

Table of Contents

- ***Al Qaeda cell accused of planning to bomb churches***
 - ***The new Constitution drafting process and freedom of religion or belief***
 - ***European court protects rights of conscientious objectors***
 - ***Turkey's Armenians reconsecrate 16th Century Church building***
 - ***What does Turkey's Restitution Decree mean?***
 - ***Turkish Government to return seized property to religious minorities***
 - ***Turkey overturns historic religious property seizures***
 - ***Historic decision: Erdogan returns seized property to religious minorities***
 - ***Changes in school religious education fail to resolve fundamental problems***
 - ***Can a new Constitution solve religious freedom problems?***
 - ***Kidnappers Allegedly Called Murdered Iraqi Christian's Employer***
 - ***Turkey arrests 20 allegedly linked to Malatya murders***
 - ***Christians face harassment***
 - ***The right to have places of worship – a trapped right***
 - ***Turkish court ignores directive from ECHR***
 - ***Headscarf continues as a political issue***
 - ***Education should facilitate, not undermine, freedom of religion or belief***
-

Al Qaeda cell accused of planning to bomb churches

Indictment reveals Christian targets in Ankara, along with Parliament and U.S. Embassy

By Barbara G. Baker

Compass Direct News (09.12.2011) / HRWF (12.12.2011) - <http://www.hrwf.net> – A large-scale Al Qaeda plot to bomb “all the churches in Ankara,” as well as the Turkish Parliament and U.S. Embassy in the Turkish capital, was made public today.

In an exclusive splashed across the front page of the daily Taraf newspaper, contents of an official indictment against 11 alleged Al Qaeda militants arrested in July revealed the homegrown terrorist cell's alleged plans to attack Ankara's churches as well as their Christian clergy.

Prepared and filed by the Special Prosecutor's Office in Ankara, the 50-page indictment outlined the militants' revised “jihad” strategy to begin focusing their attacks against Turkey before waging war against the United States and other countries.

"It is more advantageous to wage jihad against Turkey than the United States," documents seized in the July 14 raid near Ankara reportedly declared. "Let's blow the Parliament into the sky!"

Quoting from deciphered CDs and other materials, the indictment noted that the extremists reportedly referred to Turkey as a "war zone," labeling the Turkish government as "apostates" and calling the Turkish state "Satan."

Among the CDs, detailed maps, sketches and building diagrams, police also discovered lists of the names and home addresses of Christian clergy and other church workers residing in Ankara.

The news took Christian leaders in Ankara by total surprise, according to one Turkish Christian leader in Ankara.

"No one has had any news about this until now," he said.

In addition to chapels on Ankara's British, French, Vatican, Italian and Greek embassy grounds, the capital city has several international churches as well as a handful of Turkish Protestant congregations.

According to Taraf, police investigators were tipped off to the militant cell's activities by citizens living outside Ankara who filed a claim that their son had been kidnapped by Al Qaeda. Police reportedly tracked one of the suspects for six months before nabbing him a week before the others.

Starting from the city of Bursa, a branch of Turkey's Anti-Terror police began investigations in various municipalities that resulted in the arrest of suspects last July in a duplex apartment in Sincan, a town on the outskirts of Ankara. Video footage found at the scene indicated the men had undergone training in the use of Kalashnikov rifles.

Police seized 700 kilos (1,500 pounds) of explosives, along with assault rifles, ammunition, bomb-making instructions and detailed maps of Ankara.

According to documents summarized in the indictment, Al Qaeda leaders strictly forbade the members of the cell to enroll in Turkey's required military service, recognize the authority of Turkish courts, send their children to public schools, perform Muslim prayers under the leadership of state-salaried prayer leaders or vote in national elections. Those who disobeyed were warned they would be punished.

Further guidelines noted in the suspects' diaries came from their leaders in Afghanistan, instructing them how to conduct themselves if arrested: "Stay relaxed under interrogation, refuse to accept charges by giving reasonable answers, and do not provide any information regarding the community."

Although Al Qaeda's violent interpretation of Islam receives little public backing in officially secular Turkey, Ankara admits that "dozens" of Turks have received training in Afghanistan.

The 2003 bombings of the British Consulate, a British bank and two synagogues in Istanbul that killed 58 people were attributed to Al Qaeda-affiliated operatives. A 2008 attack also blamed on Al Qaeda left three assailants and three Turkish policemen dead outside the U.S. Consulate in Istanbul.

In 2010 Turkish authorities made several mass arrests of suspected Al Qaeda members and sympathizers, indicating a significant support network for its cause within Turkey.

But terrorism experts have maintained that the local group focused mainly on fundraising and recruitment in Turkey for jihad activities overseas.

In a related development, Istanbul authorities confirmed today that police were searching for three identified Al Qaeda extremists and five other individuals involved in a \$3.5 million heist from a Turkish businessman's bank account.

According to Aksam newspaper, the militants used false identities and bribed bank employees to steal the funds, designated to support the Al Qaeda cause. Four bank employees have been arrested in what police said was one of the first "fiscal terrorism" operations in Turkey.

The new Constitution drafting process and freedom of religion or belief

By Mine Yildirim, Åbo Akademi University www.inancozqurlugugirisimi.wordpress.com

Compass Direct News (30.11.2011) / HRWF (06.12.2011) - <http://www.hrwf.net> - The process of drafting Turkey's new Constitution has produced expectations that this will lead to progress in protecting freedom of religion or belief. Many questions are open, and the possible answers that the drafting process produces need to be monitored closely. The issues that affect the legal framework for protecting religious freedom are many.

These include: Will the Diyanet, or Presidency of Religious Affairs under the Prime Minister, continue to be identified as a constitutional body? Will manifestations of religion or belief in worship, practice, teaching and observance be explicitly protected? Will "laiklik", often perhaps misleadingly translated as secularism, be maintained in the new Constitution? Will Article 174 ("Preservation of Reform Laws") of the current 1982 Constitution be deleted or re-interpreted?

It is vital that the new Constitution enshrines full guarantees of freedom of religion or belief for all including agnostics and atheists, fully in line with Turkey's international human rights obligations. In this regard, reform of both the Constitution and legislation is essential. But on its own - without good laws, regulations and state actions - a Constitution can have only a limited impact in generating practical change in the daily lives of people belonging to minority religious and belief communities.

The Process

The Constitutional Reconciliation Commission (AUK), which is chaired by the Grand National Assembly [parliament] Speaker Cemil Cicek, has been assigned the task of constitution drafting. The members of the AUK are from the ruling Justice and Development Party (AKP) and the main opposition party the Republican People's Party (CHP), with other members from the opposition Nationalist Movement Party (MHP) and Peace and Democracy Party (BDP). That AUK decisions will only be made unanimously is very significant, and raises hopes that the new Constitution may enjoy a broad basis of consensus. Topics where no unanimous decision can be reached will be re-evaluated at a time the AUK deems appropriate.

The AUK seems eager to make this process open to submissions from all sectors of society, including political parties, constitutional organisations, professional organisations, trade unions, NGOs, foundations, and religious communities. The AUK's work will be in three phases. The first phase consists of public participation including receiving submissions, data collecting and assessment. This phase is intended to finish by

the end of April 2012. Following this the Constitution's principles and a draft text will be produced, followed by a third phase of public debate on this and changes following public discussion. The AUK aims to finish its work by the end of 2012, when it will be considered by the General Assembly of the Turkish parliament, the Grand National Assembly.

Although it is highly unlikely that the new Constitution will solve all of Turkey's problems in respecting freedom of thought, conscience, or belief, the process itself may be very helpful in making progress towards that goal.

Firstly, the process may help create a mentality change in thinking about Turkish identity. Contemporary nationalist attitudes – a powerful force in state and society - see "threats" from "others" who do not fit the nationalist stereotype of who is Turkish, including non-Sunni Muslim communities.

Secondly, the process may open up for public debate the provisions of the current Constitution and laws which prevent people in Turkey from fully enjoying the right to freedom of religion or belief.

Mentality Change?

Possibly the greatest contribution of the new Constitution process may be encouraging public acceptance of a pluralist approach to state policies, and relationships between citizens and the state.

The current Constitution glorifies the state, as against enshrining respect for the individual person, and privileges Turkish nationalism. This does not set out a framework which encourages the development of the pluralistic democracy Turkey aspires to become.

Public discussions on a new Constitution, including negotiations between political parties, and the contributions of NGOs and minorities are contributing to the development of an open society – a Turkey that is "more free", as some put it. This encourages a change of mentality which recognises the many parts of Turkish society. But defence of the current Constitution's general outlook is also very widely heard in Turkey.

"Laiklik", or "Turkish secularism"

"Laiklik", or "Turkish secularism", has a great impact on the protection of freedom of religion or belief. Its meaning is very different from either the French concept of "laïcité", or what many outside Turkey understand by the term "secularism". Laiklik is strongly protected in the 1982 Constitution as a principle and is described as "separation of state and religion". But in practice it means protection of the state from the influence of religion through close state supervision of religious activity, and less autonomy of religious communities than in many other countries.

The greatest problem of laiklik is that there is not one meaning of it; there are several, with for example different meanings used by different political parties.

The drafting process offers the AKP an opportunity to enshrine in the new Constitution its own version of laiklik, as the ruling party will be the major actor in formulating the Constitution. Prime Minister Recep Tayyip Erdogan, in speeches he gave during his Arab Spring tour, said that laiklik to him means that the state keeps an equal distance to all religion. At the same time he acknowledged his religious identity by stating that he himself is a Muslim. Yet when one compares these statements with AKP policies on freedom of religion or belief in recent years, there is a lack of clarity as to what the AKP really thinks.

In defining what the new Constitution means by laiklik, the AKP will have to find a balance between the demands of "conservatives", "nationalists" and "secularists" - all of whom have differing understandings. The AKP will also have to take account of the normative demands of international law, for example judgments of the European Court of Human Rights (ECtHR) in Strasbourg demanding a neutral role for the state. The drafting process will reveal what this will mean for issues at the intersection of freedom of religion and belief and nationalism.

These issues include but are not limited to: the Diyanet; compulsory school religion classes; obligatory recording of religious identity in national identity cards; accommodation of manifestations of religion, particularly the headscarf in the public school and workplace; and the lack of an adequate legal entity status for religious or belief communities.

The main opposition party, the CHP - through which the Republic's founder, Mustafa Kemal Atatürk, led Turkey as a one-party state for many years - is the main political defender of laiklik. For a significant group of Kemalists, laiklik has meant restricting the influence of religion - especially Islam - on the state by the state restricting the exercise of freedom of religion or belief. This understanding of laiklik promotes policies that exclude manifestations of religion in the public sphere. And many in the CHP are determined to keep it this way. The CHP's Constitution draft proposes a short Preamble that states the qualities of the Republic as "laik, democratic, social and respectful of human rights". It also proposes taking out "Turkishness" and using the term "citizen" in its stead.

Whatever concept of laiklik makes its way into the new Constitution, it will find its meaning in related laws and their interpretation. And the important point is that the state's role and actions must come into line with its obligations under international human rights standards.

Preservation of Reform Laws

Article 174 ("Preservation of Reform Laws") of the current Turkish Constitution states: "No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws indicated below, which aim (..) to safeguard the secular [laik] character of the Republic.."

There is no indication on whether or not this Article will be preserved in the new Constitution. The Reform Laws are directly or indirectly linked to the active protection of laiklik (as constructed by the founders of the Republic). They include: Act No. 430 of 3 March 1340 (1924) ("Unification of the Educational System"), which keeps all religious education under state control; Act No. 2596 of 3 December 1934 ("Prohibition of the Wearing of Certain [Muslim religious] Garments"); and Act No. 677 of 30 November 1341 (1925) ("Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles") (LADLS). This Act, among other things, closed Alevi places of worship and prevents their leaders from using their religious titles.

Whether the Reform Laws will be preserved in the new Constitution, and if so to what extent, will be a contentious issue. It is possible that the laws will be debated individually, rather than as a package. The CHP, the natural defender of the Reform Laws, has said that they have no "red lines" in negotiations. But only time will tell what this means. Some of the Reform Laws are not applied in practice; it has been many years since a fine has been imposed under Act No. 671 of 25 November 1341 (1925) ("Wearing of Hats") for failing to wear a hat. The prohibition on the use of Alevi titles also seems to be no longer enforced. But other Reform Laws, such as Act 677 (LADLS) and Act 430 ("Unification of the Educational System"), will be fiercely debated.

Under LADLS Dervish Lodges, used mostly by Sufi orders, are still closed. Most have been turned into museums where believers cannot meet for worship, and can visit only by purchasing tickets. Some argue that one of the greatest obstacles to recognising cemevi (places of worship of Alevis, who may be around one third of the population) is LADLS, while others do not see it as an obstacle. This issue will need to be addressed in the Constitution drafting process.

If LADLS is abolished, many complex issues will immediately arise. For example: Will the Dervish lodges and shrines be given to whichever religious communities have a link with them? The properties of the lodges and shrines were transferred to the Directorate-General of Foundations. This transfer is likely to be a source of problems if there are attempts to recover the property. Under the government's recent Restitution Decree, it is impossible to recover similar property which belonged to Christian community foundations which no longer exist.

But it is highly unlikely that LADLS will be abolished. Instead, recognition of cemevi as places of worship may be allowed through an addition to LADLS, stating that the cemevi will not be regarded as a "tekke" (place of worship) within the meaning of LADLS - or indeed through another formula.

But even this will not remove all obstacles to dealing with this one issue. In legal cases, the state has relied on an opinion of the Diyanet that cemevis are not places of worship, as Muslims worship in mosques - even though the Diyanet has no legal authority in this matter.

Senol Kilic, of the Association of Liberal Thinking, argued in the Star newspaper on 14 November that even though the LADLS provision is problematic for Sunni Sufi movements, it is in practice not applied to them. But for the Alevis, Bektashi and Nusayri it still poses a problem as they cannot use the dervish lodges for worship and similar purposes. LADLS seems to function - for many - as a security "on paper" against the influence of Islamic religious communities. It should be remembered that no religious community in Turkey has legal personality.

Constitutional protection of freedom of religion or belief

Article 24 ("Freedom of Religion and Conscience") of the existing Constitution protects the freedom to have a religion or belief and freedom to worship, and regulates the teaching of religion. But it does not explicitly recognise either the right to change one's religion or belief, or to manifest one's religion or belief "in worship, teaching, practice and observance" as international human rights standards put it. So a good step forward would be the incorporation of Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR) which Turkey ratified in 1954, into the new Constitution.

Explicit protection of manifestations of religion may reinforce the acceptance of normal religious activity that may go unprotected under a narrow interpretation of the right to "have a religion or belief" and "worship". Use of religious symbols by individuals in various walks of life may in this way be given stronger protection. For example, Minister of Family and Social Policies Ayse Sahin on 4 November stated that the headscarf problem should be solved through the Constitution.

A broader scope for manifestation may also open the way for the recognition of the right to conscientious objection to military service. Currently, Turkey claims that conscientious objection is not protected under the right to freedom of religion or belief. But on 22 November the ECtHR in Strasbourg found in the case of Jehovah's Witness conscientious objector Yunus Ercep v. Turkey (Application 43965/04) that denying the right to

conscientious objection to military service breaks Article 9. Prime Minister Erdogan, however, said on 22 November that "what is called 'conscientious objection' has never been in our agenda".

It has been reported in the Turkish media that the draft of a new law defines conscientious objection as a crime, the punishment for which will be to do public service for around twice as long as military service. After this, the "criminal" will be considered to have fulfilled their duty. On 27 November Muslim conscientious objector Muhammed Serdar Delice was arrested, as War Resisters International reported the following day.

Permissible Restrictions

The 1982 Constitution contains several clauses that may be used to restrict manifestations of religion or belief. Article 24 (5) states that "no one shall be allowed to exploit or abuse religion or religious feelings or things held sacred by religion", a vague clause that leaves unclear what is banned. Article 11 ("Supremacy and Binding Force of the Constitution") states that "laws shall not be in conflict with the Constitution" - but the lack of clarity of Article 24 makes it difficult to apply Article 11.

Article 14 ("Prohibition of Abuse of Fundamental Rights and Freedom") includes a clause stating that: "None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights". Yet again, this is an unclear formulation which may be broadly interpreted to unnecessarily restrict rights.

The limitations clause of Article 9 of the ECHR could be adopted instead. This states that: "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."

It is important that the new Constitution does not permit restrictions which exceed those found in Article 9 of the ECHR.

Teaching of Religion

Article 24 ("Freedom of religion and conscience") of the 1982 Constitution states that: "Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools". This has led to numerous problems in exercising freedom of religion or belief, including a judgment against Turkey by the ECtHR.

Currently, formal teaching of religion is carried out in universities (Islamic theology) and in Diyanet Koran courses. There is teaching of religion in places of worship or under the umbrella of associations or foundations, but these do not provide any formal qualifications. The explicit recognition of the right to manifest one's religion or belief in teaching may allow schools that teach religion outside the state establishment to be set up. This does not imply that the state will not have any regulatory role in this process, but it does mean that the state must guarantee this right for all and create the necessary legal and administrative framework.

The Diyanet

Turkish legal experts, religious minorities, and NGOs have all pointed to the obstacles that the Diyanet – a constitutional public institution - places in the way of Turkey fulfilling

its international human rights commitments. Yet the government argues that abolishing the Diyanet is unrealistic.

Some in Turkey argue that the state should neither interfere in nor support any religious group or activity, while others argue that the state should support religious services as a tradition and make financial contributions to non-Sunni religious groups as well. This relates to how the Constitution will see relations between the state and religious or belief groups. Perhaps the best one can hope for at present is both that the Diyanet may have a more pluralistic structure, and tax exemption for those who do not want to support or benefit from Diyanet services.

What can be expected from the new Constitution?

With all the possibilities a new Constitution drafting process offers for the protection of freedom of religion or belief in Turkey, one is tempted to hope for a revolutionary transformation. Yet recent developments on conscientious objection, ongoing problems resulting from legislation and practice, and the lack of political will to provide a lasting solution suggest that caution would be more realistic. Perhaps - if outstanding issues are not substantially addressed - this new Constitution will not be a great step towards a "more free Turkey". But it will hopefully be better than the existing Constitution.

European court protects rights of conscientious objectors

JW Official Website (23.11.2011) / HRWF (01.12.2011) - <http://www.hrwf.net> - On November 22, 2011, the European Court of Human Rights (ECHR) unanimously concluded that Turkey has violated the right of freedom of conscience of Mr. Yunus Erçep, one of Jehovah's Witnesses in Turkey, who was convicted and imprisoned for his conscientious objection to military service.

Yunus Erçep, a university graduate and a skilled craftsman, was first called up for military duty in March 1998. The government of Turkey does not recognize conscientious objection to military service and therefore has no provision for alternative civilian service. Erçep's Bible-based conscientious refusal to perform military service has resulted in unceasing harassment—he has been called up for military service three times a year (39 times from 1998 to the present). He has consistently presented himself for every enlistment call-up, and has been prosecuted over 30 times on the charge of bakaya (evasion of enlistment). As a result, Erçep has been imprisoned, confined to a psychiatric hospital for supposed "religious paranoia," and fined. He has endured years of verbal abuse at the hands of enlistment officers, prison officials, and fellow prisoners.

After the courts in Turkey refused to offer relief, Mr. Erçep filed an application to the ECHR in December 2004. In its decision, the Court, observing that Turkey had no provision for alternative civilian service, stated that "the penalties imposed on the applicant, while there was nothing in place to take into account the requirements of his conscience and his convictions, cannot be considered a necessary measure in a democratic society."

This decision closely follows the landmark decision of the European Court's Grand Chamber released on July 7, 2011, in Bayatyan v. Armenia, upholding Mr. Bayatyan's right to refuse military service due to his Bible-trained conscience. The court's decision in the case of Mr. Erçep places an obligation on Turkey, a member state of the Council of Europe, to stop prosecuting and imprisoning individuals whose deeply held religious convictions do not allow them to engage in military service.

See judgment of the European court on the website of Strasbourg Consortium: <http://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=280>

Turkey's Armenians reconsecrate 16th Century Church building

Ethnic Armenians who grew up as Muslims baptized in Diyarbakir

By Barbara G. Baker

Compass Direct News (11.11.11) / HRWF (14.11.2011) - <http://www.hrwf.net> - Just hours before a deadly 7.2 earthquake struck Turkey's southeast on Oct. 23, well over 3,000 visitors crowded into an ancient Armenian cathedral in nearby Diyarbakir for Sunday mass.

The mass was the first worship service in decades in the ancient St. Giragos Armenian Apostolic Church, which had fallen into serious disrepair in the early 1980s. Built 350 years ago and still the largest Armenian church building in the Middle East, it once served as the metropolitan cathedral of Diyarbakir.

In a private ceremony the following day, 10 ethnic Armenians who had been raised as Sunni Muslims were baptized as Christians in the restored sanctuary. All from one extended family, the Armenians returning to their faith said that their ancestors had converted to Islam during the Ottoman era (1299-1923).

"We have been ostracized by both Sunni Muslims and Armenians," one of them told Hurriyet Daily News. "It is a very emotional moment for me, and I'm a bit upset, because unfortunately we do not belong to either side."

For security reasons, the baptisms were closed to the press and outside visitors.

According to one source at Istanbul's Armenian Patriarchate, it is estimated that at least 300,000 Armenian and Syriac Christians converted to either Sunni or Alawite Islam after 1915 to avoid forced deportation.

"This means there could be as many as a half million ethnic-background Christians in Turkey today who carry ID cards stating they are Muslims," the cleric observed.

Over the past decade, both Armenian and Syrian Orthodox church centers in Turkey have quietly baptized individuals and families from the eastern regions of the country who had Muslim IDs but wished to return to their Christian roots.

"I wish this church had always been open," one of the newly baptized Armenians told the online Massis Post website. "It is unbelievable to be together here with people from all around the world with whom I share the same origins."

Although political dignitaries representing a number of foreign embassies attended the Oct. 23 mass, along with Armenian spiritual leaders from around the world, most of the congregation consisted of Armenian pilgrims from Armenia, the Netherlands, Germany, Syria, Lebanon and the United States.

"It was like they were returning from exile!" one Diyarbakir resident who attended the Sunday mass told Compass. "Here were these elderly Armenians who used to live here, walking through the streets of Diyarbakir, weeping and looking for their old homes and places they remembered. They all still spoke Turkish and Kurdish, as well as Armenian."

Anatolia's 'Jerusalem'

Located in the city's Gavur (Turkish for "infidel") district, the newly restored St. Giragos cathedral is just a few minutes' walk from St. Peter's Chaldean Catholic church (also undergoing restoration), a mosque, the Diyarbakir Protestant Church and a synagogue, with construction plans for places of worship along the same street for Alawite and Yezidi (blending local Kurdish and Sufi Muslim beliefs) adherents.

"This is an historic enterprise," declared Abdullah Demirtas, Diyarbakir Sur's district mayor. "Diyarbakir will become Anatolia's Jerusalem!"

Complete with seven altars and multiple arched columns in the sanctuary, St. Giragos was virtually abandoned after the massacre and deportation of its congregants in 1915. The building was confiscated during World War I as a headquarters for German army officers, used for a time as a stable, and later turned into a cotton warehouse in the 1960s.

According to Taraf newspaper columnist Markar Esayan, the church building was still intact until 1980, after which "because of hate ... in modern times" it was attacked, looted and fell into disrepair, with just the walls and arched columns remaining.

"When I saw the condition of the church at that time, I thought it would never return to its former state," Esayan wrote on Oct. 24.

Costing US\$3.5 million, the church's two-year restoration project was funded largely by Armenian donations from Istanbul and abroad, although a third of the costs were donated by the Diyarbakir municipality.

At the conclusion of the Sunday mass, Diyarbakir Mayor Osman Baydemir addressed the congregation, declaring first in Armenian, and then Kurdish, Turkish, English and Arabic: "Welcome to your home. You are not guests here; this is your home."

"We all know about past events," he said, pointedly referring to 1915, "and our wish is that our children will celebrate together the coming achievements."

By raising private funding, the Armenian church has regained this ancient building for its own use as a consecrated sanctuary, rather than a Turkish government-controlled museum like the 10th century Akdamar Church in Van, where only one religious ceremony is permitted annually.

Although no Armenian community still exists in Diyarbakir, a priest has been named by the Armenian Patriarchate to conduct occasional worship services for visiting clergy and Christian groups within Turkey and from abroad.

According to Vartkes Ergun Ayik, a businessman of Armenian origin who spearheaded the project funding, the restored church property will also be used for classical music concerts and exhibitions in the city.

"Our expectations are good," the new priest told Compass. "Even though Armenians are not living in the city today, we are praying that God will use our church to bless Diyarbakir in a very positive way."

What does Turkey's Restitution Decree mean?

By Mine Yildirim, Researcher at the Institute for Human Rights at Åbo Akademi University, and
Dr. Otmar Oehring, Head of the Human Rights Office of Missio <<http://www.missio.de>>

Forum 18 News (06.10.2011) / HRWF (11.10.2011) - <http://www.hrwf.net> - To the surprise – indeed delight – of the 162 community foundations who were the hosts of an iftar (Ramadan break of fast dinner) held in Istanbul on 28 August for senior members of Turkey's government, Prime Minister Recep Tayyip Erdogan announced that a Legislative Decree had been adopted the previous day allowing community foundations to apply to regain religious property confiscated from them by the state since 1936. Some religious minorities and commentators immediately saw the Decree as a revolution, others as at least a significant improvement.

More than a month on, and after the publication on 1 October of Regulations to implement it, what does the Decree actually mean? If implemented in full, it would provide for the restitution of much property confiscated from those Turkish religious/ethnic communities that are allowed community foundations, or compensation instead. But the scope of the Decree is narrow and it falls short of being an adequate and deep-rooted solution to correcting the basic injustices at the heart of the property issue – or correcting the wider injustices affecting freedom of religion or belief.

Religious communities' property insecure

Turkey's religious communities cannot acquire, own or rent property themselves because they are not allowed independent legal status. Some foundations are allowed to hold and manage some religious property, including places of worship. However, these foundations cannot be run by the communities themselves. Non-Muslim ethnic/religious communities protected under the 1923 Lausanne Treaty (such as Armenians, Greeks, Syriac Orthodox, Jews and others) have community foundations.

Religious communities as diverse as the Muslims, Catholics, the Greek Orthodox, Protestants, and the Syriac Orthodox Church have for many years seen no significant progress in resolving long-standing property problems. The Mor Gabriel Syriac Orthodox Monastery faces serious problems trying to retain its land against ongoing attempts by the judiciary to deprive the community of it.

Creating an adequate legal framework for the acquisition of legal personality for communities of all faiths is one of the fundamental issues that needs to be addressed to resolve the property problems of religious communities – and meet Turkey's human rights obligations and aspirations.

Latest step

The 27 August Decree – which amended the current Law on Foundations (No.5737) by adding a temporary Article 11 - entered into force on the day it was adopted. In principle, it aims to provide for the restitution of property that was wrongfully taken from non-Muslim community foundations.

The Decree is best seen as a further step in the process of trying to solve the problems of non-Muslim community foundations. This started with the passing of the Third Harmonisation Law of August 2002 which amended the 1935 Law No. 2762 on Foundations and Statutory Instrument No. 227 on the Organisation and Duties of the Vakıflar Genel Müdürlüğü (VGM - Directorate-General of Foundations). The process continued with the Fourth Harmonisation Law of January 2003 amending further Law No. 2762 on Foundations, and finally the long-promised revised Foundations Law (No. 5737) passed by a reluctant parliament in 2008.

The Decree

According to the Decree, to qualify for restitution non-movable property must:

- be registered in the 1936 Declaration on the registration of community foundations of the VGM and the name of the owner recorded in the Land Registry must be blank;
- or the non-moveable property must be registered in the 1936 Declaration and registered in the name of the State Treasury, the Directorate-General for Foundations, a municipality or city special administration for reasons other than nationalisation, sale, or exchange.

Cemeteries and fountains must be registered in the 1936 Declaration, and currently registered in the name of legally recognised public institutions.

Applications for restitution must be made within 12 months, i.e. by 27 August 2012. In order to approve the registration of property in the name of community foundations by the deed office, the Assembly of the Directorate-General for Foundations – the government body that oversees them - has to approve the application.

In addition, the value of property that was purchased by a community foundation, or left to them through a will, but whose ownership is 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 Directorate-General for Foundations. The value of the property will be determined by the Finance Ministry.

Finally, the Decree stated that the Directorate-General for Foundations would prepare Regulations concerning how the Decree will be applied. These Regulations were adopted on 1 October.

Why a Decree?

It is interesting that the government chose to partially address the confiscated property issue not by amending the Law on Foundations through a parliamentary act, but through a Decree.

The government was given temporary power to make legislative Decrees as of 2 May 2011 for six months. Some groups criticised the bypassing of Parliament in this matter of "national importance", which they argued should have been discussed in the Grand National Assembly first.

It might be that the government wanted to avoid tension in the Grand National Assembly similar to the tensions seen when successive Laws on Foundations were drafted (see F18News 13 March 2008 http://www.forum18.org/Archive.php?article_id=1100). The ruling Justice and Development Party (AKP) could still have passed the Amendment, but the discussions and resulting tension might have harmed the AKP's popularity.

Why only limited scope?

The Decree does not create an overall solution to all the property problems of community foundations – or indeed the other problems faced by foundations. Because of the Decree's narrow focus, only covering some but not all property problems, it cannot reasonably be described as a revolutionary step.

That the Decree targets specifically property that was declared in the 1936 Declaration is in itself controversial. To understand why, the use to which the Declaration has been put should be understood. In 1936, a basically harmless regulatory statute on the

Implementation of the 1935 Foundations Law provided for drawing up an inventory of the foundations' property. This became the 1936 Declaration.

However, in 1974 (amid the tensions of the Cyprus crisis of that year) the Court of Appeal ruled that the state could confiscate any property acquired by community foundations since 1936 through purchase, gift or inheritance. State agencies able to do so included the Directorate-General for Foundations, which has now been made responsible for applying the Decree by way of drafting Regulations and being directly involved in decisions concerning applications.

In its 1974 ruling, the Court argued that, as such property had not been declared by the non-Muslim minorities in the inventory of 1936, it had been acquired illegally. This was justified by the false claim that the non-Muslim minorities were non-Turks and so the law on foreigners' rights to acquire property was applied and they had no right to purchase land in Turkey.

Under this ruling, more than 40 buildings were seized from Armenian community foundations alone and handed back to their previous owners or – if the previous owners could not be found – transferred to the state Treasury.

Also, a property may be listed in the 1936 Declaration but have been transferred to legal entities that are under the supervision of a public body or other foundations. An example of this is property transferred to the Valide Sultan Foundation. It is likely that applications concerning these transferred buildings will not be accepted. Laki Vingas, the member of the VGM Assembly representing community foundations, calls this a deficiency of the Decree incompatible with "the spirit of the Decree".

Why aren't all cemeteries included?

For cemeteries, again, the Decree's scope is limited to those that were registered in the 1936 Declaration. However, since in some cases cemeteries were not seen as property, these were not listed in the Declaration. Since the Decree requires that these be listed in the Declaration, the risk is that these cemeteries will not be returned to community foundations.

This problem could have been overcome had the Decree included "cemeteries used by community foundations", as has been suggested by a lawyer representing Armenian community foundations, Setrak Davuthan. Laki Vingas encourages applications for the restitution of cemeteries even if they do not appear to meet the criteria, hoping that these applications will demonstrate the gaps in the Decree so that further regulations can be made for complete restitution.

What else does the Decree not cover?

One of the exceptions in the Decree concerns property that was "nationalised". Nationalisation has not solely been directed at the property of community foundations, and usually owners are compensated for the nationalisation. But the Istanbul-based Armenian newspaper Agos complained, on 16 September, that the property of non-Muslims in Turkey has often been nationalised in an unjust manner. The newspaper argued that it amounted to "wrongful seizure".

Also not included is property confiscated by the state from community foundations and handed back to previous owners from whom the foundations had legally acquired it.

Nor does the Decree cover properties taken from religious institutions or communities that do not have community foundations. For example, property that once belonged to the Roman Catholic or Anglican churches is not covered. These communities have neither

community foundations, nor – like all other religious communities – independent legal status.

It is important to note that the Decree does not address the property of seized community foundations (mazbut vakıf). Seized foundations are community foundations whose administration was seized by the VGM for various reasons, for example because they were not able to hold board elections for a certain time, or they could no longer fulfil their charitable purpose. The administration of this seized property, and thus the property, may not be given back to community foundations. A March 2009 report by the Istanbul-based TESEV Foundation, *Bir Yabancılaştırma Hikayesi*, found that the number of properties seized from Greek Orthodox community foundations alone was over 900.

Also, as the south-eastern city of Hatay (Iskenderun) was not part of Turkey in 1936, community foundations' property in this city is not covered by the Decree.

Will compensation be fair?

Compensation for properties that were purchased or acquired by donation, but which foundations were denied ownership of as they were said not to have the legal capacity to acquire new property and were sold to third parties will be decided on by the Finance Ministry. However, no independent body is involved in deciding on compensation, according to the Regulations.

It is thought that if compensation were judged fairly and paid in full, the state would have to pay compensation worth many millions of Euros for a large number of properties.

Another weakness of the Decree is that the state body with a direct interest in reducing the amount of compensation paid – the Finance Ministry – is the only body permitted to decide on the amount of compensation paid.

The Regulations provide more insight into the valuation process, and allow a flawed appeal procedure. The estimation of the value of property will be carried out by a valuation commission of the Finance Ministry upon the request of the Regional Directorate of Foundations. Community foundations may object to the value if they believe it is not fair. However these objections are assessed by the Regional Directorate of Foundations which oversees the entire valuation process. To ensure a just process it would have been better for valuations to have been assessed by an independent institution, and for appeals to be decided by an independent body not involved in the initial valuation.

Why limited time?

The Decree states that community foundations must apply for restitution within 12 months. Given that the Regulations were issued only on 1 October, this left less than eleven months for the applications to be prepared and submitted.

However, the 1 October Regulations improve the Decree in relation to the time requirement. It does this by lifting the time limit for property that was purchased by a community foundation, or left to them through a will, but whose ownership is registered in the name of a third party because the community foundations were not allowed to acquire the property. Community foundations can apply for the restitution of this kind of property at any time.

Yet, as the Decree concerns correcting a violation of the right to property it is difficult to see why a time limit should reasonably be imposed on any aspect. Many of the documents that will be needed to apply for restitution are very old, and might be found

only after the deadline has expired. In such a situation, it is possible that this may lead to a case at the European Court of Human Rights (ECtHR) at Strasbourg.

But it is not necessary to let matters go as far as the ECtHR. The 2002 changes to the then Foundations Law had allowed for community foundations to have property they were using approved in their name. The time allowed for this was extended in 2003 for 18 months because the initial specified period was inadequate.

Will the VGM approve applications?

The requirement of approval for each restitution application "after the positive decision of the Assembly [of the VGM]" gives the Directorate-General the power to decide how – or if – the Decree will be implemented in each individual case. The Assembly is the highest decision making organ of the VGM, with fifteen members, one of whom is chosen by the community foundations.

The VGM has been given this power in previous cases as well, a practice criticised by the TESEV Foundation. "The authority given to the Directorate-General for Foundations, an institution that has been the primary body responsible for the rights violations experienced by non-Muslim foundations, perpetuates the dominance of this institution," its March 2009 report *Bir Yabancilastirma Hikayesi* observed. As noted above, the VGM was in many cases the government agency which carried out the confiscations. This raises questions as to how far it is fair to give this decision-making power to the VGM.

Will Directorate-General help restoration?

The Regulations – and indeed the priority the VGM gives to restitution – will be crucial for the Decree's efficient and just implementation. Implementation will involve finding and consulting very old documents and transactions, which may lack accurate documentation or be in other ways irregular. Indeed, the state itself – not the foundations – may have the documents the foundations need to prove ownership.

So – as the Decree affects injustices committed by the state – it is vital that the VGM, the State Treasury, and other public authorities actively facilitate restitution. For example, the foundations should not be expected to bear all the burden of proof, and there is no requirement of proof for the state. VGM Assembly member Laki Vingas estimates potentially 350 applications. He believes difficulties in preparing most application files will not be great because the community foundations have done most of the paperwork already in 2010 when they applied for restitution of other property.

In many recent cases, especially in connection with regulations on the foundations, administrative regulations from the authorities may de facto counteract a law or a legislative decree. One can only hope that in this case this will not happen.

Urgent need for a Turkish solution to ECtHR cases

Were community foundations to take cases that are not covered in the Decree to the ECtHR, they would almost certainly win compensation or restitution of their property. The lack of adequate Turkish legislative solutions to the problems of community foundations and their property has led to an ever growing number of ECtHR cases lodged by the affected foundations against the state.

As the foundations are winning such cases at the ECtHR, this shows officials in Ankara that a fundamental solution for the still unresolved cases – whether for the return of property or compensation when this is impossible – is urgently needed. Otherwise, Turkey will continue to regularly lose such cases in Strasbourg. If the Decree is implemented successfully, there will be fewer such cases against Turkey. But the kinds of

cases outlined above, which are not covered by the Decree, are likely to be brought before the ECtHR – and it is likely that the foundations will win these cases.

Why was Muslim foundations' property excluded?

Property taken from Muslim foundations was mainly confiscated in the early years of the Turkish Republic. In those years the government took drastic action against foundations that were established before the entry into force of the 1924 Civil Code. Foundations and their property belonging to Muslim brotherhoods were transferred to the Ministry dealing with foundations, and later to the VGM. One example is the Hacı Bektaş Dergah (Hacı Bektaş Dervish Lodge) – which is very important for the Alevi community – and was turned into a museum. To enter it now, Alevis and others must buy a ticket – with the proceeds of ticket sales going to the state.

The Decree's restitution of some property only to non-Muslim community foundations has been criticised by both the excluded Muslim religious communities and some others, such as Christian leaders. On 19 September the Honorary Chair of the Federation of Alevi Foundations, Professor İzzettin Doğan, spoke of the closure of the Dervish Lodges in 1924 and the loss of property, in particular places of worship, at a meeting that launched a report on the problems of various belief groups in Turkey ('Belief Groups in Turkey - A New Framework for Problems and Solutions' - September 2011). He called for the restitution of property belonging to the Alevi community. At the same meeting Assyrian Catholic Bishop Yusuf Sag also criticised the limited scope of the Decree, saying that it should have been extended to cover all property losses before 1936.

The Chair of the Mazlumder (Association of Human Rights and Solidarity for Oppressed People), Ahmet Faruk Ünsal, commented on the Decree by drawing attention to the general purpose of foundations, which entails the endowment of donated property to "public benefit". "To play with the purpose of use or ownership of property that is dedicated to all humanity is neither legal nor humane," he told Forum 18 on 27 September. "Whoever it is that confiscates property, and uses it for a purpose other than that for which it has been endowed originally, violates the right of the person who endows the property in the first place."

While he did not comment specifically on the property of pre-Republic foundations owning and operating Islamic worship places, he underlined the fact that the rule of protecting property belonging to foundations to fulfil their original purpose is valid for all, regardless of religion. He stressed that it is the responsibility of the public authority to guarantee the property and deed of foundation property.

If the government wishes to take a holistic approach to correcting past injustices suffered by religious or belief communities, the injustice of property confiscated from Muslim foundations must also be addressed. This would be in line with the international standards – to which Turkey has solemnly committed itself – which expressly state that human rights are for all with no exceptions.

The future?

What does the Decree mean for the non-Muslim Lausanne minorities? The government decision clearly improves decisively the climate between the state and non-Muslim minorities which have community foundations. While it is another important step for the correction of the unjustified state interference in the right to ownership of these foundations, it does not create a complete solution to their property problems. On a positive note, the Decree certainly raises hopes for further steps to be taken in this direction.

What does the Decree mean for the future of religious freedom for all in Turkey? Whether the positive but limited step represented by the Decree will have any implications for non-Muslim communities which were active before 1923, but which do not have foundations – such as the Roman Catholic and Protestant churches – remains to be seen. There has been no indication that the government is considering restoring all property taken from foundations that supported various activities of religious communities since the Turkish Republic was established. For example, the demands of various Muslim organisations remain unanswered, as noted above.

Yet the effective protection of freedom of religion or belief in Turkey demands that the rights of all followers of a religion or belief – including rights in relation to property – be respected in practice.

Turkish Government to return seized property to religious minorities

By Sebnem Arsu

New York Times (28.08.2011) / HRWF (03.09.2011) - <http://www.hrwf.net> - The Turkish government said it would return hundreds of properties that were confiscated from religious minorities by the state or other parties over the years since 1936, and would pay compensation for properties that were seized and later sold.

Prime Minister Recep Tayyip Erdogan made the announcement on Sunday to representatives of more than 150 Christian and Jewish trusts gathered at a dinner he hosted in Istanbul to break the day's Ramadan fast. The government decree to return the properties, bypassing nationalist opposition in Parliament, was issued late Saturday.

The European Union, which Turkey has applied to join, has pressed the country to ease or eliminate laws and policies that discriminate against non-Muslim religious groups, including restrictions on land ownership. Many of the properties, including schools, hospitals, orphanages and cemeteries, were seized after 1936 when trusts were called to list their assets, and in 1974 a separate ruling banned the groups from purchasing any new real estate.

Disputes over the groups' properties have tied up Turkish and European courts for decades, and the European Court for Human Rights has ordered Turkey to pay compensation in several cases related to religious minority rights in recent years.

"Like everyone else, we also do know about the injustices that different religious groups have been subjected to because of their differences," Mr. Erdogan said at the dinner, according to the semiofficial Anatolian News Agency. "Times that a citizen of ours would be oppressed due to his religion, ethnic origin or different way of life are over."

In contrast with its staunchly secular predecessors, the Islam-inspired government of Mr. Erdogan's Justice and Development Party, known as A.K.P., has been more sympathetic and attentive to Turkey's non-Muslims, including Jews and Christians. It has enacted a number of measures since 2002 to bring Turkish law more into compliance with European Union standards on minority rights, so that Turkey's application to join the union could advance.

The decree issued on Saturday removed legal impediments that had continued to block the return of the properties even after amendments were enacted in recent years to allow it.

"There have been changes made to existent legislation at least five times since the government of the A.K. Party, but they have not been very satisfactory in practice," said a Greek government official who asked not to be identified because of his diplomatic position. "We hope this time the changes would make a real difference in implementation."

Less than 1 percent of Turkey's 74 million people belong to religious minorities; there are about 120,000 Christians of different denominations, including Greek Orthodox, and about 25,000 Jews.

Turkey overturns historic religious property seizures

Christian and Jewish communities to reclaim state-confiscated properties

By Barbara G. Baker

Compass Direct News (30.08.2011) / HRWF (31.08.2011) - <http://www.hrwf.net> - The Turkish government made a historic U-turn in state policy this past weekend, issuing an official decree inviting Turkey's Christian and Jewish communities to reclaim their long-confiscated religious properties.

Saturday's (Aug. 27) decree comes 75 years after the Turkish government seized hundreds of lands and buildings owned by its Greek, Armenian, Syriac and Jewish communities.

Turkish Prime Minister Recep Tayyip Erdogan announced the surprise decision on Sunday evening (Aug. 28) in Istanbul, addressing a large gathering of Istanbul's non-Muslim religious leaders representing 161 minority foundations. Invited as the honored guest for an iftar (breaking the fast) meal near the end of the Muslim month of Ramadan, Erdogan declared, "The times when citizens in our country were oppressed for their beliefs, their ethnic heritage or the way they dressed is over."

Acknowledging past injustices inflicted on those of different faith groups, he vowed, "Those days are over. In our country, no citizen is superior to another."

Seated next to the prime minister at the dinner, Ecumenical Patriarch Bartholomew of the Greek Orthodox Church told the press afterwards that the new decree represented "the restoration of an injustice."

In a deliberate clarification the next day, Turkish Foreign Minister Ahmet Davutoglu emphasized that the government's formal decision was "not a gesture toward minorities, but the return of the rights of legally equal citizens."

The landmark decree is a significant step toward eliminating decades of unfair practices imposed by the Turkish state against its non-Muslim citizens.

Within hours of the surprise announcement, the boards of Turkey's minority religious foundations in Istanbul were scrambling to review the status of their confiscated immovable properties. They must apply within the next 12 months to the General Foundations Board to recover each individual property.

Their former holdings include schools, churches, cemeteries, stores, hospitals, orphanages, houses, apartment buildings and factories that were seized by the Turkish state and re-registered as public or foundation properties. A number were later sold to third parties.

Previous changes in Turkish legislation enacted in 2003 and again in 2008 took only limited steps to correct a 1936 Declaration which had officially registered an incomplete list of minority properties. A further ruling in 1974 had prohibited non-Muslim communities from acquiring new property.

The new decree states that owners of properties sold by the state to third parties will be reimbursed at market value. According to Radikal newspaper, the Ministry of Finance will determine the amount of compensation for property that had been sold to third parties, who will not be required to relinquish these lands or buildings back to their original owners.

Significant Step to EU

The return of these extensive properties to their rightful owners has been a key demand of the European Union (EU), to which Turkey is applying for full membership.

The unexpected government decree came after rising pressures from the European Court of Human Rights (ECHR), which has slapped heavy fines on Turkey in recent years for failing to return these seized properties to their Christian and Jewish owners. Although the ECHR has declared the expropriations a violation of both local property rights and international law, Turkish nationalists had for decades blocked any legal changes.

During July, both the EU and United States congressional leaders had upped their rhetoric regarding the long unresolved issues of religious freedom for Turkey's non-Muslim citizens. In a statement on July 13, EU Enlargement Commissioner Stefan Fule cited a number of legislative issues on religious freedom that Turkey had not yet implemented: lack of legal personality, restrictions on the training of clergy, compulsory Islamic education, religious affiliation on identity cards, and property ownership.

"Missionaries are widely perceived as a threat to the integrity of the country and to the Muslim religion," Fule added, observing that the dialogue launched by the Turkish authorities with non-Muslim religious communities "has yet to produce tangible results."

That same month, Ankara reacted strongly to a measure passed by the Foreign Affairs Committee of the U.S. House of Representatives calling for Turkey to "return stolen Armenian and other Christian churches to their rightful owners." Still pending approval by both the House and Senate, the amendment was attached to the State Department's Authorization Act for 2012.

In an EU statement yesterday, Fule called the decree "positive and conducive to the respect of freedom of religion in practice." He cautioned, however, that the EU Commission would "monitor closely the implementation of the new legislation, in contact with both the Turkish authorities and the non-Muslim religious communities."

Ironically, the Istanbul offices of the Secretariat General for EU Affairs are situated in a former grade school building of the Greek Orthodox Ayios Fokas Church in Ortakoy. A case to reclaim this property, formerly owned by the church's Mektepler Foundation, is still before the ECHR.

The minority properties expected to be returned in Istanbul include more than 50 large cemeteries; several properties of the Jewish community in Kandilli, on the Asian side of the Bosphorus; and a number of buildings owned by both the Surp Pirgic Armenian Hospital Foundation and the Balikli Greek Hospital Foundation.

Historic decision: Erdogan returns seized property to religious minorities

***A decree published last night for the return of thousands of properties seized in '36, just hours before an Iftar of the Prime Minister with representatives of religious minorities. The beneficiaries are Greek-orthodox Christians, Armenians, Jews. Roman Catholics do not fall within the recognized minorities
The Prime Minister's hopes: end to era of discrimination***

by NAT da Polis

AsiaNews (29.08.2011) / HRWF (31.08.2011) - <http://www.hrwf.net> - In a sudden twist, the Prime Minister Tayip Erdogan has decided to return thousands of properties, confiscated by the government after 1936, to non-Muslim religious foundations.

This is Erdogan's second surprise reserved for the old establishment of the Turkish Republic after the recent decapitation of the heads of the armed forces and the return of the primacy of politics over the military.

The publication of the draft-law on the restitution of property took place yesterday, just hours earlier than the traditional Iftar [the dinner-party that celebrates the end of the Ramadan fast] which the representative of the non-Muslim religious foundations, Lakis Vingas, held last night with the Prime Minister guest of honour.

The publication of the draft-law is a real "coup de theater": it will return all property to religious foundations that the Turkish administration with various subterfuges has seized in the past, after the census of 1936. Non-Muslim religious foundations means those recognized by various international treaties signed by Turkish Republic after 1923.

The decree has been published within a few days of Bartholomew I's request for the return of unjustly usurped properties to minorities. In his campaign to see the return of certain properties of the Greek-orthodox communities, Bartholomew I had approached various European forums.

The decree provides:

- 1) the restitution of property as they were surveyed and registered in 1936 and subsequently confiscated from the religious foundations by the various administrations of the Republic of Turkey;
- 2) the return of the management of cemeteries belonging to non-Muslim foundations, which have been improperly sold to various towns and municipalities;
- 3) the restitution of undefined deeded property (such as monasteries and parishes), which were never recognized as legal entities by the Turkish Republic.
- 4) In the event that these properties have been sold or disposed of in various ways by the Turkish state parties, the Minister of Finance of the Republic of Turkey will establish with the owners a just compensation.

Interested parties are invited to submit the relevant documentation to the Directorate General of Foundations within 12 months.

It should be noted that the last law of the Turkish parliament voted on February 20, 2008, challenged and never accepted by opposition did not provide any of these regulations. What remains to be determined is the fate of mazbut properties (the so-

called "occupied" properties) in which management, administration and property passed to the Turkish state.

According to an initial calculation, the decree provides for the restitution of 1000 properties to the Greek-orthodox Christians, 100 to the Armenians, numerous properties to the Chaldean Catholics and also to the Jews.

Nothing is expected for the Roman Catholics as they do not fall under the Treaty of Lausanne. But according to observers, the passage of the decree gives hope.

The decree has provoked positive reactions from all minority representatives. The director of the non-Muslim foundations described it as "a step of great importance and great historical content", the lawyer for minorities, Dr. Kezmpan, described it as a great revolution, after the liberation from the military dominance". Another lawyer, Dr Hatem said that finally "the wrong done to the Church is restored."

In recent years the EU has always asked Turkey to take steps to remove discriminatory laws against religious minorities. And in some cases the European Court for Human Rights has condemned the Turkish state to return property or compensate the former owners.

At the Iftar yesterday, Erdogan said: "Like everyone else, we also do know about the injustices that different religious groups have been subjected to because of their differences...Times that a citizen of ours would be oppressed due to his religion, ethnic origin or different way of life are over".

Changes in school religious education fail to resolve fundamental problems

By Mine Yildirim, Researcher at the Institute for Human Rights at Åbo Akademi University

Forum 18 News (23.08.2011) / HRWF (29.08.2011) - <http://www.hrwf.net> -

Children across Turkey are preparing to return to school on 19 September. For the first time, the official textbooks for use in all but the few ethnic minority schools for non-Muslims will include not only teaching of Sunni Islam, but also on Alevi and Caferi traditions, both widely shared movements within Islam in Turkey. The Education Ministry's General Directorate of Religious Education confirmed that the textbooks for the compulsory Religious Culture and Knowledge of Ethics (RCKE) lessons have been amended to include additions agreed with representatives of these two communities, though the textbooks are not yet publicly available to verify this.

The inclusion of Alevi and Caferi teachings is a result of the government's "Alevi Opening" and dialogue between Alevi and Caferi organisations and the state.

While improvements in the curriculum to include more on Alevi and Caferi traditions is welcome, these fail to address more fundamental religious freedom issues raised in relation to the RCKE lessons. Their compulsory nature, their content lacking objectivity and pluralism, and finally the lack of an adequate framework for exemptions continue to pose problems to the enjoyment of freedom of religion or belief in the educational setting in Turkey.

Compulsory lessons

Religious Culture and Knowledge of Ethics classes, for between one and two hours a week, are compulsory in almost all primary and secondary schools. Lessons have up till

now been heavily based on the Sunni branch of Islam, and the textbooks are prepared and published by the Education Ministry. The few Greek Orthodox, Armenian Apostolic and Jewish schools must also hold RCKE classes but - because of these communities' rights under the 1923 Lausanne Treaty - such classes are based on Christianity and Judaism respectively.

RCKE classes have not always been compulsory in Turkey. Because the military leadership of 1980 saw the value of a certain form of "restrained religion" as a unifying factor for the nation and as a preventative tool against what it considered marginal movements, a provision was inserted into Article 24 of the Turkish Constitution making RCKE classes compulsory in primary and secondary education. The same provision goes on to say that "education and instruction in religion and ethics shall be conducted under state supervision and control", explicitly demonstrating the state's strong interest in imposing its control.

This regulation did not foresee any exemption. Only in 1990, the Supreme Council for Education adopted a decision to entitle Christian and Jewish students who are registered as belonging to these faiths in the Public Registry and on Identity (ID) Cards to be exempted from RCKE classes.

Jehovah's Witnesses can in practice be exempted from RCKE classes, either by presenting their ID cards which indicates that they are Christians (since the state regards Jehovah's Witnesses as a denomination within Christianity, not as a separate religion) or - if the religion section in their ID card is blank - by providing a letter from the Council of Representatives of the Jehovah's Witnesses. The latter is a new practice in effect since early 2011.

However, the possibility of exemption does not extend to non-believers, Islamic minorities and members of other faiths. Children of atheist, Baha'i, Yezidi or Alevi parents must attend the RCKE classes.

Only in a handful of cases have individual children been exempted through the courts, as parents brought such cases based on the incompatibility of the RCKE content with their philosophical convictions. One lawyer, Kazım Genç, has won such cases on behalf of at least 10 children in recent years.

Paradox

A close look at the practice in Turkey concerning RCKE classes immediately reveals a paradox. On the one hand, the government claims that the RCKE course synopsis includes teaching about all religions, while on the other there is a limited opt-out possibility. If the teaching includes all religions, why does the system allow exemption?

This point is also underscored in the report on Turkey from the European Commission against Racism and Intolerance (ECRI), published in 2005 (http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_03/03_CbC_eng/TUR-CbC-III-2005-5-ENG.pdf).

"ECRI considers the situation unclear: if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone," the report notes. "Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children's and their parents' religious freedom."

The changes made in the textbooks for the 2011/2012 school year to include Alevi and Caferi teachings do not remove the paradox, because the RCKE course still teaches only one religion (Islam) and no adequate exemption is in place.

Although the Alevi and Caferi communities have yet to see the books, the inclusion of their teachings has to be recognised as an improvement towards recognition and respect for diversity within the Islamic community in Turkey. On the other hand it is important to note that these improvements alone do not make the RCKE classes a lesson "about religions".

Also, while this step may satisfy some Alevi groups there are certainly other Alevi groups who remain categorically against the teaching of religion by the State.

Political perspectives on RCKE classes

Public debate on the RCKE classes has made the views of the interested parties much clearer – but at the same time shown that they are further apart than ever. It is mainly the minorities that oppose the continuation of the current practice and who seek change.

The majority on the other hand, seems largely in favour of the current practice, perhaps with minor changes in the content of the textbooks. Such changes may include the inclusion of teachings of various Islamic traditions while sticking to the general approach of teaching Islam to students. Such changes do not include an appropriate opt-out structure for anyone who finds these lessons to be in conflict with their religious beliefs or philosophical views, nor moving to a course that is "about religions".

The election programmes of the political parties are telling in elucidating what can be seen as three broad positions.

The Election Programmes of the ruling Justice and Development Party (AKP) and the Democrat Party (DP) are silent about religious education, which implies that they are satisfied with the current practice and do not wish to introduce any changes.

By contrast, the Emek, Demokrasi ve Özgürlük Blok (Labour, Democracy and Freedom Bloc), the Turkish Communist Party (TKP) and the Republican People's Party (CHP) oppose compulsory religion classes. The Bloc instead proposed history of religions and religious studies as optional lessons. The CHP proposed that the RCKE lessons cease to be compulsory, and be offered instead as optional in primary and secondary schools.

The Nationalist Action Party (MHP), Felicity Party (SP) and People's Voice Party (HAS) defend the current practice of compulsory RCKE classes. In addition, they also propose the ending of the state monopoly over formal religious education.

In June 2011 the Education Reform Initiative (ERG) of Sabanci University in Istanbul expressed concern about the lack of proposals on the continuation of a democratic, plural and participatory discussion on education about religions instead of religious education.

The AKP's apparent wish to continue with the current practice of RCKE classes is not surprising. The party's general perspective, reflecting the desires of its conservative base, is to want to see Islamic identity flourish and be part of social life. However, the AKP will have to accept that continuing the religiously-narrow, compulsory RCKE lessons is incompatible with Turkey's human rights obligations.

The AKP's "will" should become clear in the constitutional drafting process now beginning.

Religious communities' concerns and desires

Doğan Bermek, the Chair of the Federation of Alevi Vakıfları (Alevi Vakıfları Federasyonu), explains that instead of focusing on the right to

exemption from RCKE lessons, discussion should focus instead on their content. He argues that elements that teach a certain religion with the purpose of influencing the child to adopt the religion and its practices must be eliminated, and the lessons should be strictly "about religions".

Bermek also notes that calls to reject entirely any religion classes polarise society and cause the discussions to revolve around whether or not to have religion lessons, rather than on the content. He cautions that taking the exemption route might be dangerous because of the lack of conditions for the enjoyment of such an exemption in schools. The obstacles seem to stem from the attitude of some teachers and children as well as the lack of adequate facilities.

Bermek observes that religion classes should be like any other class. Since no other subject is mentioned in the Constitution, religion lessons should also not be mentioned in the Constitution.

The Chair of the Association of Protestant Churches, Zekai Tanyar, thinks it is unrealistic to expect that there will be no religion classes in Turkey. He views the current practice as the teaching of a certain denomination within Islam, and hence students should have the possibility of exemption. The important thing, as he sees it, is the consequence of the RCKE lessons: because of the narrow focus of the content, students are raised with a narrow view of religion and tend to see members of other religions or traditions as "the other".

Human rights defenders and members of minority faiths believe the stereotypes about other faiths, deeply rooted in society and reinforced by state religious education, cause a dangerous situation for religious minorities.

Consequences of opting out

Even if Christian and Jewish children may have the right to be exempted from compulsory RCKE classes, as well as those who acquire such a right through a court decision, this still leaves problems. The reason for this is the serious difficulty in ensuring an environment conducive for the enjoyment of the exemption.

Genç, the lawyer who has gained exemption through the courts for some children whose parents object to the content of the RCKE lessons, sees three difficulties, as he told Bianet on 22 June 2011: first, families do not want to file a court case fearing that their children will face discrimination at school; second, the children who are exempted from the RCKE classes can be harassed by other children; third, the attitude of teachers changes toward these children, sometimes resulting in lower grades in other subjects.

Such difficulties are confirmed by the experience of children of Protestant families. As Christians they do have a right to exemption from RCKE classes, so they normally do not have to bring a court case. However, Umut Sahin, the General Secretary of the Association of Protestant Churches, notes that there is a socially hostile and intolerant attitude in schools against children who leave the classroom during RCKE classes.

Similarly, Jehovah's Witnesses report cases where some children experience harassment in schools when they do not participate in the RCKE classes.

Compulsory teaching incompatible with human rights standards

The Turkish Court of Cassation considers the compulsory nature of the RCKE classes incompatible with freedom of religion or belief. A number of Alevi and atheist families have won cases before administrative courts where their right to exemption has been recognised on a case by case basis. The Education Ministry then allows the exemption of

those students who have a court decision. It will be interesting to see whether the 60 new members of the Court of Cassation appointed by the High Council of Judges and Prosecutors in February 2011 will uphold the stance demonstrated in such previous cases.

International human rights law does not allow the compulsory teaching of religion with the purpose of instructing students in a particular religion. Where such instruction exists, states are under the obligation to create adequate means of exemption. In addition, states, when undertaking their obligations in the educational sphere, must respect the rights of children, parents or legal guardians and teachers. More generally, the interests of society and minority religious communities as well as those without a religious faith also have to be taken into account.

In the case of *Hasan and Eylem Zengin v. Turkey* (Application No. 1448/04), brought by an Alevi parent who objected to the content of RCKE lessons and the lack of exemption, the European Court of Human Rights in Strasbourg found in October 2007 that "the instruction provided in the school subject 'religious culture and ethics' cannot be considered to meet the criteria of objectivity and pluralism". The judgment signals that the Turkish authorities need to widen the exemption possibility to all, end the requirement for those seeking exemption to reveal their religious or philosophical views, end the negative consequences for children who are exempted, and – more broadly – make the subject more objective and acceptable to all.

The enforcement of this judgment is still pending. The Council of Europe's Committee of Ministers overseeing the execution of judgments declared in June 2008 that "The Turkish authorities are invited to present an action plan for the execution of this judgment, taking into account the European Court's specific indication of an appropriate general measure". However, the Turkish authorities have so far provided neither an action plan nor an action report.

What alternatives in teaching religion to children?

The Turkish authorities impose significant limitations on teaching religion to children outside the school system. The government's Presidency of Religious Affairs (Diyanet) can offer summer courses on reading the Quran for children who are older than 12, with state funding. While it is prohibited for private groups to open similar courses, many such courses operate and the authorities seem to turn a blind eye to them. On 19 August 2011, the human rights group Mazlum-Der (Organisation of Human Rights and Solidarity for Oppressed People) organised a demonstration in Beyazit (Istanbul) demanding that the age restriction for participation in Quran courses be abolished.

As for non-Muslims, legally it is not possible to establish schools for teaching their religion. Religious education of young people takes place at home or in places of worship as part of religious activity. For example, the Syrian Orthodox community teach their youth the language and rituals of their religious tradition in the church. The experience of other religious communities, such as Catholics, Protestants and the Baha'is, is similar. They have to teach the youth in their place of worship without state funding, while at the same time supporting Islamic education by the Diyanet and Education Ministry through their taxes.

What is the purpose of RCKE course?

In order to design a course on religion or a course about religions the vital first step is to seek consensus on its purpose and function. Current practice does not have a clear purpose. It seems to strive to be both a course on teaching Islam and a course on religions and it is not working. The current arrangement concerning RCKE lessons results in a practice that is not compatible with Turkey's human rights obligations. Turkey has

the obligation to respect the rights of children to freedom of religion or belief and to respect the rights of parents to educate their children in line with their beliefs. Also, the current course functions as a tool to form a certain religious identity and such a function - coupled with its compulsory nature - is highly problematic.

To move forward, Turkey should consider approaching the matter in a holistic manner. Society could benefit from a compulsory course about religions with the purpose of promoting an understanding and appreciation of diversity, respect for everyone's human rights as well as providing an objective presentation of religions. Such a course could function as a means of building mutual understanding, respect and acceptance. At the same time, given that many parents want their children to learn about Islam at school, the state could offer courses on that faith. However, these must be optional, with no negative consequences for those who choose not to participate.

Can a new Constitution solve religious freedom problems?

By Mine Yildirim, Researcher at the Institute for Human Rights at Åbo Akademi University

Forum 18 News (27.06.2011) / HRWF (17.08.2011) - <http://www.hrwf.net> -With the convincing general election victory of Turkey's Justice and Development Party (AKP) on 12 June, the long-awaited new Constitution is at the centre of political discussion. The current 1982 Constitution is widely acknowledged to be a remnant of the 1980 military intervention which is not suitable for Turkey's progressing democracy. But what will a new Constitution mean for the country's various religious and belief communities, as well as agnostics and atheists? Will it solve Turkey's long-standing problems concerning the right to freedom of religion or belief? The AKP's decisions on the drafting method and content will be key factors in whether the Constitution is compatible with the international standards on freedom of religion or belief, which Turkey has committed itself to implement.

Some of the problems of protecting freedom of religion or belief do not require a constitutional change, yet remain unresolved. So it would be unrealistic to expect a new Constitution to solve all of Turkey's religious freedom problems. But reform of both the Constitution and legislation is still essential.

The AKP has now won a third consecutive term as government, increasing its support to 49.90 per cent of those who voted, and providing much room for manoeuvre to Prime Minister Recep Tayyip Erdogan. The AKP could use this support to take bold steps to bring Turkey's legislation and practice into line with international human rights standards, including on freedom of religion or belief. However, relying on the substantial support it already enjoys, the AKP might instead resist making the necessary changes, both in the Constitution and in the state's actions.

Diversity in the Grand National Assembly

A positive aspect of the new parliament, the unicameral Grand National Assembly, is that it better reflects the diversity of Turkish society than previous parliaments. The number of female deputies is the highest so far, at 15 per cent, there are four disabled deputies, and the number of independent deputies is also the highest so far at 36 (should the election of the six currently imprisoned candidates stand). The independent deputies are supported by the pro-Kurdish BDP (Peace and Democracy Party), as the BDP has never polled the 10 per cent electoral threshold to be represented in the Grand National Assembly. Among the independents are Kurds, Socialists, and a Syriac Christian (the only Christian deputy).

Whether the independent deputies as well as deputies of various ethnic backgrounds and various Islamic traditions realise their potential depends on how well they can work together, and the power dynamics of the Grand National Assembly.

Drafting a new Constitution

If Turkey is to adopt a Constitution that safeguards, among other things, fundamental human rights and the rule of law, a pluralistic democratic approach which respects Turkey's diversity is essential. Prime Minister Erdogan acknowledged in his victory speech that the public through their votes opted for a consensus-based approach. The AKP did not gain enough seats to adopt a Constitution by itself, so Erdogan promised to involve opposition parties in the process. Given the lack of successful consensus building among politicians of all parties in the past, Erdogan's promise is being viewed with some caution.

Turkey is not experienced in writing constitutions in this way. The 1961 Constitution was written mainly by academics, and the 1982 Constitution was written after a military coup. So drafting a democratic Constitution that respects international human rights standards will be a challenging task for politicians.

As far as the right to freedom of religion or belief is concerned, a very important question in drafting the Constitution will be how far those of different religions or beliefs will be able to influence the outcome. Christians have publicly pointed out that they face serious challenges in the protection of the right to freedom of religion or belief Turkey. Other smaller groups such as Jehovah's Witnesses, Baha'is and atheists are because of their size unlikely to have any influence. The Alevis, who with perhaps one third of the population are the largest religious minority, may be the most influential of those demanding change. Civil society organisations have also demanded full religious freedom for all and a government which adopts a neutral position in relation to all religious communities. But the most influential group of all is the AKP government.

Various Sunni Muslim denominations or movements - such as the Nakshibandi, Nurcu, Suleymanci or Gulenist - may be able to influence the accommodation of diverse customs within the Sunni tradition. However, whether this accommodation will open the way for non-Sunni groups remains to be seen.

Proposals for a Constitution

Civil society organisations and platforms have been active in creating forums for the participation of various organised groups in society in order to represent views of various groups for the new Constitution. These have included belief communities, women's organisations, human rights organisations, and ethnic minorities.

The Turkish Industry and Business Association (TÜSIAD) has proposed a draft Constitution which includes a call for freedom of religion or belief to be protected in line with Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The proposal also calls for a neutral state, and stressed that the Diyanet is in its current form not compatible with the obligations of states to protect freedom of religion in a non-discriminatory manner. (The Diyanet is an agency under the Prime Minister, which has a monopoly over the provision of Islamic public services.).

The Constitution Commission of the Turkish Economic and Social Studies Foundation (TESEV) proposed on 10 April 2011 an impartial state that does not identify with any ideology, ethnicity or culture. The Commission's Report proposes the creation of a public entity status for belief communities that wish to organise themselves outside the Diyanet

structure. The right to legal status is a fundamental point which would do much to resolve Turkey's problems in implementing freedom of religion or belief.

TESEV also demands recognition of the right to conscientious objection as a constitutional right. This demand contrasts with the current situation in which this part of religious freedom is not recognised at all.

Just before the elections, on 20 May the main opposition party, the Republican People's Party (CHP), published its Constitutional proposal. The CHP is the party through which the Republic's founder, Mustafa Kemal Atatürk, led Turkey as a one-party state. It won 25.90 per cent of the votes on 12 June. The CHP proposal focuses on citizenship rather than Turkishness. (Nationalistic concepts of Turkishness can be dangerous for Turkey's vulnerable groups.

For freedom of religion or belief, the CHP speaks of protecting the rights of citizens (but not foreigners) belonging to different religions and denominations, changing the status of places of worship, and re-organising the Diyanet to take account of the pluralism of faith communities in Turkey. All these issues certainly must be addressed.

However it should be noted that the CHP has also called for the retention of the first three articles of the current Constitution. These three Articles are unchangeable and underline Turkey's republican state structure as well as national features, such as the official language and capital city. Article 2 defines the Turkish Republic as a "democratic, secular and social state governed by the rule of law" committed to "the nationalism of Atatürk".

On 24 March, State Minister Cemil Çiçek - in response to TÜSIAD's proposal to consider that the first three Articles may be changed - expressed the AKP's commitment to maintaining the first three articles calling them "the common denominator for the 74 million [the population of Turkey]".

As both the governing AKP and the main opposition CHP express strong commitment to maintaining these Articles in the new Constitution, it would be realistic to expect that it will be so. Those who view the current understanding of secularism and nationalism as factors undercutting the protection of freedom of religion or belief must demand an interpretation of these principles in harmony with human rights law, in particular the right to freedom of religion or belief.

TÜSIAD, TESEV and the CHP all call for the compulsory Religious Culture and Knowledge of Ethics (RCKE) school classes to be abolished. This is certainly a necessary step. But it remains to be seen how the AKP will receive these and other proposals, and how far politicians generally will be able to work together to draft a Constitution which respects fundamental freedoms. For example, it is unclear how far the CHP will be willing to move away from its previous defence of the status quo.

These three proposals also address issues such as the recording of religion on identity cards. The proposals also focus on the need for a "neutral state" not favouring one faith or belief over another. So these proposals possibly outline something of a workable framework for the protection of freedom of religion or belief in the new Constitution.

None of the proposals envision a Turkey without the Diyanet. TESEV and the CHP call for the representation of different religions within it. However, many of Turkey's small and diverse religious communities may not want representation and may prefer its abolition. TÜSIAD stated that the Diyanet in its current form is not compatible with protecting freedom of religion or belief. However, the government responded that this was a very radical demand. The Diyanet issue is a complex one, and under all the proposals it seems likely that any changes will be slow.

What does the AKP want?

The AKP itself has not revealed its detailed thinking on what kind of new Constitution it would like to propose. A draft Constitution was prepared for the AKP in August 2007 by law professor Ergun Özbudun. It is unclear how far this draft reflects current AKP thinking. On freedom of religion or belief, the Özbudun draft uses language similar to Article 9 of the ECHR but the language is not identical. For RCKE classes it proposes two alternatives: to retain them as compulsory, with exemption possible at the request of parents or legal guardians; or not to mention RCKE classes in the Constitution. Professor Özbudun's draft also preserves the present position of the Diyanet.

What is necessary?

To bring the constitutional protection of freedom of religion or belief into line with Turkey's international human rights obligations, two tracks should be followed.

Firstly, constitutional provisions must contain the comprehensive guarantees found in the articles protecting freedom of religion or belief of: the International Covenant on Civil and Political Rights (ICCPR) (Article 18) <http://www2.ohchr.org/english/law/ccpr.htm>; the European Convention on Human Rights and Fundamental Freedoms (ECHR) (Article 9) <http://conventions.coe.int/treaty/en/treaties/html/005.htm>; the Convention on the Rights of the Child (Article 14) <http://www2.ohchr.org/english/law/crc.htm>; as well as Article 2 ("Right to education") of the ECHR's Protocol 1 <http://conventions.coe.int/treaty/en/treaties/html/009.htm>.

An adequate legal framework for respecting the right to conscientious objection to military service must also be within the Constitution (see F18News 17 March 2010 http://www.forum18.org/Archive.php?article_id=1423). A significant step forward would be that such constitutional guarantees would also include a requirement that the right to freedom of religion or belief and other fundamental human rights be facilitated in a separate law or laws.

Secondly, the state's role and actions must come into line with its obligations under international human rights standards. This is not only a question of the actions of officials, but also of the role of state institutions. For example, in the European Court of Human Rights (ECtHR) case of Leyla Sahin v. Turkey (Application no. 44774/98), the Strasbourg Court considered "that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed".

The ECtHR has often stressed the state's duties of neutrality and impartiality, which by implication strongly questions the function and role of the Diyanet, which reports to the Prime Minister's Office, as well as the current Constitution giving the state a monopoly on religious education.

Whatever form a new Constitution takes, it will need to be complemented with adequate legislation and regulations, as well as training of public officials. It is especially important that the state and its officials positively act to implement freedom of religion or belief. Important steps forward would include the strengthening the rule of law, the Public Inspection Authority or Ombudsperson, and the Committee on the Elimination of Discrimination.

Challenges

It appears that consensus exists among Turkey's liberals, leading civil society organisations, religious minorities, legal academics, and the CHP that the new

Constitution should uphold the right to freedom of religion or belief, and ensure that the state assumes a neutral role. Many would not object to this as an ideal, but it is unclear what parts of the various proposals the AKP may accept. But the AKP's past record would suggest that any predictions of its response should be cautious.

The AKP has so far been reluctant to fully implement Turkey's international obligations on freedom of religion or belief. Some legislative changes have been made such as in the Foundations Law, and the Law on Associations as a requirement of harmonization of Turkish law with EU standards. Yet these changes have made only a limited impact. Well intentioned gestures have been made, such as permission for worship once-a-year in historically significant churches of the Greek Orthodox and Armenian Apostolic churches. But at the same time the Syriac Orthodox Mor Gabriel Monastery remains under serious threat from the government's actions, and the Diyanet's mandate has recently been strengthened.

Many other freedom of religion or belief issues also remain, including but not limited to: the impossibility of training clergy, resistance to the removal of the religion section in identity cards and in the Public Registry, the lack of a legal framework for conscientious objection, problems over maintaining and acquiring places of worship, resistance to abolishing compulsory RCKE classes which teach Sunni Islam, and the lack of an adequate legal personality that is suitable to the nature of religious communities.

This record of partial steps forward, without any substantial change, encourages caution in expecting the AKP to genuinely implement freedom of religion or belief in a new Constitution.

In addition, the significance of the nationalistic Sunni Muslim understanding of Turkish identity should not be underestimated as an obstacle. This understanding seeks the fostering of this identity and undercutting the cultivation of what might be seen as rival identities. Any step that would weaken this monolithic understanding of Turkish identity is likely to meet resistance from elements in both society and the government.

The importance of daily life

It is vital that the long-awaited new Constitution enshrines full guarantees of freedom of religion or belief for all, fully in line with Turkey's international human rights obligations. A new Constitution has great potential to further the protection of freedom of religion or belief – especially if drafted to address the Turkish reality of a religiously pluralistic society.

But a new Constitution on its own will not produce effective protection of freedom of religion or belief for all. A good Constitution in line with Turkey's international human rights obligations can help change attitudes and mentality only in the long run. Yet on its own - without good laws, regulations and state actions - a Constitution can have only a limited impact in generating practical change in the daily lives of people belonging to minority religious and belief communities.

Kidnappers Allegedly Called Murdered Iraqi Christian's Employer

Murderers said to have told contractor to fire Chaldean because he was Christian

By Damaris Kremida

Compass Direct News (18.05.2011) / HRWF (19.05.2011) - <http://www.hrwf.net> - A pastor in Kirkuk, Iraq told Compass that sources close to a Christian reportedly kidnapped, tortured and murdered by al Qaeda over the weekend said the kidnappers had pressured his employer to fire him because he was a Christian.

The body of Chaldean Christian Ashur Issa Yaqub was found on Monday (May 16) with marks of severe torture and mutilation. He had worked as a construction worker from the northeastern city of Kirkuk, and al Qaeda members had demanded \$100,000 for his release, according to Agence France-Presse (AFP).

"It seems that the contractor that Ashur was working for was told he had to fire Ashur because he was Christian, but he refused," said the pastor, who spoke on condition of anonymity. "Because the contractor was rich and they couldn't do anything to him, they kidnapped Ashur, and unfortunately they killed him."

When a police patrol found his body on Monday (May 16), his head was nearly severed off, according to the AFP.

The 29-year-old Yaqub, whose surname is also spelled Jacob, is survived by his wife and three children.

Chaldean Catholic Archbishop of Kirkuk Louis Sako told Compass by phone from Rome that he was shocked to get the news of Yaqub's death. While noting that the murder was unusually brutal, the archbishop said it was probably the work of criminal opportunists trying to make money, and that Yaqub was not necessarily targeted as a Christian.

"It was horrible," Sako said. "When I heard it, I was ripped. He was kidnapped for money. That happens, but kidnappers don't usually torture and kill this way. This wasn't human ...this is like they were beasts. They killed him immediately to scare the people of Kirkuk and send the message that if they are kidnapped they have to pay."

Yaqub's body bore marks of dog bites and torture; his legs and arms were tied together and his clothes were covered in blood, according to the AFP. His eyes were gouged out, his ears were cut off and his face was skinned, according to the Assyrian International News Agency.

"This was exceptional, but there are other cases where they killed them or left them half dead, like Sameer the doctor," Sako said, referring to the case of a Christian, 55-year-old Sameer Gorgees Youssif, who was kidnapped and released in 2009. "They paid, but they had tortured and hit him." (See www.compassdirect.org, "Kidnapped Christian Doctor Freed in Critical Condition," Sept. 22, 2009.)

In Kirkuk another Christian, Iyad Daoud, was kidnapped on Feb. 14 but was freed after ransom was paid for him, according to Iraqi online publication Assafir Press.

Noting that Christians are not the only victims of kidnapping, Sako said Muslims and other nationals living in Kirkuk have been abducted. Although he said he didn't believe the attack targeted Yaqub because he was a Christian, he said Christians were very shaken by the attack, and he feared that many would leave the city as a result.

"I don't think this was against Christians," said Sako. "This one was very poor. We can't imagine - this was someone with three kids, a wife, and poor, really poor. They killed him for nothing ... they have no sense of humanity and religion."

Over the last few years, Christian and Muslim leaders in Kirkuk have joined forces to condemn the violent acts of insurgents against their communities through joint

statements, among other efforts to promote peace and conviviality. Things “were calm” in the last year, according to Sako, making this brutal attack perplexing.

“After this, everyone, not just Christians, was shocked,” he said. “In Kirkuk, very few Christian families had left the city, but this is shocking. I think that after this they will evacuate, because this is very serious. What is this? Torturing and killing someone; there are no words to explain this.”

General Secretary of the Chaldo-Assyrian Student and Youth Union Kaldo Oghanna described the mood among the Christian community in Iraq as miserable. He said by phone that he was at a loss for words to describe what had happened.

Oghanna said he thought only al Qaeda could be capable of such an act.

“It’s a very bad situation, and everyone, the youth, they are feeling hopeless,” he said. “This kind of attack is – beastly.”

He said that the murder of Yaqub took away the glimmer of hope that Iraq’s youth had for the future and further eroded their faith in the government.

“We describe this brutal murder of Ashur as a heinous act – a heinous crime against religion, the nation and humanity,” Oghanna said. “Today we can’t trust our governments on the issue of establishing security.”

Oghanna said that he is planning a conference to examine the challenges that youth face in Iraq and the causes and consequences of their migration from the country.

“Today the situation in Iraq is complex,” said Oghanna. “Up to now the subject of the government’s performance has not been decided. There are the demands of citizens, and terrorist operations of al Qaeda. We fear that the coming days will be hard for us as Christians.”

Christians in Iraq asked for prayer that extremist thinking and acts be eliminated in Iraq, he said.

Turkey arrests 20 allegedly linked to Malatya murders

Suspects in Ergenekon network long sought in homicide case to be questioned

By Damaris Kremida

Compass Direct News (18.03.2011) / HRWF (21.03.2011) - <http://www.hrwf.net> - In simultaneous operations in nine different provinces of Turkey, authorities yesterday arrested 20 people suspected of playing a role in the murder of three Christians in Malatya in 2007, according to local news reports.

Zekeriya Oz, chief prosecutor overseeing the investigation into a clandestine network known as *Ergenekon* allegedly aimed at destabilizing the government, ordered the arrests based on information that linked the suspects to both the network and to the Malatya murders, Turkish press reported after Istanbul Chief of Police Chief Huseyin Capkin announced the sweep at a press conference yesterday.

"This was an operation related to the Malatya Zirve publishing house murders," Capkin said, according to online news agency Malatya Guncel. "They were just arrested. This is connected to the Zirve publishing house. That's the framework."

Those apprehended include Ruhi Abat, a Muslim theology professor from Malatya Inonu University, Mehmet Ulger, a retired commander of the Malatya Gendarmerie in service at the time of the murders, and other members of the military. Oz will question the suspects in Istanbul, according to reports.

Police also raided the guesthouse of the Izmir Gendarmerie, seizing computers and documents. News sources listed Malatya, Siirt, Mugla, Mersin and Izmir as some of the cities in which authorities conducted raids and arrests.

A plaintiff attorney in the Malatya murder case, Orhan Kemal Cengiz, told Compass that the names on the list of those arrested were suspects he and his colleagues have been trying to convince the Malatya prosecutor to pursue since the court received a tip in May 2008.

"They are all the usual suspects," Cengiz said. "All their names were mentioned in the first informant letter. Unfortunately, despite all our efforts, we couldn't find anyone to investigate these allegations."

The letter was the first of many informant letters the Malatya court has received since it started hearing the case on Nov. 22, 2007. Penned by someone who identified himself by the pseudonym "Ali Arslan" but unsigned, the letter claimed that Ulger incited Emre Gunaydin, one of the suspects, to carry out the murders and that he communicated with Gunaydin through Abat and two gendarmerie officers, reported Turkish English daily *Today's Zaman*.

Cengiz said that, though it was the duty of the Malatya prosecutor to pursue leads in the informant letter, the prosecutor deferred the investigation to the military court, which in turn refused to investigate, claiming that the name on the letter was fake and the letter was not signed.

"It was like a joke," Cengiz said.

On April 18, 2007, two Turkish Christians, Necati Aydin and Ugur Yuksel, and German Christian Tilmann Geske, were bound, tortured and then murdered at the office of Zirve Publishing Co., a Christian publishing house in Malatya. The suspects, Salih Guler, Cuma Ozdemir, Hamit Ceker, and Abuzer Yildirim, were arrested while trying to escape the scene of the crime, as was alleged ringleader Gunaydin.

From the beginning of the court hearings, plaintiff lawyers have brought evidence to the court showing the five young suspects were connected to a wider plot to kill the three Christians as well as other key Christian leaders across Turkey. Known as the Cage Plan, the plot is believed to be part of the alleged *Ergenekon* "deep state" operation to destabilize the government.

The Cage Plan centers on a compact disc found in 2009 in the house of a retired naval officer. The plan, to be carried out by 41 naval officers, termed as "operations" the Malatya killings, the 2006 assassination of Catholic priest Andrea Santoro and the 2007 slaying of Hrant Dink, Armenian editor-in-chief of the weekly *Agos*.

Cengiz told Compass that new evidence in the *Ergenekon* case might have convinced Oz to pursue those detained yesterday, and he called the move "a very big step" in shedding light on the Malatya case. He and colleague Erdal Dogan said their efforts – especially a request they sent to Oz on Jan. 18, 2010 asking him to investigate the allegations that

Ergenekon members were behind the Malatya murders – surely helped to move the process along.

“I believe our efforts had a very big influence on this,” Cengiz said. “We submitted a petition and requested this from Oz last year. He is acting with the Malatya prosecutor on this.”

At the request of the Istanbul Chief Prosecutor’s Office, the Istanbul Police Department prepared a report last year revealing links between the Malatya murders and *Ergenekon*, according to *Today’s Zaman*. According to the report, Sevgi Erenerol, spokesperson for a bogus ultranationalist association known as the Turkish Orthodox Church, described foreign missionary activity as “spying” and “provoking.”

“A piece of evidence in the report was a conference on missionary activity given by Sevgi Erenerol ... at the General Staff’s Strategic Research and Study Center,” reported *Today’s Zaman*.

Erenerol was arrested in connection with *Ergenekon* in 2008. Her suspected links with those thought to have masterminded the Zirve murders may have influenced yesterday’s arrests, *Today’s Zaman* reported.

She is also believed to be one of the key people behind false accusations against two members of Turkey’s Protestant Church, Hakan Tastan and Turan Topal, who were arrested in October 2006 for insulting Turkishness and Islam because they openly shared their faith.

After four years of legal battle, a judge finally acquitted the two Christians of insulting Turkey and its people by spreading Christianity, but not without slapping them with a hefty fine for a spurious charge. The two men are in the process of appealing the fine.

The Turkish Constitution grants all citizens the right to speak about their faith.

Plaintiff attorneys in the Malatya murders case said they believe yesterday’s arrests bring them closer to their requests that the Malatya murders case file be joined to that of the *Ergenekon* trial.

“From now on, we can predict it is very possible that our case will be sent to Istanbul soon and that these two cases will be merged,” said Cengiz.

The next Malatya hearing is scheduled for April 29.

Christians face harassment

Departure of presiding judge in Malatya case could further delay justice, attorneys fear

By Damaris Kremida

Compass Direct News (15.03.2011) / HRWF (16.03.2011) - <http://www.hrwf.net> - Though the horrific scale of the 2007 Malatya murders has not been repeated in Turkey’s Protestant church, a recent report shows harassment continues to be a daily problem for the country’s Christians and churches.

Discrimination, slander and attacks against churches were among the examples of ongoing harassment that the Turkish Association of Protestant Churches (TEK) recorded in 2010.

In an eight-page report published earlier this year, TEK's Committee for Religious Freedom and Legal Affairs outlined problems Protestants face. Turkish laws and "negative attitudes of civil servants" continue to make it nearly impossible for non-Muslims to establish places of worship, the committee reported. Three churches faced legal problems last year regarding their buildings, according to the report.

Missionary activities are still considered a national threat despite the existence of Turkish laws guaranteeing citizens the freedom to propagate and teach their faith, and children are victims of discrimination at school, according to the report. Though the Religious Education General Directorate for Higher Education and Training Committee allows non-Muslim students to stay out of religious classes, parents have reported cases in which they were not able to take their children out of such courses.

"After four years [since the Malatya murders], Turkey's religious freedoms have not improved as desired," said attorney Erdal Dogan. "Christians, Alevis [a Shiite sub-community] and people of other beliefs are still not protected by law. And people of other faiths apart from Muslims have no legal status. Since racism is still prevalent in the context of freedom, discrimination in its turn has become a fact of life."

About a third of Turks are estimated to be Alevis.

Turkey rose to 30th place in Open Doors' 2011 World Watch List of nations in which persecution against Christians takes place, up from 35th place the previous year. The Christian support organization cited deteriorating conditions as the secular country applied some laws in discriminatory ways against Christians.

TEK estimates that there are up to 3,500 Protestant Christians in Turkey.

Malatya Trial Stalled

In the trial of the five primary suspects in the murder of three Christians in Malatya, plaintiff attorneys fear the departure of one of the three judges to a Supreme Court of Appeals post in Ankara could further stall the nearly four-year-old case.

The loss of Judge Eray Gurtekin, who had presided over the case since it began on Nov. 22, 2007, could threaten to set back the progress of the court that has been examining links between the killers and alleged masterminds, according to Dogan, a plaintiff attorney in the case. Gurtekin was appointed as a judge in the Supreme Court of Appeals in Turkey's capital Ankara last month.

"In a three-member panel [of judges], the change of one is not really helpful," said Dogan, "because just as the previous presiding judge had started to understand and pay close attention to the case file, a new judge came in his place. I hope he will catch on quickly."

The new judge joined the Malatya hearings panel this month, and Dogan said there could be more changes in the panel.

The 12th Istanbul High Criminal Court is expected to hear the testimony of another witness on March 29, and the court is trying to locate two more witnesses in order to shed light on the Malatya murders.

On April 18, 2007, two Turkish Christians, Necati Aydin and Ugur Yuksel, and German Christian Tilmann Geske, were bound, tortured and then murdered at the office of Zirve Publishing Co., a Christian publishing house in Malatya. The suspects, Salih Guler, Cuma Ozdemir, Hamit Ceker, and Abuzer Yildirim, were arrested while trying to escape the scene of the crime, as was alleged ringleader Emre Gunaydin.

From the beginning of the court hearings, prosecuting lawyers have brought evidence to the court showing the five young suspects were connected to a wider plot to kill the three Christians as well as other key Christian leaders across Turkey. Known as the Cage Plan, the plot is believed to be part of the alleged *Ergenekon* "deep state" operation to destabilize the government.

The Cage Plan centers on a compact disc found in 2009 in the house of a retired naval officer. The plan, to be carried out by 41 naval officers, termed as "operations" the Malatya killings, the 2006 assassination of Catholic priest Andrea Santoro and the 2007 slaying of Hrant Dink, Armenian editor-in-chief of the weekly *Agos*.

Questioned by the judges, Varol Bulent Aral – suspected of being one of the people who planned the murders and linked the killers to the masterminds – said he wanted the court to find out who was supporting the Zirve Publishing Co. He added a cryptic remark to Tilmann Geske's widow, Suzanne Geske, who continues to live in Malatya with her three children and regularly attends the murder hearings.

"I want to ask Suzanne, what business does a German have here?"

The judges finally threw Aral out of the courtroom for contempt of court when he told the judges: "You are in the clouds!"

Prosecuting lawyers still hope judges will join the Malatya case files to the Cage Plan case, which is being tried at an Istanbul court.

The threat of violence against Christians continues. Last week Turkish news sources reported that Istanbul police arrested two suspects, ages 17 and 18, accused of plotting to assassinate a priest on the European side of the city. The Istanbul Public Prosecutor's Office is examining their case.

The right to have places of worship – a trapped right

By Mine Yildirim

Forum 18 News (02.03.2011) / HRWF (03.03.2011) - <http://www.hrwf.net> - The right to establish, own, and maintain places of worship is a fundamental part of the right to freedom of religion or belief. This is very clear in the international human rights standards – such as Article 18 of the International Covenant on Civil and Political Rights, to which Turkey is a party. Yet religious communities in Turkey face serious obstacles – both formal and informal - preventing them from enjoying this right effectively, Forum 18 News Service notes. For example, only the Diyanet, or Presidency of Religious Affairs which reports to the Prime Minister's Office, can open mosques and administer them.

These obstacles are in addition to the fundamental problem that no community – whether Muslim, Jewish, Armenian Apostolic, Greek Orthodox, Syriac Orthodox, Catholic, Protestant, Baha'i, Jehovah's Witness, or any other - has any legal status in Turkish law.

This leads to situations such as communities being unable to legally prove they own buildings they pay property tax on.

Is an Alevi solution close?

A similarly wide range of communities face obstacles affecting places of worship. The largest community which has demanded that this be addressed is the Alevi community, which is around one third of the population. (No reliable survey of religious affiliation numbers exist, not least as many people are reluctant to openly identify themselves as Alevi or from another disfavoured religious group.)

In the run-up to the general election, due on 12 June, they have called for their places of worship – cemevi or cem houses – to be recognised by the state. State Minister Faruk Celik has announced that a solution is close under the ruling Justice and Development Party's (AKP) "Alevi Opening" process, which attempts to address Alevi concerns. However the Chair of the Alevi Cem Foundation, Professor Izzettin Dogan, told the Haberturk television channel on 24 February that they want to see concrete results.

The AKP might indeed want to find a solution for the Alevi community before the election – but it is unclear what the solution might be, or whether it will be compatible with freedom of religion or belief and the prohibition of discrimination.

There is much discussion in Turkey about the non-recognition of Alevi places of worship, although there is less discussion of the needs of the Caferi. The Caferi, who are closest to Shia Islam, want to open their own mosques and complain that the Diyanet appoints Sunni imams to mosques used by the Caferi. The leader of Turkey's Caferi community, Selahattin Gündüz, called on 14 March 2010 for there to be no obstacles to opening non-Diyanet mosques.

Mostly unrecognised within Turkish public debates is that other communities, such as Protestants and Jehovah's Witnesses, also face serious obstacles in establishing places of worship. Catholics, Greek Orthodox and other communities also face serious problems in maintaining their places of worship. There are also the ongoing well-known serious problems faced by the Mor Gabriel Syriac Orthodox Monastery, in trying to retain their land against ongoing attempts by the AKP government to deprive them of it.

Mosques not an alternative for Alevis

Most members of the Alevi community use cemevi as a place of worship, as well as social centres. While there is a certain variety of practices within the Alevi community most Alevis do not go to mosques (which are all run through the Diyanet which the Alevi consider to be guided by the Sunni Muslim tradition), their clergy are not the imams who minister in mosques but dede (elder or grandfather), and their rituals and prayers are different from Turkey's majority Sunni Muslim tradition.

Before the Turkish Republic was established in 1923, the Alevi worshipped in what were called tekke. But the new republic banned these as well as some religious pilgrimages and ritual under the 1925 Law on the Closure of Dervish Lodges, so restricting all Muslim public worship to mosques. Like closely-related Sufi groups, Alevi worship and rituals now took place only in private. While Alevis did not like this, they accepted it because the restrictions also affected Islamic movements the Alevis saw as hostile to them.

Restricting Muslim worship solely to the mosques administered by the Diyanet clearly raises serious questions in relation to Turkey's international law obligations to be impartial between religions and beliefs. It is for followers of religions or beliefs to decide where they worship – this cannot be a state decision. Turkey is willing to give Alevi

places of worship the status of cultural associations, but not to recognise them as places of worship.

Why not?

Resistance is strong, for a variety of reasons, to recognising Alevi places of worship. Firstly, the Diyanet, which reports directly to the Prime Minister's Office, teaches that mosques – which it administers – are the only places of worship for Muslims. Secondly, most of the ruling AK Party's supporters come from Sunni Muslim backgrounds, and do not like the idea of granting freedoms to the Alevi and so fostering Alevi identity. And thirdly, Article 174 of the Constitution ("Preservation of Reform Laws") bars changing certain laws, including the 1925 Law on the Closure of Dervish Lodges. It may be possible to overcome the restrictions imposed by this Law, by interpreting it and related laws to facilitate freedom of religion or belief.

What difference can having a legal place of worship make?

It is possible, de facto, for Alevis, and others to worship in a building not legally recognised as a place of worship. But there are financial, legal and social consequences of non-recognition.

Financially, places of worship enjoy exemptions from a number of taxes, for instance, property tax, electricity and water tax. Belief communities whose buildings do not have a legal place of worship status cannot benefit from these exemptions.

Legally, gathering for worship in a building that is not legally recognised, or calling it a cemevi, church or similar name may result in prosecution. In Istanbul a Christian was prosecuted on 25 May 2010 for calling his association (established for running seminars on Christianity) a church. He was acquitted when he stated that his poor Turkish as a foreigner led him to wrongly describe his legal association as a church. A number of self-described "churches" without legal place of worship status, but with legal associations, have been formally warned by local police that worship in their buildings is unlawful. The reason given is that the buildings are not legally recognised as places of worship.

Similarly, the authorities are currently attempting to close down an Alevi association, the Cankaya Cemevi Building Association (CCBA), in the capital Ankara. The reason for the ongoing court case is that the CCBA's legal statute describes the cemevi as a place of worship.

Non-recognition of cemevi as places of worship is based on an opinion by the Diyanet – which does not in Turkish law have binding legal force. A Communication (No. 1773), sent by the Diyanet to the Interior Ministry on 17 December 2004, states that: "It is not possible to consider cemevi and other places as places of worship because Alevism, which is a sub-group within Islam, cannot have a place of worship other than mosques or mescit that are common places of worship within Islam".

The Associations Directorate of the Ministry of Interior on 30 March 2005 sent a letter (No. 1277) to the Ankara Governorship, referring to this Diyanet opinion. The Interior Ministry asked for the CCBA to remove references to cemevi as a place of worship from its statute. The CCBA refused to do this when the Ankara Governorship wrote to them requesting this, stating that for all Alevis cemevi are accepted as places of worship. The Governorship then initiated a court case via the Ankara Prosecutor's Office to close the CCBA down.

The Alevis have protested strongly against this, not least as the Diyanet opinion has no legal force and they object to their religious community being made subject to the

opinions of another religious community. The state's interference in Alevi internal religious affairs by attempting to dictate whether or not cemevi are places of worship, as well as its subjugation of one religious community to the dictates of another, seems indeed seriously incompatible with international law. Were the case to reach the European Court of Human Rights in Strasbourg, it is very likely that Turkey would lose.

Socially, having a legally-recognised place of worship gives a religious community a high social standing and helps their followers not to be marginalised. This is important in Turkish society – not least for those communities whose followers are at risk of violent attack.

Theoretically possible, but in practice..

Legally, it has been since 2003 theoretically possible to establish places of worship other than mosques, under legal changes brought in because of the European Union accession process. But local authorities are allowed wide discretion in granting permission for this.

Local planning regulations, prepared by municipalities, have detailed Implementation Guidelines for what are referred to as "religious facilities". These guidelines also contain detailed structural and construction requirements. For example, the Greater Izmir Municipality's Guidelines require a place of worship to have an at least 2,500 square metre [3,000 square yard] plot of land in newly developing areas. This is beyond the means of small religious communities, and in any case they normally do not want such large buildings. Also, as religious communities cannot legally exist, how can they buy land and build buildings as themselves?

Protestant communities for example, which have mainly been founded since 1980, would like to build or establish legally-recognised places of worship. Since 2003 one Protestant foundation (not a church) - the Istanbul Protestan Vakfi – has had in 2006 its building granted the status of place of worship. But more than than 20 applications have been turned down for various reasons.

In the south-eastern city of Adana for example, the local Protestant community's applied in writing on 5 February 2005 to the local municipality for a building to be approved as a place of worship. They received no written reply and enquired about this. They were then told verbally after a long time by an official of the sub-provincial municipality that the the municipality assembly said: "This is a Muslim neighbourhood. You cannot sell snails [which are forbidden by Muslim dietary laws] here". No further reply has been received and their application was returned to them.

Mosques, which can only be run by the Diyanet, are subject to a different planning and regulatory regime. They have to be constructed in conformity with the regulations of the Diyanet.

A trapped right

It is extraordinary that a basic and fundamental right such as freedom of religion or belief should be so restricted, when it is protected under international human rights treaties and Article 24 of Turkey's Constitution ("Freedom of religion and conscience"). The right of all to establish places of worship is trapped in political inaction and the arbitrary decisions of public administrators. Turkey's unwillingness to implement its international obligations, and inaction against arbitrary decisions by public officials, continues to leave Turkey's vulnerable religious communities disadvantaged.

Turkey's international and domestic human rights obligations, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Turkey's

aspirations to become a member of the European Union, all demand that this right be freed from its current trap.

Turkish court ignores directive from ECHR

Conscientious objector sentenced to ninth consecutive prison term



Barış after three years in prison.

JW Official Website (16.02.2011) - The European Court of Human Rights (ECHR) directed the Turkish government on July 7, 2010, to "suspend all penal actions" against Barış Görmez and "not to execute any sentence issued" against him until the Grand Chamber of the ECHR renders its judgment in the conscientious objector case of *Bayatyan v. Armenia*. Nevertheless, on January 26, 2011, the military court in Isparta ignored the ECHR interim directive and sentenced Mr. Görmez back to the military prison where he has been since November 5, 2007. The court made this decision after conferring with the Republic of Turkey Ministry of Justice.

"Barış is essentially caught in a never-ending revolving door because current laws in Turkey do not allow for conscientious objection to military service," states Ahmet Yorulmaz, a spokesperson for Jehovah's Witnesses in Turkey. Yorulmaz continues, "As soon as he finishes one prison term, Barış is sentenced to another because his Bible-trained conscience does not allow him to wear a military uniform or bear arms. The decision by the Isparta Military Court and the Ministry of Justice to ignore the ECHR directive sadly confirms that there is no end in sight for this type of injustice in Turkey."

Bariş Görmez is 33 years old, a Turkish citizen, and a former professional basketball player. He has consistently stated that he would be willing to perform alternative civilian service if this option was available. After more than three years of incarceration, Bariş has not wavered in his determination to maintain his firm Bible-based conviction to abstain from learning war, in spite of difficulties he has endured. Even before arriving at prison, cruel attempts were made by the military police to coerce Bariş to change his religious beliefs and take up arms. He was hit, kicked, and stepped on while the soles of his feet were beaten with a club. At seven feet tall, Mr. Görmez also faces a constant challenge in prison. In order to sleep, he must either pull two beds together or contort into an uncomfortable position each night.

An application was filed on March 17, 2008, and is pending with the ECHR on behalf of Mr. Görmez and three other Turkish Jehovah's Witnesses who are conscientious objectors.

Headscarf continues as a political issue

By Jacques N. Couvas

IPS (31.01.2011) / HRWF (01.02.2011) - <http://www.hrwf.net> - A ruling by an administrative court banning female candidates for academic posts from being veiled during an admission examination has brought the headscarf back to the front of Turkish politics, and reignited tensions between secularist and religious forces.

The crisis was triggered following an initiative by the Student Selection and Placement Centre (OSYM) to allow wearing of the headscarf during the Selection Examination for Academic Personnel and Graduate Studies (ALES).

A ban on this attire in higher education and public administration premises had been observed strictly until recently, but OSYM's initiative led the Education and Science Workers' Union (Egitim-Is) to file a complaint with the Council of State.

The Council of State is Turkey's highest administrative instance, with large judicial and advisory powers in practically all state activities. It functions through a structure that controls 23 district chambers, 33 administrative courts and 63 tax courts.

The decision of the Council to maintain the ban has not gone well with the ruling Justice and Development (AK) Party.

Turkish Prime Minister and AKP leader Recep Tayyip Erdogan did not wear gloves in punching back at the Council. Addressing a businessmen association in Ankara after the ruling last week, he declared the decision "highly politicized", "unfounded" in legal standing, and said prohibition of the headscarf was "unlawful".

The opposition was quick to react. Defending the legitimacy of the Council's acts and its constitutional status, Kemal Kilicdaroglu, chairman of the Republican People's (CH) Party remarked that no one had the right to object to the Council's conclusions. CHP, formed in 1923 by the Turkish Republic's founder Mustafa Kemal, better known as Ataturk, is the largest minority party in the Grand National Assembly.

Secularism has been the driving force of the Republic for the past 88 years. Following the collapse of the Ottoman Empire at the end of World War I, and a successful independence war against the foreign powers that had appropriated parts of mainland Turkey, Ataturk embarked on modernizing his country by introducing western models, both in state governance and people's lifestyle.

He saw religion as the main obstacle for the emancipation of the Turks, and abolished all state institutions that had been in the hands of, or influenced by the clerics. The dress code was associated with such influence. The headscarf for women and the fez for men were banned from public life, although individual religious freedom was not restricted. He and his entourage championed the western attire, from French-designed dresses to the tuxedo and top hat. Business and society in the urban areas followed suit, but no significant changes were noticed in the countryside.

Nationalists consider the headscarf a symbol of religious activism and social conservatism. Turkish governments since World War II have turned a blind eye to its use. But with the emergence of Islamic political parties in the 1990s, secular authorities have toughened their stance.

Since 1997 women covering their head are not allowed to enter public buildings, universities, or military premises, including military hospitals. Many who insisted on wearing the headscarf have been deprived of higher education, or have had to migrate abroad to pursue their studies and careers.

The Islam-rooted AKP, which has won the legislative elections twice since 2002 and appointed its member Abdullah Gul president in 2008, has made abolition of the ban a compelling theme in its political programme. In a country where 98 percent of the population is Muslim, this seems a convincing argument with voters.

It is estimated that 65 percent of Turkish women wear the headscarf, but there is no reliable research on the meaning they attach to it. The wives of the president and the prime minister are fervent supporters of the veil, and adorn themselves with fashionable silk foulards privately and at official ceremonies.

The AKP victory in 2007, when it won 47 percent of the vote, led the ruling party to introduce legislation in 2008 to reverse restrictions on the headscarf. But the Constitutional Court invalidated the decision of the MPs. The issue went back to square one. Until last October.

Following a fresh triumph on Sep. 12 last year when the party won 52 percent support in a referendum to amend the Constitution, the government felt strong enough to tackle the headscarf issue once more. The Higher Education Authority (YOK) issued a circular to the rectors of universities that no student should be excluded from attending class because of their dress. Most academics complied grudgingly, but there were cases of resistance. In one instance this led to suspension of a professor at Istanbul University.

OSYM seems to have followed YOK's initiative. But it ran into the all-powerful Constitutional Council. This institution, first formed in mid-19th century during the reign of Sultan Mahmut II, was later reformed to match the model of the French Conseil d'Etat created in 1867 by Napoleon III.

Abolished by Ataturk in 1922 first as an Ottoman relic, it was restored on his request in the Turkish Constitution of 1924 (Art. 51). It has since been a major pillar of the Republic, safeguarding Ataturk's doctrine on secularism, that is a mandatory component of the curriculum in secondary and undergraduate studies till today.

"I had to allow a head-scarfed young woman attend my course," an Istanbul academic told IPS on condition of anonymity. "I was trapped: not accepting her might cost me my job; admitting her goes against the ruling of the Constitutional Court. The worst part was that, later during their association's meeting, students expressed dissatisfaction with my tolerance. Damned if you do, damned if you don't."

Education should facilitate, not undermine, freedom of religion or belief

By Mine Yildirim, Researcher at the Institute for Human Rights at Åbo Akademi University

Forum 18 (05.01.2011) / HRWF (06.01.2011) - <http://www.hrwf.net> - The need to review and reform Turkey's primary and secondary school education system to facilitate freedom of religion or belief is urgent. Members of various religious communities have identified key problems in the compulsory Religious Culture and Knowledge of Ethics school classes themselves, in the way exemption from these classes is strictly limited, and in the discrimination experienced by children seeking exemption and their parents or guardians. Also, textbooks in classes on the History of Turkish Republican Reforms and Atatürkism provide misleading information encouraging intolerance.

Many in Turkey – from both religious and secular backgrounds – consider that this is an urgent problem, as these aspects of the school system play a role in fuelling intolerance and a type of nationalism behind violent attacks and possibly even murders experienced by vulnerable groups.

Compulsory classes, limited exemptions

Religious Culture and Knowledge of Ethics classes, for between one and two hours a week, are compulsory in all primary and secondary schools. Lessons are heavily based on the Sunni branch of Islam, and the textbooks are prepared and published by the Education Ministry. The state must provide some classes in this subject – although not necessarily in the current form - as Article 24 ("Freedom of religion and conscience") of the 1982 Constitution states that: "Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools."

However a 1991 circular from the Education Ministry granted the right to exemption to Jewish and Christian children whose parents are registered as belonging to these faiths in the Public Registry and on Identity Cards. (Schools for foreign children are also exempt from the classes.) Greek Orthodox, Armenian Apostolic and Jewish schools must hold Religious Culture and Knowledge of Ethics (RCKE) classes but - because of these communities' rights under the 1923 Lausanne Treaty – such classes are based on Christianity and Judaism respectively.

(Compulsory recording of individuals' religious affiliation, and the associated violations of freedom of religion or belief, has been a subject of an as yet unimplemented European Court of Human Rights (ECtHR) judgment – see F18News 8 October 2010 http://www.forum18.org/Archive.php?article_id=1496.)

As only registered Jews and Christians have the right to be exempt from the state RCKE curriculum, followers of every other belief and those who do not wish to express a definite belief must attend the classes. This includes Baha'is, Jehovah's Witnesses, Yezidis (an ethnic Kurdish faith), atheists, agnostics, and Muslims – including Alevis - who do not follow the Sunni branch of Islam that is taught in RCKE classes.

Opposition to teaching government-defined Sunni Islam

Religious Culture and Knowledge of Ethics classes are not lessons about world religions, but about Sunni Islam with a small portion of the curricula devoted to some non-Islamic faiths. They incorporate Sunni religious practices including memorising prayers in Arabic.

This compulsory teaching of one religion and its practices seriously interferes with the right to be free of coercion to profess a certain religion or belief.

The Alevi community – estimated to be around 20 million people (the number is not certain as there is no statistical information available) or around one third of the population – is Turkey's largest Muslim religious community after the Sunni Muslim majority. They argue that the RCKE lessons are a means of assimilating their children into Sunni Islam, and have publicly demonstrated against this. Alevis tend to have two contrasting approaches to the issue. One approach is to demand that RCKE lessons be abolished. On the other hand, Caferis (Alevis who are close to Sunni Islam) tend to demand substantial reform in the content to include Alevi perspectives, rather than demanding the abolition of the classes.

Some Sunni Muslim families are also unhappy with the RCKE classes, claiming that they teach the state interpretation of Sunni Islam and lack authenticity. In a 27 October 2010 article in Istanbul's Star newspaper, regular columnist Hidayet Tuksal pointed out that Sunni Muslim parents have many possibilities to pass on their religion to their children, so the abolition of RCKE classes would not be a major deprivation. She argued instead that an objective lesson on religions would be more exciting and beneficial for children.

However, the government continues to disregard these protests – and its legal and political human rights commitments (see section below). The Education Ministry is adamant that RCKE classes must remain compulsory. Changes in the curricula are made frequently – but never yet have these changes seriously addressed the freedom of religion or belief issues that the classes' current form involves.

Minister of State Faruk Çelik promised, in October 2010, substantial changes in textbooks for the 2011-2012 schoolyear to include information about various strands of Islam, including the Alevis and Caferis. However, it remains to be seen whether these promised changes will satisfy everyone in these communities. Expanding exemption possibilities (as a 2007 ECtHR judgment requires – see below) is still not being planned, so those for whom the content of the lessons interferes with their right to bring up their children in line with their own beliefs will continue to experience problems. And although some Alevis and Caferis may welcome these changes, the proposals do not address the religious freedom violations the system causes for – among others - atheists, agnostics, Bahai's, and Yezidis. So even the "substantial" change promised by the government falls short of providing a framework compatible with the right to freedom of religion or belief.

Interestingly, the 2009 Strategic Plan of the Diyanet (the government's Presidency of Religious Affairs - see the F18News religious freedom survey http://www.forum18.org/Archive.php?article_id=1379) identifies demands from some members of Turkey's Alevi community to eliminate compulsory religious classes as one of the threats to the Diyanet. It regards these classes as important to foster its preferred monolithic form of Turkish identity, even though Turkey is a far more diverse society than this approach to Turkish identity acknowledges (.).

Exemption problems

Exercising the right to exemption from RCKE classes can be difficult, as parents often complain. Many school administrators are uninformed about the right to exemption and hence do not inform students and parents of their rights. According to official records 99 per cent of the Turkish population is Muslim, so the number of students who have the right to be exempted is very small in total and within individual schools. But as schools have copies of students' Identity Cards in their files, they can identify who has the right to exemption.

A particular problem has arisen since 2006, when it became possible to leave the religion section in Identity Cards blank. Yet those who leave this section blank do not have the right to be exempted. This means that those who want to be exempted are forced to disclose a religion – an interference in the "forum internum" which enjoys complete protection in international human rights law. To gain exemption, this disclosure is required at the beginning of every school year.

One Christian parent, who asked Forum 18 that they should remain anonymous, stated that their child's school "is trying to manage the exemption process in the best way they can". But the parent does not want to disclose their family's religious affiliation and nor does the child: "this year [2010] my child told me that they do not want to take a letter about this to school every year". The family considered bringing a legal case about this against the Education Ministry, but this is expensive and would bring unwelcome media attention.

In 2004 an Alevi parent brought a case to the European Court of Human Rights (ECtHR) in Strasbourg (*Hasan and Eylem Zengin v. Turkey*, Application no. 1448/04), claiming that the compulsory nature and the content of RCKE classes violated the European Convention on Human Rights and Fundamental Freedoms (ECHR). In its 2007 judgment, which became final in January 2008, the ECtHR upheld the complaint and confirmed that the content of the books lacked objectivity and pluralism and urged the government to bring its teaching into line with the requirements of Article 2 of Protocol No. 1. The basis of the violation was the absence of an acceptable way of exemption from these classes (see <http://cmiskp.echr.coe.int/td/1977/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=22423&sessionId=64341749&skin=hudoc-en&attachment=true>).

Governments are obliged not only to pay any fines or compensation required by the ECtHR, but to remove the cause of any violation. However, Turkey has taken no action to implement the judgment.

Atheist parents of a 10-year-old child complained that the local administration refused to accept their application for exemption from Religious Culture and Knowledge of Ethics classes for their primary school student child. The judgment of 8th Chamber of the Administrative Court in Istanbul on 26 May 2010 found their complaint rightful based on Article 24 ("Freedom of religion and conscience") of the Turkish Constitution and Article 9 ("Freedom of thought, conscience and religion") of the ECHR. The judgment further specified that the exemption decree concerning Jews and Christians should also be applicable to families without any faith. The government has made no public response to this ruling.

Jehovah's Witnesses are not recognised in Turkey as a separate religion but, according to a court decision based on an "expert opinion" of the Diyanet, as a "sect" within Christianity. (Most Christians, unlike the Jehovah's Witnesses themselves, think that they are a non-Christian religion.) Jehovah's Witnesses often identify themselves on Identity Cards as Christian, and so in Turkish law are entitled to exemption from RCKE classes. However, school administrations often identify them as a separate religion and deny them the right to be exempted.

In international human rights law, the opinions of state officials - whether in the Diyanet or in school administrations - on the religious identity of an individual are irrelevant to that person's right to freedom of religion or belief. Everyone, without any exceptions, has this right and the government has the duty to facilitate this. Yet as these examples show, public authorities often decide to restrict religious freedom, instead of facilitating the enjoyment of this fundamental human right.

Exercising exemption right leads to intolerance

Even if parents manage to apply for and gain exemption through the official process, children often experience intolerance directed against them and their exercise of the right to freedom of religion or belief. Protestants and Jehovah's Witnesses in particular have complained about this. Exempted children are also often required to sit in the classroom as RCKE lessons take place, as there may not be alternative rooms where they can wait for the next class.

Children themselves have complained of intolerant attitudes and comments by teachers and classmates, because of their non-participation in RCKE classes. Children and parents are frequently reluctant to complain about this, as they think this would result in even more hostile comments against them. A September 2010 report by the Association of Protestant Churches contains examples of this problem (see http://www.protestankiliseler.org/Protestants_in_Turkey-_A_Threat_of_Under_Threat_2010__.pdf).

The Association of Protestant Churches told Forum 18 that it wrote in 2010 to the Education Ministry about the problems faced by children and requesting an effective remedy. The Education Ministry merely replied stating that it would inform schools of the problem. In 2009, the Ministry said it would inform provincial National Education Administrations of the problem. No change in the situation has yet been experienced by children and parents.

Textbook problems

Despite the Education Ministry's review of the content of school textbooks and removal of discriminatory references to members of ethnic and religious groups, problems remain. A review and monitoring project carried out by the Istanbul-based History Foundation (Tarih Vakfi) in 2009 found that the Education Ministry's reform of schoolbooks had ignored many of the Foundation's 2005 recommendations (see <http://www.tarihvakfi.org.tr/english/historyeducation.asp#3>).

In the field of freedom of religion or belief, the Foundation recommended in 2009 that the Education Ministry should ensure that textbooks reflect the fact that different ethnic and religious groups living in Anatolia are major components of Turkish society and identity (see http://www.tarihvakfi.org.tr/dkih/download/bulgular_tavsiyeler_raporu.pdf).

The school textbook on the History of Turkish Republican Reforms and Atatürkism, for 13-year-old children, is one example of the problem. It states that: "Missionary activity is not the ordinary propagation of religion. Missionary activities cannot be classified under freedom of thought and the freedom to express opinion."

The textbook also states that: "Missionaries have political, cultural and economic aims in addition to religious aims. They try to fulfil their goals through the significant financial support of foreign powers, some non-governmental organisations and from their own supporters. Missionaries exploit the financial hardships of people. They translate texts related to their own beliefs into different languages and distribute them free of charge and accordingly use written and visual media for their propaganda purposes. They are a threat to the national unity and integrity of our state and nation."

These statements reinforce the common attitude in Turkish society and the mass media that sharing beliefs threatens national security. Such an attitude has been encouraged by the National Security Council, which is chaired ex officio by the President and also comprises the Chief of the General Staff, the commanders of all the branches of the Turkish Armed Forces and several government ministers. In the opinion of many within

Turkey, propagating such attitudes does result in breaches of national security - violent attacks and even murders against Turkish citizens.

While the textbook does not refer to any specific religious community as conducting "missionary" activity, clues to who may be in mind can be found elsewhere. For instance, a 2002 letter from the Diyanet's Chamber of Religious Education to the Council of Higher Education alerts educators about certain "destructive" groups and "missionary" activities. Among those the Diyanet bracketed together are Baha'is, Jehovah's Witnesses, Hizbullah paramilitaries, and unspecified other "missionaries".

Freedom of religion or belief is not an unlimited right. In the ECHR, it "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". Commenting on this, the ECtHR noted in a 12 February 2009 judgment (Application no. 2512/04) in a case involving a missionary in Russia that: "the Convention does not allow restrictions on the ground of national security. Far from being an accidental omission, the non-inclusion of that particular ground for limitations in Article 9 reflects the primordial importance of religious pluralism as 'one of the foundations of a 'democratic society' within the meaning of the Convention' and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs".

Turkey's legal and political human rights obligations

Compulsory Religious Culture and Knowledge of Ethics classes and other problems in the education system seriously interfere in the child's right to freedom of religion or belief, as well as the right to education which respects parents' and guardians' religious and philosophical beliefs. Both of these rights are protected in the articles protecting freedom of religion or belief of the International Covenant on Civil and Political Rights (ICCPR) (Article 18) and the European Convention on Human Rights and Fundamental Freedoms (ECHR) (Article 9).

Article 2 of Protocol No. 1 ("the right to education") of the ECHR also protects these rights, stating that: "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions." However in 1954 Turkey lodged a reservation on this Article protecting its Law No. 430 of 3 March 1924, which has the effect of placing all educational institutions offering religious education under state control.

As a participating State of the Organisation for Security and Co-operation in Europe (OSCE), Turkey has politically committed itself to implement measures "to counter prejudices and misrepresentation, particularly in the field of education". Initiatives to enable this to happen include the OSCE's Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools <http://www.osce.org/odihr/documents/29154>, which was produced with the aid of a Turkish academic expert.

As a signatory to the ICCPR and the ECHR, and an OSCE participating State, Turkey is obliged to protect everyone's right to freedom of religion or belief within the education system. Yet the government shows no signs of carrying out these obligations by taking action to provide fair education on religions and beliefs in schools.

Solving the problem

Solving the problem of violations of freedom of religion or belief in the education system is not just a matter of changing textbooks and curricula. The attitudes of teachers and conditions in the classroom are crucial in addressing the issue. If these reflect respect for

everyone's freedom of religion or belief, the education system can become a powerful factor in addressing issues of human rights and tolerance in Turkish society.

Turkey has to seriously rethink the role of the state in providing religious education (and other religious functions such as those of the Diyanet) to be in line with ECtHR judgments obliging the state to remain neutral and impartial. However the government's desire to retain compulsory RCKE classes, a narrow approach to exemption and the legal bar on providing alternative primary and secondary school-level religious education contradicts this need. Instead of addressing its ECHR obligations, the government appears to want to retain control of all aspects of religious education in a way that maintains a discriminatory disparity between the dominant faith and other religious and non-religious beliefs.

As the European Court and others have indicated, many changes are necessary - for example of curricula, textbooks, the conduct of lessons and exemptions from them, and the administration of schools. An overdue first step was specified in the ECtHR's October 2007 judgment in the Zengin case (Application no. 1448/04): "bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1". Implementing this - as Turkey has been required since January 2008 to do - would include legally enabling all parents who wish to exempt their children from RCKE classes to do so.

Implementing respect for the freedom of religion or belief of parents, children and staff within the education system will not endanger national security. Instead, it will help address the threat to national security that violent attacks and murders represent, and contribute to Turkey flourishing as a truly pluralistic democratic society.
