurement were not met.[101]

» **Sacred lands should be protected. Any restriction should be prescribed by law, pursue a legitimate aim, necessary in a democratic society, proportionate to the aim pursued and non-discriminatory.**

5.1.4 Conversion of the places of worship

During the reporting period the Hagia Sophia Museum and the Chora Museum were converted into mosques. Both Hagia Sophia and Chora were originally built as churches, converted into mosques during the Ottoman period, and then converted to museums during the Republican Period.

98 For a detailed account of the Alevi life in Munzur see The Traditional Cultures Project, Benanav, M., et al The Alevis of Munzur.

99 *Ibid.*

100 Bianet, *Danıştay Munzur Gözeleri projesini iptal etti*, 19 February 2021.

101 Law on Public Procurement No. 4734, 4 January 2002, Official Gazette No. 24648 22 January 2002.

In 2005, the Association of Permanent Foundations and Service to Historical Artifacts and Environment filed a lawsuit to challenge the status of the Chora Church as a museum. In November 2019, the Council of State, Turkey's highest administrative court, ordered that it was to be reconverted to a mosque. A Presidential Decree opening the Chora (Kariye) Mosque to worship was published in the Official Gazette on 21 August 2020.[102] In October 2020 the images of Jesus Christ, frescoes and icons in the museum were covered by white curtains.

In July 2020, the Turkish Council of State Tenth Chamber annulled the 1934 Cabinet Decree making it a museum.[103] The Council of State ruled unanimously to nullify the 1934 Cabinet Decree as contrary to the law. Almost immediately after the ruling, President Erdoğan signed a presidential decree on 10 July 2020 turning the site back into a mosque. The decree transferred the administration of the Hagia Sophia (Ayasofya-i Kebir) Mosque to the Presidency of Religious Affairs (Diyanet İşleri Başkanlığı, DİB or Diyanet hereafter), a public body under the Presidency responsible for the administration of all mosques in Turkey. The Fatih Sultan Mehmed Foundation, which originally endowed the building as a mosque, is under the administration of the VGM. It has the status of a *mazbut vakif* (added foundation), meaning that it is "represented by and is under the care and administration of the VGM."

For Christian communities in Turkey, the opening of the Hagia Sophia as a mosque has been disappointing. Ecumenical Patriarch Bartholomew remarked that the opening of the Hagia Sophia as a mosque would sadden Christians around the world.[104] The Armenian Patriarch, while supporting the conversion of the Hagia Sophia Museum to a place of worship, appealed for a section of the building to be allocated for Christians religious services.[105]

» **The historical nexus between places of worship and their original purpose as well as rule of law must be upheld in a non-discriminatory manner.**

5.1.5 Public funding to religious services and equality

The enforcement of the *İzzettin Doğan and Others v. Turkey* judgment offers an important opportunity to improve the provision of public religious services in a manner compatible with both human rights law and with the obligations of states to observe principles of neutrality and equality. A consultation process with broad participation – including the Alevi community and diverse segments of society – will contribute to effective implementation.

It should also be noted that the religious services provided by the Presidency of Religious Affairs are funded from the taxes paid by all. While an important portion of the society benefits from these services, there are many who are not beneficiaries, or even object to these services. There is no option of tax exemption.

The impact of the Pandemic exacerbated the inequalities between the communities that are served by the publicly funded religious services under the Presidency of Religious Affairs and others. Public religious services are funded from the budget allocated to the Diyanet from the general tax income. Alevis, Christians, Jews, JWs, the Bahai and others do not receive any public funding despite their contribution to the state budget through their taxes. These communities rely on the donations of their members.

102 Bianet, *Chora Museum in İstanbul opened to worship as mosque*, 21 August 2020.

103 For a detailed analysis of the legal process see Yildirim, M., The Hagia Sophia: What's law got to do with It?, 11 August 2020.

104 Dokuz8Haber, *İstanbul Fener Rum Patriği Bartholomeos'dan Ayasofya açıklaması*, 30 June 2020.

105 Euronews, *Türkiye Ermenileri Patriği'nden Ayasofya önerisi: Hem cami hem kilise olarak ibadete açılsın*, 14 June 2020.

Restricted assembly during the Pandemic meant that members could not make their donations or collections through community dinners and other community activities. As a result, these groups' income decreased while expenses had not. They continued to pay rent, utilities, and staff salaries. This brought renewed attention to the demands made by some from the Alevi community for the salaries of the Alevi religious officials, the *dede* and others, to be paid from public funds.[106] A Protestant church leader said that though donations had decreased, they were able to manage.[107] She remarked that many people in the society had become unemployed during the Pandemic, and were in need of public funding before it came to the funding of the church. She also underlined that **as a matter of principle it is unfair that only mosques receive funding.**[108]

» **A transparent consultation with broad participation should be followed for the enforcement of the ECtHR judgment on *İzzettin Doğan ve Diğerleri v. Turkey*. Religious services provided as public services should be provided in a manner that is compatible with the principles of equality and neutrality and international human rights law.**

5.1.6 Attacks and Threats Against Places of Worship and Religion or Belief Communities

Hate crimes continue, motivated by bias towards religious or belief communities and their places of worship, associated venues, religious/spiritual leaders, and members, and these crimes often go unpunished. Current legislation is inadequate to address hate crimes. The crimes are neither sufficiently reported nor sufficiently recorded by public authorities.

Within the scope of our monitoring report, *"Hate crimes motivated by bias based on religion and belief in Turkey 2020"*, 14 hate crimes committed with religion or belief-based bias were documented in 2020.[109] 8 of these incidents were committed based on bias towards Alevis, 5 against Christians and 1 against those wearing a headscarf. The report classifies the incidents into: damage to places of worship or cemeteries, damage to private property, insult/defamation and threats/threatening behaviour.

5.2 The right to manifest religion or belief in teaching

5.2.1 The right to spread one's religion

The right to freedom of religion or belief includes the right to spread one's religion or belief.[110]

Activities aimed at spreading one's religion to people other than co-religionists are often viewed with suspicion. These are quickly labelled as "missionary activities" and, as such, are not viewed within the scope of the right to freedom of religion or belief.

5.2.2 The right to establish schools for religious education and teaching

Everyone has the right to manifest his/her religion or belief in teaching.[111] This also includes the right to establish educational and teaching institutions to train religious teachers and leaders. **Despite the above, restrictions on the training of religious clergy, teachers and leaders continue with the exception of publicly funded Sunni Muslim**

106 Interviews with Doğan Bermek from the Alevi Düşünce Ocağı, 14 December 2020 and Müslüm Metin, Alevi Bektaşi Federation, 15 December 2020.

107 Interview with Kayra Akpınar from Pera Resurrection Church, 15 December 2020.

108 *Ibid.*

109 Yildirim, M. and Tekin, F., (2021), Hate crimes motivated by bias based on religion and belief in Turkey 2020.

110 ECtHR, *Kokkinakis v. Greece*, No. 14307/88, para. 31, 25 May 1993.

111 ICCPR Article 18, ECHR, Article 9.

educational institutions. Religious communities, such as the Alevi community, Greek Orthodox Patriarchate, Armenian Patriarchate and Protestant community, could not train religious staff within Turkey. Interlocutors expressed concern over the blatant inequality.

Under the Law on Private Educational Institutions, "education institutions identical or similar to ones which provide religious education cannot be opened".[112] In higher education, it is theoretically possible to provide religious education or instruction at the university level by establishing a private – foundation based – university with the permission of the Cabinet. This is, however, extremely burdensome, and close to impossible in practice. Religious or belief communities do not possess the resources needed to establish a private university without public funding. At the same time, in state-run universities, there are a great number of departments aimed at training Sunni Muslim religious officials.

In February 2020, the Halki Seminary Metropolitan Apostolos Daniilidis reiterated the desire and expectation of the opening of the Halki Seminary. The hope is to both provide teaching to train their own clergy and to become a resource for other Christian, Jewish, and Muslim communities.[113]

A 1971 Constitutional Court ruling prohibited the operation of private institutions of higher education and led to the seminary's closure.[114] The 1982 Constitution allowed for the establishment of private institutions of higher education but also placed significant restrictions on the institutions placing them under the Higher Education Council. The seminary was not permitted to reopen and operate under the Patriarchate in accordance with its traditions.

The tuberculosis hospital in Heybeliada, Istanbul, was allocated to the Presidency of Religious Affairs with plans to open an Islamic educational centre. Following a petition to the court for the annulment of this accommodation by several civil society organisations including Istanbul Bar Association and the Chamber of Architects in December 2020, the Administrative Court reached an interim decision to request the relevant documents from the Istanbul Governorship, the Istanbul Greater City Municipality, the Ministry of Environment, Urbanization and Climate Change.[115]

» **Measures should be taken to ensure the right to manifest religion or belief in teaching, to protect the right to train religious officials for all religious communities and to enable all religious or belief groups to open educational institutions to train their own religious officials. Halki Theological Seminary should be opened without delay.**

» **The glaring inequality between the public resources allocated to the training of Sunni Muslim religious personnel and the denial of resources to the training of other religious personnel, as well as legal restrictions before training any other religious personnel, should be corrected without delay.**

5.3 The right to manifest religion or belief in practice

5.3.1 Religious symbols and/or attire

Under the 1934 Law that prohibits the wearing of certain religious attire, restrictions on the attire of religious representatives continue regardless of the religion or belief.[116]

112 Law No. 5580 on Private Education Institutions [*Özel Öğretim Kurumları Kanunu*], 8 February 2007, Official Gazette No. 26434, 14 February 2007, Article 3.

113 Rudaw, *Metropolit Apostolos: Heybeliada Ruhban Okulunun açılmasını istiyoruz*, 9 February 2020.

114 Turkish Constitution Article 130, AYM, 1969/31 E and 1971/3 K, Official Gazette No 13790, 26.3.1971.

115 Sözcü, *Heybeliada Sanatoryumu davasında ara karar açıklandı*, 6 January 2021.

116 Law on the Prohibition of Wearing Certain Garments, No. 2596, 3 December 1934, Official Gazette No 2879, 13 December 1934, Article 1.

Accordingly, **no religious official of any religion may wear clothing which represents his or her religious role or position outside a place of worship.** There is one exception to this; with the approval of the Cabinet a single representative of a religious group may wear attire that displays their religious status in public.

The headscarf is the only religious symbol that is allowed for civil servants or students in primary, middle, or high schools. Other religious symbols such as the kippah, cross or Zulfikar are not allowed.

» Restrictions on the use of religious symbols in the public sphere should be prescribed by law, pursue legitimate aims, necessary in a democratic society, proportionate and in a non-discriminatory manner.

5.3.2 The right to learn and use languages traditionally used in religious practice

The right to learn and to use the language traditionally used in religious services and ceremonies is an integral part of the right to manifest religion or belief.[117] The ability to learn or teach languages used in religious services is critical to passing on the faith and practises and to the cultural survival of religious or belief communities. It allows individuals to effectively exercise their right to freedom of religion or belief. Armenian, Greek, Arabic, Syriac, and Kurdish are among the languages used for worship in Turkey. **However, access to public resources for instruction in these languages is not being provided to all communities of belief.**

The Syriac community experiences hardship in this area since they do not have schools where new generations can learn the Syriac language. Following the closure of the last Syriac school in Mardin in 1928 the Syriac community did not have any formal language education until the opening of the Süryani Mor Efrem Pre-school in 2013 following an administrative court ruling. Since public funding is not available, a lack of financial resources prevented the opening of a primary school. The Syriac community's appeals to the Ministry of National Education have, so far, not been granted a response.

In July 2021, members of the Democratic Islamic Congress and Religious Scholars Association (DIAY-DER) were arrested based reportedly on usage of the Kurdish language in the accusation.[118] Their lawyer has reported that the arrested imams were asked why they did not use the sermons provided by the Diyanet and why they prayed in the Kurdish language. The use of the Kurdish language was connected to terrorism charges in the indictment in December 2021.[119]

» Public resources should be provided without discrimination for education and instruction in languages traditionally used in religious practices.

» Public authorities should refrain from interfering with the use of the mother tongue in worship and practice. Instead, religious or belief communities should be supported in the use and development of the use of the languages they traditionally use in their worship.

5.3.3 The right to appoint religious officials

The rights associated with the appointment of religious officials are among the rights of religious or belief communities to autonomy over their internal affairs.[120] In Turkey, religious or belief communities remain subject to different laws and practises regarding the appointment of religious officials or spiritual leaders.

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117 UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 4.

118 Bianet, *9 imams arrested for preaching sermons in Kurdish*, 10 July 2021.

119 Evrensel, *DİAYDER iddianamesi kabul edildi | Kürt din adamları üzerinden İBB'ye operasyon*, 30 December 2021.

120 *Supra General Comment 22.*

Credit: İsa Terli (AA)

The Armenian Orthodox community could not elect a Patriarch for more than 10 years. State interference continued until Sahak Maşalyan was appointed as the new Patriarch in 2019.

Legislation and practice applicable to the appointment of religious leaders is not uniform. The President appoints the President of the Diyanet. Provincial *muftis,* and *imams* working in Sunni mosques are appointed by the DİB and therefore there is not a mechanism for mosque communities to participate in the appointment processes.

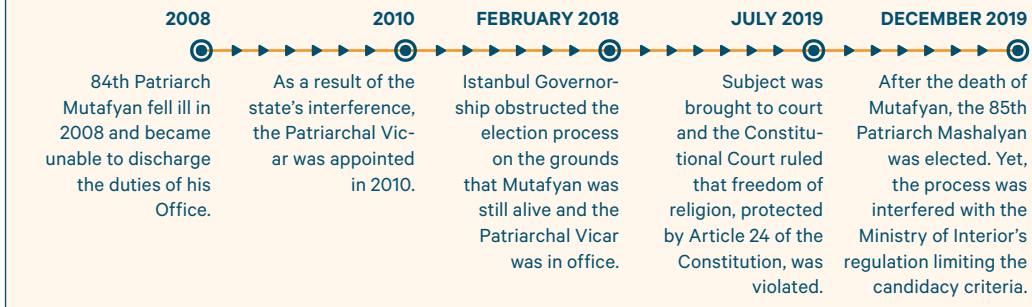
No measures have been taken to eliminate interference in the internal affairs of the Armenian Orthodox, Jewish, and Greek Orthodox communities in the appointment of religious leaders. When the 84th Patriarch Mesrob Mutafyan fell ill in 2008 and became unable to discharge the duties of his office, the Armenian Orthodox community applied to the Interior Ministry but was not permitted to carry out a free election. As a result of the state's interference, the Patriarchal Vicar was appointed in 2010. State interference continued until Sahak Maşalyan was appointed as the new Patriarch in 2019.

The Turkish Constitutional Court's 22 May 2019 judgment on the individual application made by Levon Berç Kuzukoğlu and Ohannes Garbis Balmumciyan in 2014[121] contains significant findings on the interference in the internal affairs of religious or belief communities in Turkey. The applicants had complained that the state's refusal of the request they made for the election of a Patriarch violated their right to freedom of religion. Kuzukoğlu and Balmumciyan's application was rejected by the Istanbul 3rd Administrative Court in March 2012. The court argued that, under the 1863 Regulation for the Armenian Millet and subsequent Interior Ministry directives, the Patriarchal seat may be considered vacant only following the death or resignation of the Patriarch. Therefore, since the Patriarch (then, Mesrob Mutafyan) had neither died nor given his resignation, elections could not be held. The court found the state's refusal of the request for a new election compatible with the law and the applicants' appeal was rejected.

The Constitutional Court's May 2019 judgment describes the interference in the Armenian community's right to elect its own leader. When applying the domestic law, the Constitutional Court refers to the 1863 Regulation for the Armenian Millet (ethno-religious community). The court also references international legal provisions including the

121 AYM, 22 May 2019, Individual Application No. 2014/17354, *Levon Berç Kuzukoğlu and Ohannes Garbis Balmumciyan.*

INTERFERENCE IN THE PATRIARCHAL ELECTION



The Armenian Orthodox community could not elect a Patriarch for about 10 years, and their right to freely appoint religious officials was violated.

ECHR and the 1923 Lausanne Peace Treaty's provisions on the protection of non-Muslims in Turkey.

A key question here concerns the relevance of the 1863 Regulation. This regulation addresses the election of Turkey's Armenian Patriarch (Articles 1-7), the various organs of the Patriarchate and their elections and the functioning of the charitable and social bodies within the Patriarchate. It also includes provisions on the Jerusalem Patriarchate (which was under the Ottoman Empire in 1863). Article 2 sets out how elections take place when the Patriarch's seat becomes vacant. It mentions various reasons: "the death of the Patriarch, resignation and other".

The 1863 Regulation is a remnant of the Ottoman era. State authorities, in leading the four Armenian Patriarch elections that occurred during the Republican era, Turkish State authorities largely deferred to the procedure of the 1863 legislature with some arbitrary changes. The arbitrariness of this approach has left the Armenian community with only limited agency over its own election and with no way to foresee what procedures the state will impose in future elections.

For the most part, the Directives of this election process were based on the Cabinet Decree of 18 September 1961 (No. 511654). This decree was issued for that year's Patriarchal election and did not include provisions for future elections. The Interior Ministry, however, has continued to use it. The Ministry of Justice's submission to the Constitutional Court stated that the measures taken by the authorities derived from "the state's positive obligation to organise the religious field".

The Constitutional Court,

- described the issue as one that essentially relates to religious freedom which is protected under Article 24 of Turkey's Constitution;
- recognised the relevance of the Lausanne Peace Treaty, specifically Article 38 which discusses the freedom to practice religion, and the applicable jurisprudence of the ECtHR in Strasbourg;
- noted that the election of a religious leader constitutes a form of manifestation of religion and, as such, is protected under the Constitution;
- found that the measures that led to the appointment of a Patriarchal Vicar General in 2010 were not a result of a process that took place within the competing civilian and spiritual initiatives in the Armenian community. Instead these measures resulted from "state pressure that was unconstitutional";
- as a result, **found that there was interference in the Armenian community's**

right to freedom of religion or belief, a freedom guaranteed under Article 24 of the Constitution;

- ruled that, under Article 13 of the Constitution, fundamental rights may only be restricted by law. It noted the absence, in the case at hand, of an accessible, foreseeable, and absolute legal provision. Such a provision should have prevented arbitrary action by public authorities and enabled persons to foresee the law. **The implemented restriction cannot be considered to have been prescribed by law;**
- noted that events that occurred after the application was submitted in 2014 demonstrate the state's prolonged desire to determine the conditions under which elections for an Armenian Patriarch might take place;
- found that the state was unable to demonstrate a pressing social need that would override the "spirit of Armenian traditions" and the "Armenian community's will";
- therefore, ruled that Article 24 of the Constitution was violated.

Despite its significance, the Constitutional Court's judgment was delayed: the application was lodged in 2014; the Constitutional Court ruled in May 2019. Two months prior to the judgment, Patriarch Mesrob Mutafyan died and the community held elections. Despite their tardiness in this case, the AYM findings must guide future administrative practice and authorities should comply with standards on non-interference in the internal affairs of religious or belief communities.

» The selection and appointment of religious officials by religious or belief communities should be treated as an internal matter.

Restriction on the use of religious titles

The 1925 Law on the closure of the dervish lodges prohibited the use and functions of "sheikh, dervish, disciple, *dede, seyit, çelebi, baba, emir, nakip,* khalifat,...".[122] The ECtHR (Grand Chamber) judgment on *İzzettin Doğan and Others v. Turkey* includes significant findings for the Alevi community and beyond. As a result of the denial of public religious services, requested by the Alevi applicants, and the non-recognition of the Alevi faith by the state, Alevis are unable to fully exercise their right to freedom of religion or belief.[123] **This non-recognition makes it impossible for the Alevi community to use their places of worship (*cemevis*) and for the *dede* – their religious leaders – to use their titles in conformity with the legislation.** According to the ECtHR, the Government has been unable to present relevant and adequate reasons for this interference; Turkey has acted beyond its permitted margin of appreciation.[124] Such interference cannot be deemed necessary in a democratic society. Article 9 and, in conjunction with it Article 14 have been violated, since the differential treatment of the Alevi cannot be explained with objective and reasonable reasons.

» The restrictions on the use of religious titles should be lifted.

5.3.4 Travel restrictions and deportations of Christian foreigners

Turkish authorities have continued to issue travel restrictions targeting Christian foreigners. These restrictions interfere with several human rights including freedom of

122 Law on the Closure of Dervish Lodges, Hospices, and Shrines, and on the Prohibition and Repeal of Certain Titles, No. 677, December 1925, Official Gazette No 243, 13 December 1925.

123 ECtHR, *İzzettin Doğan and Others v. Turkey*, No. 62649/10, 26 April 2016.

124 *Ibid.*, para. 135.

religion or belief, the right to fair trial, freedom of movement, and protection of aliens against unlawful expulsion.

The Association of Protestant Churches has reported that more than 100 individuals have been impacted. The restrictions have been issued by the Directorate General for Migration Management. Objections to these travel restrictions have revealed that these are based on reports of the National Intelligence Organization (*Milli İstihbarat Teşkilatı,* MIT). Neither the individuals affected by these restrictions nor their lawyers have been granted access to these files. Furthermore, these individuals have not been prosecuted for any crimes under Turkish law, and the authorities have not been able to provide a reasonable justification for the restrictions described above.

The Association of Protestant Churches reported that, in the past two years, approximately 100 religious officials with foreign nationalities have been forced to leave Turkey due to their visas or residence permits not being renewed.[125] Some of the deportations and entry bans affected foreign citizens who had been long-term residents and had been part of Protestant communities for a long time.

Due to the restrictions on opening formal educational institutions to train religious officials, the Protestant community must rely on citizens of other countries to supply their religious officials and teachers. Therefore, the refusal to allow foreign religious workers to stay in Turkey impacts the Protestant community in a negative way. Turkey does not have a special visa regime for religious workers.

In February 2020, the Istanbul Protestant Church Foundation (*İstanbul Protestan Kilisesi Vakfı* - İPKV) issued a press release stating, "Since 2019, it has been increasingly difficult for the foreign Protestant clergy serving in Turkey to reside in our country."[126] The pastor of Altıntepe Protestant Church, a church linked to the İPKV, a Spanish citizen, had been granted a "religious officer" visa since 2001, however in November 2019, he was issued a preliminary permit entry requirement (istzan N decision).[127] A preliminary permit entry requirement means that, were he to leave the country, he would have to gain permission to enter prior to attempting to re enter Turkey. In June 2020, the Association of Protestant Churches issued a statement reporting that no one has been able to obtain this permission prior to entry.[128] Several Turkish Protestant citizens married to foreigners who have been expelled have, consequently, been compelled to leave their country rather than have their families separated.[129]

It has been reported that many individuals who were issued residence permit denials or entry bans have pursued domestic legal remedies. Kenneth A. Wiest, who was issued an N82 code whilst having a valid residence permit, has however made an application to the ECtHR following an inadmissibility decision on his individual application to the Constitutional Court on 27 January 2021.[130] The latter ruled that the application was inadmissible finding that the applicant did not provide evidence of interference in his private and family life. In regard to freedom of religion or belief the court found no interference.[131] The application is pending at the ECtHR.

125 Telephone interview of the General Secretary of the Association of Protestant Churches Umut Şahin, 10 December 2020.

126 Istanbul Protestant Church Foundation (*Istanbul Protestan Kilisesi Vakfı*), Press Release, 16 June 2020.

127 *Ibid.*

128 Association of Protestant Churches, *Hristiyan din görevlilerinin ve aile üyelerinin sınırdışı edilmesi hakkında*, 22 June 2020.

129 *Ibid.*

130 Verifying documents supplied by Kenneth A. Wiest's lawyer on 15 September 2021.

131 *Ibid.*

My family and I lived in Ankara, Turkey for 30 years. We came at the beginning of 1990 with our young children when my husband came to help start up an American/Turkish joint venture company. He also became one of the founding elders [leaders] of the International Protestant Church of Ankara. As a result, we were both active in supporting various church activities including helping refugees, outreach programs, activities for children, and counselling. When our children became a bit older, I started teaching English at a Turkish private school. I retired from teaching in 2016 but continued giving presentations about teaching English and mentoring new English teachers in various cities. I also wrote songs and made teaching videos for online English lessons sponsored by the Turkish Ministry of Education. In January 2020, despite having a valid residence permit, I was banned from re-entering Turkey at Esenboğa airport, Ankara, after being in England for the Christmas holidays. My husband was subsequently given the same entry ban (N-82 code) when he left Turkey to join me in April 2020. We later learned that I was given this code just like the other 10 or so foreigners who attended a seminar at a hotel in Antalya in November of 2019. This seminar was organised by a Turkish Christian children's ministry for the churches I had worked with on a voluntary basis for 30 years. My husband did not attend this seminar and that is why he did not receive the code until February 2020 when he attended a family conference organized by the Turkish churches at a hotel in Antalya. Only foreign citizens who attended this conference were given this code. These activities are completely legal. So, it is hard to understand why foreign citizens have been punished this way. ***– C, England***

Freedom of religion or belief is a universal right, regardless of whether one is a citizen or foreigner. The right to freedom of religion or belief should be at the centre of any consideration of policies regarding foreign religious officials.

Those who were banned from entering Turkey were given reasoning that alluded to "missionary activities" and "activities against national security". However, the recipients of the security codes have said that they have not been prosecuted for any crime under Turkish law. Since these individuals have not been prosecuted and convicted for any crimes under Turkish law it is believed that the interference concerns legitimate acts of religious practice.

» The Directorate General for Migration Management should end the practice of denial of residency and re-entry into Turkey without prior approval against Christian foreigners.

» Authorities should ensure due legal process and fair procedure in appeals against these entry-ban decisions and provide access to files submitted by Turkish intelligence concerning them.

» All necessary regulations should be implemented to ensure that foreign religious officials, invited by communities of religion or belief, are able to work in Turkey without exclusion or discrimination.

5.3.5 Holidays, Days of Rest, and Days of Special Religious Importance

Religious holidays officially recognized as national holidays include the Ramadan Holiday (Eid al-Fitr) and the Feast of the Sacrifice, which are important days for Muslims. However, days that are important holidays, such as Ashure Day (important for Alevis), the Hıdrellez Festival, the Gadir Hum Festival (of special importance to Arab Alevis), Christmas (celebrated by Christians), and Rosh Hashanah (of special importance to Jews) are not part of national holidays. For believers, holidays and days of rest are important days to manifest their religion or belief in practice. They gather together with other believers, nurture their identity and pass on important traditions to new generations. For believers, these festivals are important manifestations of their religion or belief.

One of the goals stated in the April 2021 Human Rights Action Plan is "Regardless of their religion, public and private sector employees and students will be given the

Credit: DHA Photo

Hıdrellez celebrations in Edirne.

opportunity to be considered on leave during their religious holidays."[132] However, at the time of writing this goal has not been achieved.

5.3.6 Right of burial

Good practice: Burial services

- **Istanbul Metropolitan Municipality (IBB) provides funeral services to a diverse range of religious or belief communities as a public service in an inclusive manner. To this end the IBB has hired 50 religious personnel to provide services to diverse religious communities. This includes priests, rabbis, Caferi *imams*, Shafii *imams* and Alevi *dede*.[133]**

Interferences in burial rites

The burial rites of PKK members have been obstructed. The family of PKK member Agit İpek, who died in 2017 in Tunceli, was informed that the body was found two years later.[134] Following DNA testing the remains of the body were sent to the Ipek family by post. The mother, who received the cargo package from the post officers at the prosecutor's office, was told that the bones of her son were in the package. The family took the remains of the body from Diyarbakır to their hometown of Mardin. Religious funeral rites were denied by the public religious services; the family had to bury their son's body by their own means, without the imam.

There was also interference in the funeral rites of Helin Bölek, member of the music band Grup Yorum, who died following a hunger strike in April 2020. Reportedly, the family wanted to take the body to Okmeydanı *cemevi* for ritual cleansing but the police did not allow them and wanted the body to be taken to the Feriköy cemetery instead. The body

132 Ministry of Justice, *Human Rights Action Plan*, Activity 4.3.b., April 2021.

133 Statement by Ekrem İmamoğlu on 3 December 2019, *İmamoğlu: Farklı inançlara mensup 50 din görevlisi İBB'de İie başladı*, 3 December 2019.

134 Gazete Duvar, *Kargoyla gönderilen cenaze Meclis gündeminde*, 11 April 2020.

Credit: Yeni Asya

Istanbul Metropolitan Municipality (IBB) provides funeral services to a diverse range of religious or belief communities.

was buried without cleansing against the will of the family.[135]

Another example of burial obstruction, in May 2020, was that of İbrahim Gökçek, also a Grup Yorum member who died after a hunger strike. Gökçek's body was taken from the *cemevi* by the police and handed over to family members, Grup Yorum members and People's Law Office lawyers at the Mehmetçik Foundation Facilities in Tuzla, Istanbul.[136] The body was then taken to Kayseri for burial however a group of nationalist individuals gathered in Kayseri to prevent the burial of Gökçek in Başakpınar.[137] The body was buried, instead, in Halep Hoca cemetery.

- **The right to freedom of religion or belief and the right to privacy must be protected regardless of the deceased person's religion or belief or political views.**
- **Public authorities must take necessary measures to ensure that burial rituals are performed without any interference by state officials or private citizens.**
- **Public religious services should not be denied to individuals who have been convicted on terrorism charges.**
- **Public services provided for burials should be provided in a non-discriminatory manner.**

135 Gazete Duvar, *Helin Bölek'in cenazesinin yıkanmasına izin verilmedi*, 4 April 2020.

136 Gazete Duvar, *Grup Yorum üyesi İbrahim Gökçek defnedildi*, 8 May 2020.

137 *Ibid.*

The non-Muslim community foundation board elections have been obstructed since 2013. Minister of Justice Abdülhamit Gül and Presidential Spokesperson İbrahim Kalın discuss the challenges faced by minority communities with their religious leaders and foundation administrators on 29 November 2020.

6. Freedom of religion or belief and the right to association

6.1 Legal personality

No religious or belief community in Turkey has a legal personality, as such. A Venice Commission Opinion of 2010 found that this legal situation is incompatible with the standards set forth in the ECHR:

> the present Turkish system of not providing non-Muslim religious communities as such with the possibility to obtain legal personality amounts to an interference with the rights of these communities under Article 9 in conjunction with Article 11 ECHR[138] … that a national legal situation that generally denies religious communities the possibility to register themselves as legal entities under the law is not in compliance with the requirements of Article 9 paragraph 2 in conjunction with Article 11 paragraph 2 of the Convention, given that the religious communities concerned are small and peaceful and pose no threat to public order. As stated above the refusal to grant legal personality could be justified only in exceptional circumstances. The Venice Commission does not see any reason to assume that there are such exceptional circumstances.[139]

In Turkey, at the time of this writing, religious or belief groups:

- And their representative institutions such as Patriarchates or Chief Rabbinate which also lack legal entity status and, as such, cannot access the court system.
- Cannot open bank accounts, access court, buy property or make contracts.
- Cannot officially employ their own religious officials and provide social security

138 Venice Commission Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Istanbul Orthodox Patriarchate to Use the Adjective "Ecumenical", Opinion No. 535 / 2009 15 March 2010, para. 58.

139 *Ibid.*, para. 65.

for them.

- Have no possible way of coordinating activities or investments related to their common lives and future, since they cannot form representative institutions or supreme boards that have legal status.

Under the current system religious or belief communities must go through the foundation or association system. This presents an added challenge for religious communities whose religious sites and related buildings and institutions are administered by non-Muslim community foundations. The governing board of these foundations often lack representative clergy and sometimes become disconnected from the religious community. Belief groups, which cannot directly acquire a legal entity status, have tried to acquire this status to a certain extent by establishing foundations or associations. They have managed to maintain some of their activities through these institutions. However, these models, due to important inherent restrictions, do not provide a direct legal entity status for religious and belief groups.

Under Article 101(4) of the Turkish Civil Code, a foundation cannot be established for the purpose of supporting a particular religious community.[140] In addition, Islamic brotherhoods (*tarikats*) are categorically banned under Law No. 677 on the Closure of *Tekke* and *Zaviyah* of 1925.[141]

6.2 Restrictions on associations

Turkey has adopted Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction which amended the Law on Associations (No. 2860) and Law on Aid Collection.[142]

The Venice Commission has found that Law. No. 7262 is not compatible with international human rights standards and constitutes a risk for civil society organisations.[143] According to the Commission:

- The new provisions apply to all associations, irrespective of their goals and records of activities, and lead to far reaching consequences for basic human rights, in particular the right to freedom of association and expression and the right to a fair trial.[144]
- The amendments to the Law on Associations enable the authorities to remove board members without judicial review and to replace them with trustees who do not need the approval of the members of the association concerned. Consequently, the insertion, into governing bodies of an association, of one or more persons without approval and without clear guarantees that they act in the best interest of the association and its members, constitutes a serious infringement of the right of associations to conduct their own affairs.[145]

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140 Law No. 4721, Turkish Civil Code, 22 November 2001, Official Gazette No 24607, 8 December 2001.

141 Law on the Closure of Dervish Lodges, Hospices, and Shrines, and on the Prohibition and Repeal of Certain Titles, No. 677, December 1925, Official Gazette No 243, 13 December 1925.

142 Law on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, No. 7262, 27 December 2020, Official Gazette No. 31351, 31 December 2020.

143 Council of Europe Venice Commission, CDL-AD (2021)023-e Turkey- Opinion No.1028/2021 Opinion on the compatibility with international human rights standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction recently passed by Turkey's National Assembly, amending, inter alia, the Law on Associations (No. 2860), adopted by the Venice Commission at its 127th Plenary Session (hybrid, 2-3 July 2021).

144 *Ibid.*

145 *Ibid.*, para. 87.

We recommend the immediate application of the recommendations made by the Venice Commission:[146]

- **To limit the right of associations to seek resources only in cases when the restriction is necessary in a democratic society to achieve a legitimate aim as depicted in Article 11(2) ECHR and Article 22(2) ICCPR;**
- **To ensure that the power of inspectors to request information and documents from those involved in fundraising activities is exercised in conformity with the right to privacy of the relations, members, and founders of civil society organisations. This must be done within the framework of a certain audit activity and in relation to the subject within the scope of the audit;**
- **To ensure conformity to the principle of proportionality, when applying the ban to re-enter a managerial position within an NGO to individuals convicted of terrorism-related offences;**
- **To ensure foreseeability and accessibility of the provisions regulating the audits of associations based on risk-assessment, in order to prevent misuse of audits, and to ensure proportionate imposition of sanctions for breach of auditing obligations;**
- **Upon the removal of board members and their replacement by court-appointed trustees, to provide that the court consults with the members and/or the board of the NGO concerned regarding the choice of the trustees with the aim that the ones appointed will act in the best interests of the NGO;**
- **To authorise the suspension of activities, and, a fortiori, the prohibition or dissolution of associations only in exceptional cases and as *ultimum remedium*, in conformity with the principle of proportionality;**
- **To properly ensure the freedom of national and foreign associations to association on Turkish territory.**

Following the adoption of this new law, the Association of Protestant Churches remarked that the risk of associative rights restrictions has increased and therefore the choice to form associations has become more difficult for Protestant churches.[147]

Restriction of the collective activities of non-governmental organisations during the pandemic

Throughout the Pandemic, general assembly meetings of non-governmental organisations, including association and foundations, were postponed for an extended period of time until the end of February 2021.[148] Holding online general assembly meetings was not possible during this time due to general assembly meeting requirements set forth in legislation. Finally an announcement was made that general assemblies should be held within 30 days, after 28 February 2021.[149]

Many religious or belief communities or their places of worship attempted to carry on with the activities they had been running under associations or foundations. Therefore, the extended postponement of general assemblies impacted the freedom of association of non-governmental organisations having religious intent. Three key difficulties were the uncertainties, prevention of activities, and the vulnerabilities of worship places linked to associations. The scope of the postponement was unclear. Many questions were unanswered as to whether the postponement decision created an opportunity for

146 *Ibid.*, para. 90.

147 Association of Protestant Churches, Rights Violations Report 2020.

148 Sivil Toplumla İlişkiler Genel Müdürlüğü, *Dernek Genel Kurul Toplantıları, Bildirim ve Beyannameleri*, 24 July 2020. Then again, this was followed pursuant to the amendment made with Law No. 7256, published in the Official Gazette dated 17.11.2020 and numbered 31307, the period for the submission of the declarations and notifications of the associations and the postponement of the general assembly meetings was extended until 28.02.

149 Sivil Toplumla İlişkiler Genel Müdürlüğü, *Dernek Genel Kurul Toplantıları, Bildirim ve Beyannameleri*, 27 November 2020.

postponement for associations whose general assembly could not convene, or whether it meant a categorical ban on the general assembly of all associations. Some associations held their general assemblies while many decided to postpone them. While the boards of non-governmental organisations could regularly convene, decisions that required general assembly decisions of associations, such as changes in the statute or opening branches, had to be postponed. Similarly, foundations had to postpone Board of Trustees meetings. Some foundations' statutes explicitly refer to specific dates for when the Board of Trustees must be held. There were questions as to if and how these meetings could be postponed.

6.3 Non-Muslim community foundations

The non-Muslim community foundation board elections have been needlessly obstructed since 19 January 2013. As a result, the functioning of the community foundations continues to be paralyzed and weakened. These community foundations administer and fund non-Muslim community properties such as church and synagogue buildings, schools, hospitals, and other charitable work and as such constitute a lifeline for these communities. Ensuring that there is a clear and foreseeable legal framework enabling board elections is critical. The adoption of the Election Regulation is among the positive obligations of public authorities to ensure effective exercise of freedom of association.

> *The foundations are effectively paralyzed. Board membership is a voluntary task and people have taken on these roles for a few years but, at the moment, they have been in this role for 12 years. This affects the financial well-being of the foundations and thus the community's well-being.*
> ***– Lawyer Sebu Aslangil***

In 2013 the General Directorate of Foundations repealed the provisions of the Regulation on the formation of the community foundations' administrative boards. Subsequently, the Istanbul 1st Regional Directorate of the General Directorate of Foundations published *interim* measures until the new regulations come into force. The heads of the foundation boards were told that current board members must continue to serve, no change to electoral districts could be made and that no elections could be held. The last elections had been held in 2011. Despite statements from authorities that "work" was underway on it, the new regulation has not been drafted. In March 2019, the General Directorate of Foundations sent a letter to the regional directorates providing instructions for appointments in place of elections to replace the missing board members of community foundations. According to this provision, the present boards of directors can appoint new board members by way of board decision. Elections should be conducted and community foundations want to hold them; an order to make appointments instead is incompatible with human rights obligations and constitutes a serious interference in these communities' rights to freedom of association and internal affairs autonomy. Moreover, as this policy is contrary to the historical traditions and framework by which these foundations have identified their board members, it does not meet their needs.

The Human Rights Action Plan announced in March 2021 stated that the regulation on the formation and election of non-Muslim community foundations would be addressed in the Regulation on Foundations as one of the goals to be achieved within a year.[150] However, no steps had been taken at the time of the writing of this report.

In December 2020 the Ankara 7th Administrative Court annulled the 2013 circular which had declared the non-Muslim community foundations' election regulation and the 2019 circular which had allowed the appointment of new board members by the

150 Ministry of Justice, *Human Rights Action Plan* Freedom of Religion and Conscience, 4.3.f., April 2021.

INTERFERENCE IN THE COMMUNITY FOUNDATIONS' BOARD ELECTIONS

As non-Muslim community foundations' elections have been obstructed since 2013, the communities' freedom of association has been violated.

existing board without elections null and void.[151] The court found that, considering Constitutional and legal provisions, specifically the Law on Foundations, the interference in the freedom of electing and being elected had been violated. The VGM's appeal to stay execution of this ruling was then rejected on 28 April 2021.[152] However, this rejection ruling stated that the Ankara Regional Administrative Court ruled that the 7th Administrative Court of Ankara was not authorised to decide on this issue and that it should send the file to the Council of State. The reason for the lack of jurisdiction was that the 2019 circular dealt with a "general" issue and not a local one and therefore was under the jurisdiction of the Council of State. The case is pending at the Council of State. **Aslangil remarked that, "all this judicial process ultimately only prolonged the process of not being able to hold elections".**[153]

Meanwhile, four Armenian community foundations[154] applied to the VGM in August 2021 to hold elections. However, the VGM relied on the 2019 Circular and informed the communities' foundations in September that, until a new regulation is adopted, they could appoint new board members. As such, the VGM did not permit them to hold elections. Tıbrevank community foundation objected to the VGM's instruction by filing a court case against the VGM whereas the other three foundations decided to pursue elections through negotiations.[155]

The needs of community foundations, however, extend beyond the adoption of a new regulation. Communities must be able to exercise the right to association effectively according to their capacity and vision. This includes conjoining community foundations as needed, establishing federations and establishing a central administration for properties or functions.

» **Community foundation election regulation, in line with international human rights standards, must be drafted without delay. The drafting process must employ a participatory process.**

» **Steps should be taken to fully protect non-Muslim communities' freedom of association.**

» **A consultation process, inviting broad participation, should be initiated with a view to establish the best model of administration for the community foundations taking into consideration current needs.**

151 Ankara Administrative Court, 7th Chamber, 31 December 2020.

152 Ankara Regional Administrative Court, 10th Chamber, 28 April 2021.

153 Interview with lawyer Sebu Aslangil, 8 September 2021.

154 Getronagan, Kalfayan, Karagözyan and Tıbrevank Foundations.

155 Agos, *Dört Vakıftan Seçim Açıklaması*, 23 October 2021.

Credit: Cevahir Efe Akçelik

Edirnekapı Aya Yorgi Rum Ortodoks Kilisesi, one of the properties of the seized (mazbut) foundations.

7. Protection of property

The impact of past loss of properties belonging to Sunni Muslim, Alevi, Christian and Jewish religious communities continues to be a scar in need of attention.

The 1935 Law on Foundations placed Muslim and non-Muslim foundations under tutelage.[156] Some of the provisions of this law were incompatible with the Treaty of Lausanne. This paved the way for the community foundations to be given annexed (*mülhak*) foundation status.[157] This status gave the VGM extensive powers over these foundations, removing their autonomous legal status. The next step, then, was the seizure of these foundations and their properties.

A recent individual application to the AYM challenged the seizure of the *Edirnekapı Aya Yorgi Rum Ortodoks Kilisesi* Foundation, a seized (*mazbut*) foundation. The community contested the refusal to return the seized foundation to them and claimed that the seizure violated property rights and freedom of religion and conscience.[158] The AYM, however, held that the application was inadmissible on the grounds that, regarding property rights, the AYM did not have jurisdiction *ratione temporis* and, regarding the right to freedom of religion and conscience, the application was manifestly ill-founded.[159]

The Greek Orthodox community is a community that has been damaged by the practice of seizure. As of October 2007, 24 Greek Orthodox community *vakıfs* have been seized by the VGM. 990 properties have been seized through this process. Similarly, as of February 2008, 24 community *vakıfs* dedicated to the benefit of the Jewish community have been seized by the VGM.

156 Law No. 2762 on Foundations (*Vakıflar Kanunu*), 5 June 1935, R.G. No. 3027, 13 June 1935.

157 The 1935 Law on Foundations gave way to increased state seizure and control over Muslim and non-Muslim foundations and thus the properties owned by these foundations. For more details see Hatemi, K. and Kurban, D., *Bir 'Yabancı'laştırma Hikayesi: Türkiye'de Gayrimüslim Cemaatlerin Vakıf ve Taşınmaz Mülkiyeti Sorunu*, TESEV, 2009. Yildirim, M. *The Collective Dimension of Freedom of Religion: A Case Study on Turkey*, Routledge, 2017.

158 AYM, 4 April 2019, Individual Application No. 2015/15815, Haralambos Sakati, Karlo İrakli Tarinas, and Yani Stavridis.

159 *Ibid.*

For non-Muslim communities, the process of returning community foundation property unjustly taken has not been completed; the damage has yet to be fully remedied. The legislative decree (hereafter, "the decree") of 27 August 2011, which makes it possible for community foundations to apply to regain property confiscated from them by the state since 1936, has been applauded by many as a "revolution". However, it is best seen as a limited step in the process of trying to solve the property problems of community foundations. The decree amends the current Law on Foundations (No. 5737) by adding a temporary Article 11. A regulation to implement the decree was published on 1 October 2011. In essence, the decree aims to provide for the restitution of some of the property that was wrongfully taken from non-Muslim community foundations. Conversely, it is important to note that it is far from creating an overall solution to all the property or associative problems of community foundations.

The decree's scope in terms of the kind of property that may be returned is limited. According to the decree, to qualify for restitution, non-movable property must be registered in the 1936 Declaration of the community foundations of the VGM and the section for the name of the owner recorded in the Land Registry must be blank. Alternatively, the non-moveable property must be registered in the 1936 Declaration and registered in the name of the State Treasury, the VGM, a municipality or city special administration for reasons other than nationalisation, sale, or exchange. Provided that the community foundations apply within 12 months and a positive decision is reached by the VGM General Assembly, such property may be registered in the name of respective community foundations. In addition, the value of property that was purchased by a community foundation, or left to it through a will, but having ownership registered in the name of a third party because the community foundations were not allowed to acquire the property, will be paid by the Treasury or the VGM. The Finance Ministry will determine the value of the property. However, there are many cases of property that do not meet the strict demands of temporary Article 11.[160]

For cemeteries, too, the decree's scope is limited to those that were registered in the 1936 Declaration. However, in some cases cemeteries were not seen as property and were not listed in the 1936 Declaration. Since the decree requires that, for restitution to take place, properties must be listed in the 1936 Declaration, unlisted cemeteries are not returned to community foundations. This problem could have been avoided had the decree included "cemeteries used by community foundations".

> *For example, there is a Jewish cemetery in Kırklareli. Jewish cemeteries have Hebrew inscriptions on their tombstones. The name of the district is the Jewish cemetery. Kırklareli Community demands the return of the Jewish cemetery, but the General Directorate of Foundations does not return it because it [the process] is based on the 1936 declaration. In fact, the representative at that time, Laki Vingas, says the following while making his defense: 'The Jewish Foundation of Kırklareli may not have made this request in 1936, but it is a Jewish cemetery.' In the answer, it is asked how it is known that it is a Jewish cemetery. It is written in Hebrew on the tombstones, but it is not considered a Jewish cemetery. Now, foundations in a similar situation cannot claim their property back because the 1936 Declaration is taken as the basis.* – ***Moris Levi***

The non-Muslim communities in Hatay (İskenderun) face a unique and great challenge in this regard. The non-Muslim community foundations in Hatay were registered as such in 1939 when Hatay became part of the Turkish Republic in the same year. Since non-Muslim communities in Hatay could not provide a list of their properties in 1936

160 The Temporary Article 11 was added to Foundations Law No. 5737, 27.08.2011.

prior to Hatay's annexation, they are beyond the scope of the decree. As a result, these communities have properties which are under the control of the General Directorate of Foundations.

The Foundation of Armenian Catholicos of Cilicia, currently headquartered in Lebanon, has pursued legal remedies for the return of the deed of Sis Monastery in Adana's Kozan district. The foundation filed a lawsuit for the cancellation and registration of the title deed which was rejected in 2021 at the Kozan 2nd Civil Court of First Instance for the return of the title deed of the Sis Monastery.[161] The Armenians in Kozan had left the region in 1921 following the final destruction of the Cilician Catholicosate.

The Armenian Catholicos of Cilicia had applied to the Constitutional Court on 28 May 2015 for the return of the monastery.[162] They had claimed that the seizure of the church and monastery, according to decrees issued pursuant to the law on abandoned property, violated their right to this immovable property. They stated that seizure of a place of worship violates the freedom of religion and belief and the principle of equality and that an obstruction of access to land registry records violated their right to a fair trial. In 2016, their application was rejected on the grounds of not having exhausted domestic remedies.[163]

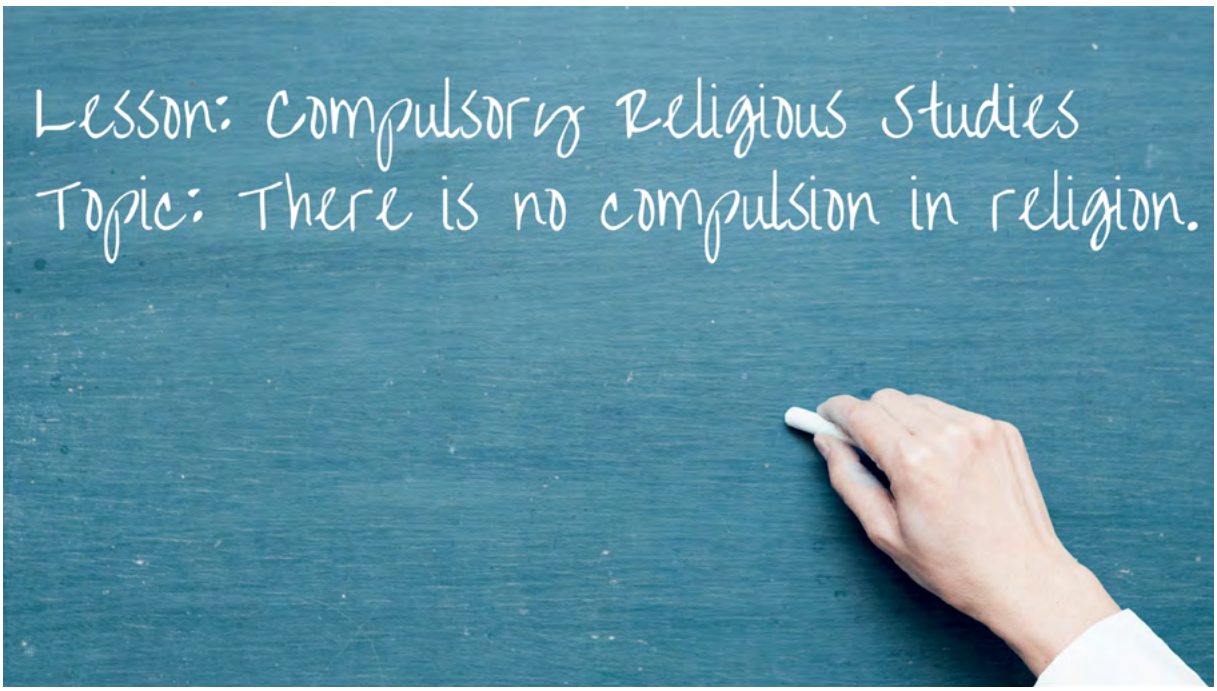
» **New legislation should be passed that allows for the restitution of all properties lost unjustly by all religious communities/foundations in the past.**

» **The restitution of captured (mazbut) foundations to the related communities or of suspended foundations' income to these communities should be made.**

161 Habertürk, *Ermeni Vakfı'nın, Kozan'daki tarihi manastırın iadesi için açtığı dava reddedildi*, 12 November 2021.

162 AYM, 15 June 2016, Individual Application No 2015/7661, *Klikya Ermeni Katolikosluğu*.

163 *Ibid.*



8. Freedom of religion or belief in the education system

The child's right to freedom of thought, conscience and religion, their right to participation, as well as parents' rights to raise their children in line with their own philosophical or religious views, are subject to systematic interference in Turkey's public education system. **The mandatory RCE (Religious Culture and Ethics) lessons, including the exemption mechanism, the optional religion courses, Islamic religious practises in schools, and high school placement exam, constitute important challenges to the protection of, among others, the child's right to freedom of religion or belief.**

The National Ministry of Education's partnership with some religious foundations, the placement of children in formal or informal Islamic community dormitories or housing and related human rights and safeguarding issues, as well as the more recent consideration of religious instruction to the preschool age, pose central concerns. A more detailed report will be published on freedom of religion or belief in the education system in the coming months.

8.1 Mandatory course on religious culture and ethics

The RCE course is among the compulsory courses taught in basic education (grades 4-12) for two hours a week.

The ECtHR has found Turkey in violation of the right to education, specifically parents' rights to raise their children in line with their religious or philosophical views in two separate judgments. These are 2007 *Hasan and Eylem Zengin v Turkey* and 2014 *Mansur Yalçın and others v Turkey.*[164] Since 2017 the Ministry of National Education has taken steps to reconcile the RCE curriculum and books with the findings of the ECtHR judgments, however, despite revisions, the books are still not compatible with international human rights standards.

164 ECtHR, *Hasan and Eylem Zengin v. Turkey*, No. 1448/04, 9 October 2007 and *Mansur Yalçın and Others – Turkey*, No. 21163/11, 16 September 2014.

A human rights-based assessment of the RCE textbooks demonstrates that the textbooks are not compatible with the ECHR and Toledo Guidelines on Teaching About Religion or Belief in Public Schools.[165]

Teaching about religions and beliefs should be sensitive, balanced, inclusive, non-doctrinal, impartial, and based on human rights principles relating to freedom of religion or belief.[166] However, the overall approach in the RCE textbooks is one of positive assertion. This is done about the existence and nature of God, the Holy Qur'an, Hz. information about Muhammad, the formation of the world, the purpose of man and life, death, afterlife, angels and demons and the doctrines of the religion of Islam.[167]

Teaching about different approaches and traditions, within Islam and other religions and worldviews, is not presented in an objective manner. There is widespread criticism among the Alevi that the sections devoted to Alevism constitute a small portion of the whole RCE course content.[168]

- The *cemevis,* which are considered places of worship for the Alevi community, are not introduced as such;
- The Alevi *semah* is not presented as a form of worship;
- Because tarikat are prohibited by Law No. 677, the mutual inclusion of Alevism, Bektashism and *tarikat* in the section on "Sufi interpretations in Islamic Thought" implies that Alevism and Bektashism are also prohibited sects.
- The content of the textbooks is sectarian, as opposed to supra-denominational. Throughout grades 4-12 Sunni doctrine and practice dominate the different sections of the books. When the theme of worship is discussed, Alevi worship is not included in the discussion. When prayer or fasting are discussed, no reference is made to *cem, Muharram* and *Khidr* which are important practises of the Alevi.[169]
- The RCE teachers overwhelmingly come from a Sunni Islamic background and thus lack diversity. This may undermine the objectivity of the way the textbooks are taught.

Following hundreds of pages explaining Sunni practises, Alevism is presented in a separate section, at the end of the yearly plans of instruction, in the 4-6th grade textbooks and 8-11th grade textbooks. It is presented with the approach that one should first "learn the correct practice of belief in Islam, then you can do cem, you can do Khidr fast. – ***Prof. Ali Yaman***

The essential principles and practises of Christianity and Judaism are broadly included in the 11th grade textbook. However, the Islamic view's assumption that the scriptures constituting the main sources of Christianity and Judaism have been "tampered with" has an important place in the book. This approach undermines their legitimacy and rejects their principles and practice. According to Christian and Jewish theologians in Turkey, the information presented is based on inaccuracies and incompatible with the basic teachings of Christianity and Judaism.[170]

165 Yildirim, M., *Din Kültürü ve Ahlak Bilgisi Dersi ve kitapları hakkında İnsan Hakları Temelli bir değerlendirme*, Eşit Haklar için İzleme Derneği (ESHİD), 2021.

166 OSCE/ODIHR, Toledo guiding principles on teaching about religions and beliefs in public schools, 2007, p.40.

167 *Supra* 165, p. 39.

168 Yaman, A., (2021), 'Education about Alevism in Public Schools of Turkey', *Religious Diversity at School*, Springer.

169 This evaluation regarding the Alevism-related parts of RCE textbooks was made by Prof Dr Ali Yaman. February 11, 2021.

170 See the comments by a Christian theologian and the Jewish Rabbinate *supra* 165.

Theism, deism, atheism, and agnosticism are discussed in the 11th Grade textbook under "Issues About Faith". These issues are presented with Islamic explanations and apologetics; their general tenets are not presented objectively.

The child's right to freedom of religion or belief

Every child has the right to freedom of thought, conscience and religion and can use this right in line with their evolving capacity.[171] It is the child who exercises this right. Their parents or anyone else do not exercise this right on their behalf. The RCE textbook content often asks children to give "the right" answers to doctrinal matters that are not presented objectively and that lead them to certain behaviour as "the right" behaviour. The RCE course performance of children is evaluated based on exams, homework and in-class participation. The grade they receive will significantly affect their education. Given the aforementioned, it is clear that there is significant pressure on the child to perform in a way that meets the doctrinal expectations and approval of the curriculum. This exposes the child to conditions in which he or she may have to act against their freedom of thought, conscience or religion.

Although not ubiquitous in new RCE textbooks, expressions such as "our religion", "our prophet", "our holy book, the Koran," which are signs of an approach that teaches religion from within, continue to be used in many RCE books.

The right of parents to raise their children in line with their own religious or philosophical views

Religious instruction in the form of doctrinal information presented as positive assertions is not compatible with the religious or philosophical views of all parents. The formation process of the universe and human life and the purpose of human existence are the subjects about which many religions, beliefs or worldviews offer explanations. Consequently, parents, whose philosophical or religious views contradict the teaching their children are subjected to in the RCE lessons, face interference in their right to raise their children in line with their own religious or philosophical views.

Exemption from the RCE course

Under a decision of the Higher Education Council of 1990 in Turkey, **children of Christians and Jewish families are exempt from the RCE course.**[172] However, there are significant shortcomings to the exemption system:

Exemption mechanism is discriminatory. Only Christian or Jewish students can benefit from the right of exemption, and it can only be done by disclosing their affiliation in the religion field of the population register.[173]

The child's right not to be compelled to reveal her / his religion or belief is violated. Disclosure of religion or belief is compulsory to be exempted from religion lessons. This is in direct contradiction of international human rights law.

The child is not allowed to participate in the exemption application process. The exemption application process does not allow for the child to participate even though it is the documented religious identification of the child that is required by the authorities. The parents make the application and present the document. A child-friendly application process, and informing children about exemption, would allow children to exercise their right of

171 Article 14 of Convention on the Rights of the Child.

172 *Supra* 165.

173 *Ibid.*

exemption. The duty of parents and authorities is to accommodate children in their right to exercise this.

Entering the phrase "exempt" on a report card creates a risk of discrimination. Students exempted from RCE lessons are at risk of being stigmatised whenever these records are viewed, throughout their academic lives and careers. In light of ECtHR case law, the disclosure of such a record cannot be regarded as a practice that complies with the ECHR.[174]

Students who are exempt from the RCE course are at risk of being discriminated against in the school environment. Because exempt students are in the minority, there are varying options given to exempt students as to what they will do while their classmates are in RCE lessons. Exempt students report that they are often subject to questions or denigrating comments from peers or teachers and are stigmatised, especially in public schools. Students in private schools remark that they can wait in the school library and that they feel less discriminated against compared to students in public schools.

The use of the exemption right may put the student at an academic disadvantage. Although the high school entrance exams system has been changed over the years, students who are exempted from RCE continue to be evaluated unequally.

It appears that the Ministry of National Education (*Milli Eğitim Bakanlığı,* henceforth MEB) does not monitor exemption applications. In an application for information made to the MEB, the following questions were asked: "How many students applied for exemption from RCE in the 2017-2018, 2018-2019, 2019-2020 school years? How many of these have been accepted and how many have been rejected?"[175] The MEB's formal answer to these questions was, "We do not have any information or documents."[176]

» **The MEB should take immediate steps to bring the Turkish education system and domestic legislation into conformity with the Convention – in particular, by remedying the shortcomings in textbooks and exemption rules.**

» **The MEB should take steps to implement non-discriminatory exemptions without delay.**

» **The MEB should review and revise its programs and practice with a view to uphold the child's right to freedom of thought, conscience and religion in the education system.**

» **The MEB should take all necessary measures to eliminate the unequal criteria facing students who have been exempted from the RCE course when they take the High School Placement test.**

8.2 Optional religion courses

Optional courses on The Life of the Prophet Mohammed, Basic Religious Knowledge (Islam), and The Koran have been listed among the elective courses offered in middle schools and high schools since 2012. **There are no options for elective courses on other religions, beliefs or worldviews.**

There are reports of circumstances leading to students and their guardians being forced to select elective religion courses. School directors commonly present students with "elective course packets" which include "elective religion courses." Other classes that students would prefer to take are closed based on "a lack of teachers". Forcing students to take religion courses constitutes a violation of the right to education and the right to freedom of religion or belief.

174 ECtHR, *Grezelak v. Poland*, No. 7710/02, 22 November 2010.

175 Information request no.2002662931 dated June 4, 2020.

176 Responses given dated 7 July and 27 July 2020, to the Application for enquiry no. 2002662931 and dated 4 June 2020.

Credit: Kayhan Ayhan

The billboard, prepared by the governorship, the mufti, the provincial directorate of national education and the Önder İmam Hatip Association for the elective religion classes, stating "Its selection? One minute; Its value? Two worlds!"

The Diyanet systematically instructs imams to encourage their communities to opt for the optional Islamic lessons for their children. In January 2021, the time of year when elective lessons would be selected for the following academic year, the Diyanet's sermon in all mosques in Turkey included a reminder to the believers to encourage their children to choose the elective Islamic religion lessons.[177] That same January in Diyarbakir, four parties, the governorship, the *mufti,* the provincial directorate of national education and the Önder İmam Hatip Association, prepared a joint billboard for the elective religion classes explaining why religion classes should be chosen.[178]

In the fall of 2021 when students went back to face-to-face education after pandemic-related online education, it was reported that, despite having chosen otherwise in January 2021 for the elective lessons they would take during the 2021-2022 academic year, students in Cihangir Münir Özkul Middle School were instructed to take Islamic religion lessons.[179]

» **The MEB must monitor whether elective religion courses are presented as elective in practice and take measures necessary to ensure that they are truly optional.**

177 Habertürk, *8 Ocak Cuma Hutbesi 2021- İşte Cuma Hutbesi'nin bu haftaki konusu*, 8 January 2021.

178 Cumhuriyet, *Valilik, müftülük, il milli eğitim ve dernek, seçmeli din dersleri için birleşti*, 17 January 2021.

179 Birgün, *'Seçmeli' adı altında Kuran dersi dayatması*, 8 September 2021.

Credit: Funda Tekin

The playground next to the section allocated for women in Arap Mosque, Istanbul. Unlike most mosques across Turkey, the women's space of worship is designed at the same level with the main area to enhance women's access.

9. Women and freedom of religion or belief

The right to freedom of religion or belief is everyone's right regardless of their gender identity and sexual orientation, including women, men and LGBTI+ individuals.[180] States are under the obligation to ensure that this right is protected without discrimination.

Applying the gender lens is important to identify challenges to the protection of freedom of religion or belief and ensure everyone's right is protected because,

- people of different gender identity may be affected differently by restrictions on freedom of religion or belief, and;
- different measures or added protection may be required to ensure that their right to freedom of religion or belief is equally protected.

Integrating the gender dimension of freedom of religion or belief into the monitoring and reporting activities is therefore crucial.

This section aims to capture and highlight some of the key challenges that women have faced in the exercise of their right to freedom of religion in Turkey within the reporting period. The section begins with an overview of observed central trends regarding women's rights to freedom of religion or belief. This is followed by the presentation of three critical cases of Muslim women. Then, the Women in Mosques Campaign and its questioning of women in mosques provides important insight into the freedom of religion or belief issues within the Muslim community in the mosque and beyond. Finally, the section ends with recommendations on the steps that public authorities, religion or belief communities and civil society can take to improve the protection of freedom of religion or belief for all.

In addition to desk-based research, over 25 women from different religious or belief backgrounds were interviewed. Rather than a representative sample, people who are not

180 UDHR Article 18, ICCPR Article 18.

random, but who have experience with the topic at hand were chosen. The interviewees included students, activists, homemakers, researchers, teachers, social workers, and religious workers some of which work in the public sector. It has been a challenge to reach LGBTI+ individuals in the context of this monitoring work and therefore the findings here are limited to women. One limitation has been the limited scope and reach. One reason for this is that, while occasionally they become public, the unique challenges faced by women present themselves differently in private and complex contexts. More field research, in diverse contexts, exploring women's experiences from different religious or belief backgrounds, including that of non-belief, is necessary. This report uses initials for most interviewees at their request and withholds other identifying information to protect their privacy and security.

Important cases related to women's rights to freedom of religion or belief highlight the unique challenges women experience. They also demonstrate the significant role women play as agents of change for the protection of human rights, freedom of religion or belief and gender equality for all. Research and observations from the interviews suggest that the accounts presented here are experienced by scores of women in varying degrees.

Women face significant obstructions to free will in the exercise of their human rights, including freedom of religion or belief. Women face challenges when their stance and practice differ from those who hold power over them. These challenges may be experienced within the public and private spheres, including the family home, the workplace, a religious or belief community and the greater community within which she lives. Often motivated by dominating paternalism and at times concealed under protective paternalism, men's decisions play a significant role in setting the boundaries of women's enjoyment of the right to freedom of religion or belief and gender equality.

In recent years, more attention has been paid to the restrictions on Muslim women's manifestations of religion, especially the use of headscarf in the public sphere. At the same time however, interviewees noted that challenges to freedom of religion or belief are faced by women from a wide range of backgrounds. These include, among others, Christians, Yezidis, Alevis, Sunni Muslims, Shafi'i Muslims, and atheists *vis a vis* their family, own community and the greater community. More field research is needed to identify unique challenges and patterns of violations and discrimination.

Some of the central trends may be summarised as follows:

Women continue to be especially vulnerable in their homes. Women from diverse religious or belief backgrounds face interferences in their right to freedom of religion or belief at home. Several women who have converted to Christianity from different religious backgrounds remarked that they are not free to exercise their religion by attending a church, participating in Bible study groups, or reading the Bible openly in their homes. In addition their husbands prevent them from raising their children in line with their religious convictions. Such restrictions compel women to create confined spaces for nurturing their own religious spirituality in secret and live double lives.

> *Before we got married, I told N. that I am a Christian and that I will go to church. At the time he accepted this and said that he will respect my religious identity and I will be free to practice my religion. But over the years he changed and has viewed my religious practice with suspicion and is concerned about what his wife being a Christian would mean to his reputation. He does not allow me to go to church, does not want me to meet with Christian friends and gets angry when he sees my Bible in the house. I am not allowed to share my faith with my children. – **D.***

Credit: Michael Benanav

Alevi women during a cem ritual.

Several Muslim women students have remarked that they feel compelled to wear a headscarf when they visit their families whereas they no longer wear the headscarf in the cities where they pursue their university education. A number of interviewees stated that this is also the case for many of their friends at the university.

Monopoly over interpretation of religious dogma. Women interviewed by the Freedom of Belief Initiative remarked that men consider "Islamic religious interpretation under their monopoly". This is not only limited to the Presidency of Religious Affairs but includes Islamic community (*cemaat*) leaders and other actors. Several interlocutors indicated that, even though there are male Islamic theologians who advocate for similar points of view, they are not targeted to the same degree. When asked about the reason for this, it was suggested that women are viewed as having more influence over young generations of Muslim women and that men categorically object to women's roles in interpreting religious dogma.

While such tensions are often not as visible in the context of Alevi or non-Muslim communities, the place and role of women in religious or belief communities remain determining factors in the exercise of freedom of religion or belief.

In the reporting period, challenges drawing attention include those of the headscarf and challenging discriminatory interpretations of Islamic dogma particularly by women expressing criticism against their own religious communities. These women face the risk of being subjected to harassment, prosecution and even death threats from several fronts, especially if they are seen as having an impact as mobilizers. Some of these cases are described in more detail below.

Women are pressured between secular and religious segments of society. Women, as a result of their religious or belief identity or their expression of the identity, may find themselves under pressure between the secular and dominant religious segments of society.

A frequently repeated observation has been that veiled Muslim women are pressed between the secular segments of society and the governing party and its supporters in Turkey.

Women who wear the headscarf are often verbally harassed by secular people who view them as "representatives" of the ruling party or accuse them of supporting the ruling party's policies while they may be critical of these policies. The #10yearchallenge which went viral on Twitter in January 2019 is a good illustration of this. The posts sparked a debate about the headscarf when a group of women took the opportunity to share photos of themselves before and after removing their headscarf. Some said that they chose to wear the headscarf with their own free will while others said that they were forced to wear it by their families as early as 10 years of age. Removing the headscarf was not an easy decision for many and often came with a cost. Still some who have removed their headscarf feel they have to wear their headscarf again when they visit their hometown or village as they feel pressure from their family and neighbours.

The reactions to the #10yearchallenge tweets reflect the tensions and polarisation on this topic in society. Many showed solidarity; for example, the website *Asla yalnız yürümeyeceksin (you won't walk alone)* retweeted the posts and encouraged women to share their stories. On the other hand, many comments expressed judgment for the women or their families and others; they judged the women either for wearing the headscarf or removing it and judged either the families or other factors that forced them to wear the headscarf or cultural trends that they saw as being responsible for the decision to remove the headscarf.

Women feel compelled to live double lives. Women who face challenges to freedom of religion or belief within their families and/or religious or belief communities feel compelled to live double lives. This situation is demonstrated by women who feel they have to conform to religious life, including practises and manner of clothing, within the family, workplace, and home community. Several interviewees remarked that they and their friends adapt themselves to the "acceptable" way of life in their homes and hometowns and refrain from expressing themselves in the way they would if they had felt free to be who they are. This has been an important common issue reported by women across different religions or beliefs including non-believers.

I don't wear my headscarf when I'm in Istanbul, where I'm studying at university. But during term breaks or in the summer when I'm back with my family in ... I wear my headscarf. There are many women who do the same. ***– S., Istanbul***

When I'm back at home from university, I hide my Bible and try to comply with the way my family lives. I've become very good at censoring my speech or behaviour. Otherwise, we won't have peace at home. I don't mind this, that's just the way things are. ***– M., Istanbul***

Religious offices and decision-making processes in religious or belief communities remain dominated by men. Interviewees from different religious or belief backgrounds overwhelmingly remarked that in religious or belief communities and institutions men are in decision making positions including in teaching and organisation of the religious sphere. Religious officials, including *imams*, *rabbis*, priests, pastors — with less than a handful of exceptions and *dedes* are exclusively men.

Ceren Ataş, an Alevi researcher challenges this practice:

I was already a feminist; but for some reason, the already existing thought of 'we are equal' in Alavism can tie your hands. I had not developed any awareness of the inequality. I read Gülfer Akkaya's book and met her. I started to look at the institutions I engaged with differently. The majority of men in leadership, the fact that women do the work but they are definitely put in the background, the Pir Anas are erased from memory... While I was thinking that I was entering a place ▶

> *of worship where everyone is defined as a soul, where there is equality, I saw the existence of a masculinized society where women are destroyed every day. For example, the simplest thing is, we are comparing the practice of Alevism right now. During the cem ceremony, only Dede sits on the post; but there is no Dede without Ana, and there is no Ana without Dede. That post, Ana and Dede should sit together in Cem. An incident that is completely against Alevism is now all over the place. – **Ceren Ataş***

Furthermore, women's representation within religious institutions is extremely low.

The tables below demonstrate the distribution of men and women within the Presidency of Religious Affairs and other faith-based institutions.[181]

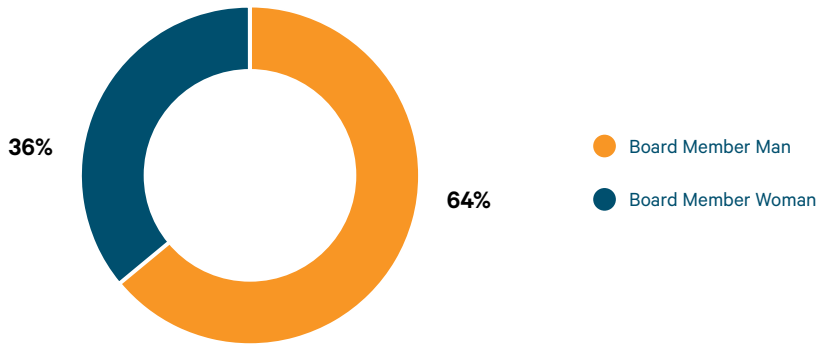
The leadership of the Diyanet remains dominated by men as shown in the table below.[182]

TABLE 3: GENDER DISTRIBUTION IN THE DIYANET - 2021

Presidency of Religious Affairs	Number of members	Men	Women
Head of the Presidency of Religious Affairs	1	1	0
Deputy Heads of the Presidency of Religious Affairs	5	4	1
The Head of the High Council of Religious Affairs	1	1	0
Deputy Head of the High Council of Religious Affairs	1	1	0
The High Council of Religious Affairs	14	14	0
General Secretary of the High Council of Religious Affairs	1	1	0
The High Council of Religious Affairs Experts	38	38	0
Directors of the General Directorate of Religious Services	6	5	1

The gender distribution in the management of other religious or belief institutions, while varying considerably, remains largely dominated by men as well.[183]

GRAPHIC 1: GENDER DISTRIBUTION IN THE MANAGEMENT OF SELECTED RELIGIOUS INSTITUTIONS - 2021



181 Presidency of Religious Affairs, Activity Report 2020, 2021.

182 Since the Association for Monitoring Gender Equality (*Cinsiyet Eşitliğini İzleme Derneği* -CEID) published its monitoring report of 2020, there has not been any change in the Presidency of Religious Affairs. Sancar, S. *Din hizmetlerine erişimde toplumsal cinsiyet eşitliği*, CEİD, 2020.

183 These figures were shared with us by these institutions or were taken from the public information provided on their websites. We are thankful for the collaboration of religious or belief communities and the Association for Atheism for the information they provided.

TABLE 4: GENDER DISTRIBUTION IN THE MANAGEMENT OF SELECTED RELIGIOUS INSTITUTIONS (SEGREGATED) - 2021

Name of the Institution	Chair Woman	Chair Man	Board Members Woman	Board Members Woman %	Board Members Man	Board Members Man %
İzmir Association for Culture	1			%100	0	%0
İzmir Jewish Cemetery Charity Association			5	%100	0	%0
İzmir Charity Association for Orphan and Poor Children			3	%100	0	%0
Karataş Hospital Management Association			4	%80	1	%20
Association for Atheism		1	3	%60	2	%40
Regional Bahai Councils			15	%53	13	%47
Kurtuluş Churches Association		1	1	%50	1	%50
Hasat Church Ministries Association		1	2	%40	3	%60
Bahai Community in Turkey National Council [184]		1	2	%22	7	%78
500th Year Foundation				%20		%80
Neve Şalom Sefarad Synagogues Foundation				%20		%80
Garip Dede Dergah Foundation		1	3	%17	14	%83
Pir Sultan Abdal Cultural Association		1	4	%16	20	%84
Hacı Bektaş Veli Anatolian Culture Foundation		1	1	%14	6	%86
Alevi Bektaşi Federation		1	3	%14	19	%86
Turkey Rabbinate Foundationı				%10		%90
Greek Community Foundations Association		1	1	%11	10	%89
İzmir Jewish Community Foundation		1	0	%0	10	%100
Kars Ehl-i Beyt Association		1	0	%0	16	%100
Protestant Churches Association	0	1	0	%0	5	%100

The cases of three Muslim women, Fatma Yavuz, Zeyneb Duygu Ağbayır, and Zeynep Çetinkaya, presented below, shed light on the complex dynamics of public and legal pressure that constitute interference in several human rights including the freedom of religion or belief.

The case of Fatma Yavuz

Fatma Yavuz worked as a Koran instructor for the Presidency of Religious Affairs (PRA henceforth) for 14 years. She is a Muslim, a religious woman, and an activist. She was dismissed from the DİB in April 2019 following an investigation.

In February 2019, the Diyanet initiated an investigation and terminated her employment because she no longer was found to be in compliance with the qualification stated in

184 This data is updated annually because the Bahai National Spiritual Assembly and regional councils hold elections every November.

the Presidency of Religious Affairs Regulation on Appointment and Placement.[185] The Regulation states that the person must be known as someone whose "beliefs, worship, behaviour and practice is known to be in compliance with the traditions of Islam" (*itikat, ibadet, tavır ve hareketlerinin İslam törelerine uygunluğunun çevresinde bilinir olduğu*). Yavuz was found to have violated Article 48/B of the Law on Civil Servants, which stipulates that a civil servant must comply with the conditions set forth in the specific law applicable to their institution. As a result, she was dismissed.[186] Furthermore, her behaviour was found to be in violation of Article 8 of the Law on Civil Servants which stipulates that, "Civil servants are obliged to show that they are worthy of the reputation and trust expected of their official titles, with their behaviour inside and outside the service."[187]

The inspectors did not listen to the students. I asked them how they knew what I taught. They listened only to one student and her account was very positive. But they claimed that I discredited the Hadith, taught that women can fast and pray (namaz) while menstruating. Whereas I always taught that there are differing views on these and that this is what I believe. ***– Fatma Yavuz, Istanbul***

Due to a procedural error, her application for an *interim* measure was successful and she returned to her job. However, in a short while her employment was terminated again to which she objected. She continues to pursue legal remedies. The regional administrative court found the termination of employment lawful and at the time of the writing of this report her case is pending at the Council of State.[188]

The file against Fatma Yavuz lists many acts, however a particular act requiring disciplinary action is not specified. Therefore, according to her lawyers the legality of the action taken against Yavuz is contested. She remarked that her social media posts are poorly presented, lacking parts that demonstrate her nuanced assertions. Furthermore, she added that "in the file, they are excessively interpreted". The tweets, which were met with criticism, were those expressing her support of Nadia Murad and her criticism of ISIS and the mistreatment of LGTBI+ people and denigration of women. "I think the fact that this [my] objection comes from someone from within the Diyanet is viewed as a 'great danger'" she commented.[189]

Fatma Yavuz's journey is one of constant questioning, exploration, reaching out and seeking authentic expression of her faith.[190] Her enthusiasm about her discoveries and friendships made along the way with those who are considered "others" is clear, contagious and inspirational to many.

Yavuz describes herself as "a classical Sunni Muslim" after her years at an *Imam Hatip* Highschool and faculty of theology. She worked as a Koran instructor for women and for many years. She attributes her questioning to a lack of sincerity and loss of trust she saw in the context of her work with diverse religious actors. This led her to question the credibility of the "knowledge" she had received throughout her education, including the interpretation of the Koran, information on the Islamic *mezheb* (denominations), as well as on who were classified as "others", such as Jews and Christians. She began

185 Presidency of Religious Affairs Regulation on Appointment and Placement (*Diyanet İşleri Atama ve Yer Değiştirme Yönetmeliği*), 5/b.

186 Law on Civil Servants No. 657 48/B, 657 14/7/1965, Official Gazette No. 12056, 23/7/1965.

187 *Ibid*, Article 8.

188 Correspondence with Fatma Yavuz, December 2021.

189 Interview with Fatma Yavuz, 27 July 2021.

190 *Ibid.*

visiting synagogues and churches and interacting with individuals whom she had originally known as "the others" in a negative way.

In 2016 she started teaching a lesson on *"meal"* (interpretation) as a volunteer in addition to the Koran lessons she was teaching professionally. There were no interpretation lessons in the curricula when she initiated these, with the permission of the Mufti's Office. She had decided to offer these lessons following the interest of her students who wanted to learn more after learning to read the Koran in Arabic. As a part of the course, she and her students had to address the meaning of verses from the Koran and Hadith attributed to the Prophet Mohammed that seemed to demean women and people who are considered *kafir- unbelievers.*

Typically, women join Koran courses offered by the Diyanet with the approval of their families. According to Yavuz, parents or husbands who may not be comfortable with a woman's activities outside the house generally trust the Diyanet and even encourage the women to join the courses. As Yavuz' course became popular, however, the women's husbands also started to express objections.

She received, and continues to receive, comments on social media that are threatening, stigmatizing, and that demonize her as someone who demeans Islam. In August 2019 a threat posted on Twitter identified her with her name and work location. She filed a complaint with the prosecutor however this has not led to any prosecution to her knowledge.[191]

A small group of others have started an initiative *Kadınların Aklı Yargılanıyor* (Woman's Mind on Trial) to support the trial process of Fatma Yavuz and others like her. The campaign group was formed by women who argue that the masculine power based on religious knowledge is a form of violence against women and call all women to stand up for the cause of Fatma Yavuz and Zeynep Çetinkaya (Algı).[192]

Yavuz finds that much has changed since her dismissal and continued activism. "My experience had more impact than I thought," she says.

The case of Zeynep Duygu Ağbayır

Zeynep Duygu Ağbayır is being prosecuted under Article 216(3) on grounds of denigrating the religious values of a segment of society because of her tweets reversing anti-woman discourse. Charges include the denigration of religious values of a segment of society by way of changing certain hadith which are considered sacred in Islam and replacing several of its words with rude words.[193]

> *A Muslim woman who prefers to wear the headscarf cannot go outside of the boundaries set by 'them'. The male theologians who object to the same Hadith were not prosecuted. I'm not afraid, but I am hurt by the pressures of the religious communities (tarikat) since my childhood and youth. In the digital age the pressure has become stronger and more pervasive because they feel more threatened by the impact of the digital content via Netflix, YouTube etc., on their families and they can utilize digital tools to apply pressure.* – ***Zeynep Duygu Ağbayır***

In June 2020 Ağbayır joined a campaign on Twitter with the hashtag #erkekleryerinibilsin (men, know your place); the campaign aimed to draw attention to gender equality

191 Yavuz, Fatma, Twitter, 1 August 2019.

192 https://twitter.com/KadinlarinAkli

193 Indictment prepared for the Istanbul Criminal Court of First Instance, 25 August 2021.

by reversing anti-woman discourse. The campaign was launched in June 2020, when a user, Ruq, posted "My husband can work if he wants" – passively criticising men who consider themselves enlightened because they "allow" their wives to work. Thousands of women retweeted and followed with tweets of their own. The campaign was even joined by some municipalities posting, for example, "men can wander the streets freely". Ağbayır also posted tweets reversing several Hadith, which she considered denigrating to women, by replacing the word woman with man.

A complaint was made against her by a person *via* CİMER (The Presidential Communication Centre) and she was called to give a statement in 2021 and, in September 2021, a case was initiated against her. The indictment of 25 August 2021 relies on Article 216(3) of the Turkish Penal Code which stipulates that, "A person who publicly degrades the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace." The prosecutor has also invoked Article 53 of the TCK which stipulates that "Where a person is sentenced to a penalty of imprisonment for an intentional offence the legal consequence of such shall be his prohibition from" certain rights such as becoming a member of the Grand National Assembly, voting or being elected, exercising political rights, acting as a guardian or being appointed in the role of guardianship and trustee, being the administrator or inspector of a legal entity namely, foundation, association, labour union, company, cooperative or political party, and conducting any profession or trade, which is subject to the permission of a professional organisation.

Ağbayır remarked that she did expect a strong reaction to her posts about the Hadith but did not expect to be prosecuted.[194] Therefore, she did not complain when she received many threats via social media including death threats. She remarked, "One person threatened to hang me, Zeynep Çetinkaya and LGBTI people from the Hagia Sofia. Now I regret not having pressed charges."[195]

The case of Zeynep Çetinkaya

Zeynep Çetinkaya was subjected to harassment on social media platforms, in her social circle and at work. She was called to give a statement by the prosecutor following complaints against her.[196] This was prompted by the content she shared on Twitter. In June 2020 she had tweeted "A community that leaves their business to a man will never find salvation – (Buhari, Megazi 82, Fiten, 18, Tirmizi, Fiten 75; Nesai Kudat, 8; Ahmed B Hanbel, V/43, 51, 38, 47), reversing the controversial Hadith, "A community that leaves their business to a woman will never find salvation" in June 2020. Çetinkaya was, like Ağbayır, inspired by the social media trend #erkekleryerinibilsin (men, know your place) and shared this tweet in connection to the trend.

> *Despite the negative consequences, I am happy that the incident led to debate about the Hadith and the issues about which I wanted to raise awareness. Of course, we will oppose discourse that degrades and ignores women and is delivered under a 'religious cover' and with 'the sword of religion'. When they cannot respond intellectually, they resort to enforcement through the police and the judiciary. Whereas I would like to discuss with them and ask them, 'why do you want to kill me?'* – ***Zeynep Çetinkaya***

The tweet led to several negative consequences impacting Çetinkaya's life. She experienced limitations on her freedom of religion or belief and freedom of expression as well

194 Interview with Zeyneb Duygu Ağbayır on 25 October 2021.

195 *Ibid.*

196 Karaca, N. B., *Karakolda biten hadis tartışması*, Habertürk, 9 October 2020.

as discrimination in employment based on religion or belief. She was summoned to give a statement five months after a male theologian reported this tweet to the police. She was accused of "inciting the people to hatred and hostility or insulting them," under Article 216 of the Turkish Penal Code punishable by up to one year in prison. As of the writing of this report no other developments have taken place following her statement.

She also received many threatening messages on Twitter, including "killing you is required (under Islam), you may be killed when the day comes" ("*senin katlin vacip, günü geldiğinde idam edilebilirsin*"). She considered complaining to the police about the threatening messages that she received; however, she did not pursue legal remedies thinking that it would not lead to any result. Fearing reprisals from her neighbours, she relocated to a relative's home immediately after the Twitter incident, but later she felt safe enough to return home.

The call she received from the police asking her to give a statement brought the police involvement to the attention of her employer. Çetinkaya remarked that her employer initially stood by her, but once he found out that the tweets were about the much-debated Hadith he also criticised her and, following a period of mobbing at her workplace, she was dismissed.

While Çetinkaya is pleased about the discussion her tweet started, she noted that she now censors what she says and is concerned about herself and her children. Her children were also stigmatised at school following the incident.

Women in mosques

> *There is a certain order in mosques that women have internalised. It is an unwritten order. The Women in Mosques Campaign has been successful in terms of raising awareness about the challenges women face in mosques, however not when it comes to changing things.* – ***Sena Arslan, Women in Mosques campaigner***

The Women in Mosques Campaign (or the campaign) deals with a practical question of primary importance: What is the nature of the space allocated for women in mosques? This space speaks volumes about the place of women in mosques. The Women in Mosques Campaign is defined as a campaign that was initiated by a group of Muslim women with the purpose of improving the place of women in mosques.[197]

Since October 2017 groups of women have continued to meet in mosques to identify the problems that women encounter in mosques and discuss possible solutions. These groups have two goals. The first is to create paths for women to participate in the mosque community more effectively. The second is to prompt the mechanisms that carry responsibility for mosque administration to address demands as they surface.

A key argument of the Campaign is that, even though mosques are open to women, not everyone can benefit from a mosque under equal conditions. The problems identified by these women and their demands relate to both the physical conditions and the social environment of mosques. Regarding physical conditions, the Campaign states that spaces allocated to women are inadequate They are often unclean and disorderly. Not all mosques have clean, open, and accessible ablution rooms for the ritual cleansing necessary before entering the mosque for women. In mosques where the space allocated to women is on the upper level, the stairs tend to be steep and narrow. This is prohibitive to women who are elderly, disabled, or have young children or strollers with them.

197 See the Women in Mosques Campaign website.

Credit: Sena Arslan

Women pray in a mosque.

Furthermore, the view from where the women gather inside the mosques is limited and often the mosque's main hall and, and the worship players it houses, cannot be seen. A physical barrier separates them from the main hall, where men worship together with the *imam*. In some mosques the women's room is completely disconnected from the main hall. These physical circumstances make it difficult for the women to feel included in the mosque community when they worship.

The Women in Mosques Campaign group argues that the social environment poses additional limitations.[198] The private security staff employed in mosques often limit the movement of women in the mosque, for example by instructing them to go to the women's place. Women's attempts to move within the mosque or to see the main assembly hall are countered with insults or harsh reactions from security personnel, members of the mosque community or the mosques' *imam*.[199] Such incidents are frequently reported on the Women in Mosques website and social media accounts.

The Diyanet is tasked with the administration of mosques in Turkey, of which there are approximately 89,445.[200] Women demand to receive this religious public service equally. Since managing places of worship is a duty of the Diyanet, and the Diyanet and its supervisor, the President of Turkey, are responsible to ensure human rights are protected in the execution of this service. Since the 2000s, the Diyanet has been making efforts to increase mosque accessibility for women. The Istanbul *Mufti* also responded with legal arrangements and published a circular titled *Criteria to be Taken as a Basis for the Beautification of the Places Allotted to Women in Mosques.*[201] The Diyanet's 2019-2023 Strategic Plan sets a target to bring 12,350 mosques up to standards that meet the needs of women, children and the disabled.[202] However, despite ostensive support for women's demands, substantial change lags far behind.

198 Meeting with Women in Mosques team members, 28 July 2021.

199 *Ibid.*

200 Presidency of Religious Affairs, *Din hizmetleri raporu 2020*, 2020.

201 Erdemli, K.A., *Cami mimarisinde kadınların yeri ve İstanbul Müftülüğü camilerin kadınlar bölümünü güzelleştirme projesi*, 2012.

202 Presidency of Religious Affairs, 2019-2023 Strategic Plan, 2020.

The Religious Services Report 2020 indicates that out of the 89,445 mosques in Turkey only 32,019 have places designated for women's ablution.[203] 48,305 of the mosques have spaces in which women can pray the daily prayers.[204]

However, the quality of the physical space and the general atmosphere in the mosques, also important factors, show discrepancy. There are associations linked to each mosque; these are often established during the construction of a mosque. Women in Mosques members remark that members of these associations consider themselves "the real owners" of a mosque and tend to be around the mosque when it is open.[205] Often, the members of these associations are men and are known as "mosque uncles" (*cami amcaları*) and, according to the Women in Mosques members, they tend to control the women's place in any given mosque. This control may be considered a manifestation of an attempt to preserve the patriarchal hegemony of these religious actors.

The Women in Mosque Campaign requests that *mufti* offices, responsible for the administration of a city's mosques, create a centralised complaint mechanism, train mosque staff on the above issues and address the mosques' physical capacity to meet the needs of the mosque community in its entirety, including women. The Campaign strives to re-build a mosque culture that is inclusive. Members hope to start a dialogue with those who feel that they have been treated unfairly; this should aim to understand their problems and to work on finding a solution together. To this end, establishing networks of sharing information and experiences is a priority for the campaign.

One important dimension of the issue relates to the exclusive nature of the Diyanet framework. This exclusivity results in the Diyanet being the sole subject of the enjoyment of key collective components of the right to freedom of religion or belief. On the one hand, Muslims may be the receivers of this "public service", on the other hand, they do not have the legal possibility of engaging in the exercise of certain rights protected in the right to freedom of religion or belief, such as the right to establish places of worship apart from the Diyanet structure. Thus, this arrangement results with a system where all Muslims, in practice, are compelled to enjoy certain rights through the Diyanet. Formal religious associative activities for Muslims are quite limited outside of the Diyanet. The Diyanet holds a monopoly, in law and fact, over key areas of manifestation of religion or belief. Only the Diyanet can open and establish places of worship, mosques, and administer them.[206] As an example, although this is not one of the demands of the Women in Mosques group, it would be challenging for a group to establish a mosque in which men and women were permitted to pray in mixed groups.

Under the TCK Article 115 it is a criminal offence to prevent individual or collective worship by force or threat, or any other unlawful means, and is punishable by 1-3 years in prison. It is also a criminal offence to interfere with or attempt to change the lifestyle emanating from one's beliefs, thoughts, or convictions.

The above account demonstrates that women experience unique challenges in the exercise of their right to freedom of religion or belief at home, in the workplace, within their religious or belief community and vis-a-vis the greater community; there is need for added protection. More research is required to help understand the factors impacting these challenges and measures that can be taken to address them.

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203 Presidency of Religious Affairs, *Din Hizmetleri Raporu*, p. 78, 79, 2020.

204 *Ibid.*

205 Meeting with the Women in Mosques team, 28 July 2021.

206 Law No. 633 *Diyanet İşleri Başkanlığı'nın Kuruluşu ve Görevleri Hakkında Kanun* [Law on the Establishment and Duties of the Presidency of Religious Affairs], 22.06.1965, Official Gazette No 12038, 2 July 1965, *inter alia*, Article 35.

- Where women and LGBTI individuals express a critical stance toward the dominant dogma and doctrines of faith, public authorities should uphold these groups' freedoms of expression and of religion or belief and take care that these groups are not stigmatised, threatened or prosecuted. Where these individuals are targeted, authorities should take measures to protect them.
- Authorities, religious or belief communities and civil society organisations should work together towards creating a safe and enabling environment in which women, girls, LGBTI+ persons, and all others can exercise the right to freedom of expression and to manifest their religion or belief.
- Religious leaders and public authorities should affirm that traditional, historical, religious, or cultural attitudes cannot be justifications for violations of human rights. [207]
- Turkish Penal Code Article 216, which criminalises "denigrating religious values", should be repealed.
- The Presidency of Religious Affairs should ensure that women's access to places of worship, particularly mosques, equals that of men.
- Religious or belief communities should ensure that women have equal representation in associations responsible for the administration of places of worship, including synagogues, churches, mosques, *cemevis*, and kingdom halls.
- Public authorities and religious leaders should publicly condemn expressions of hostility against, and the perpetuation of harmful gender stereotypes of, women, girls, LGBTI+ persons and human rights defenders promoting gender equality. This should include expressions made by religious figures as well as expressions "justified" with the defence of religious belief. [208]
- Those in leadership roles in public institutions and religious or belief communities should recognise their responsibility to provide robust leadership in the area of gender equality.

207 UN Human Rights Committee (HRC), CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10.

208 UN Special Rapporteur, Report on freedom of religion or belief and gender equality, A/HRC/43/48, 27 February 2020, recommendation (g).

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