

Freedom of Religion and Belief in Turkey

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Edited by

Özgür Heval Çınar and Mine Yıldırım

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P U B L I S H I N G

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Dedicated to the people who have not given up on the struggle
for the protection of freedom of thought, conscience and religion
in Turkey for all- you continue to inspire us!

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INTRODUCTION

ÖZGÜR HEVAL ÇINAR* AND MİNE YILDIRIM**

The protection of the right to freedom of thought, conscience and religion is one of the most basic tenets of a democratic society. This right is not only crucial for those who believe but is also for atheists, agnostics and sceptics who have no religious beliefs. It is also considered a cornerstone of a democratic society and closely linked to pluralism, tolerance and open-mindedness.¹

Freedom of thought, conscience and religion is recognised by numerous international human rights documents such as Article 18 of both the Universal Declaration on Human Rights and International Covenant on Civil and Political Rights, Article 10 of the Charter of Fundamental Rights of the European Union and Article 9 of the European Convention on Human Rights (ECHR).² Although the Republic of Turkey (hereinafter ‘Turkey’) is a signatory to these conventions and therefore recognises this freedom in principle, when it comes to implementation its record leaves a lot to be desired.

Turkey has been involved in an accession process in order to become a full member of the European Union (EU) since 2005. The Justice and Development Party (*Adalet ve Kalkınma Partisi – AKP*), which first formed a government after its election victory of 2002, pledged to introduce reforms and lift prohibitions. Hence, although the AKP has made significant progress towards meeting the political norms required for EU membership in its twelve years in power, there are many outstanding restrictions regarding the right to freedom of thought, conscience and religion which remain in place. Although some flexibility was introduced for religious minorities such as Christians, significant restrictions on religious and community life remain. Moreover, the government seems reluctant to even consider recognising the right to conscientious objection to compulsory military service. The Norwegian Helsinki Committee: Freedom of Belief Initiative’s Monitoring Report on the Right to Freedom of Religion or Belief in Turkey demonstrates that the obligation to observe the principle of neutrality in the protection for religion freedom continues to be a fundamental challenge in Turkey.³

Religion has always been an important component of Turkey's social and political life, but the fact that claims about religious freedom have been more and more expressed in human rights language and remedies sought in human rights compliance control mechanism is a relatively new dimension. The normative demands which have been the basis of these claims have challenged the traditional state-religion relationship. The recent new constitution-making process has seen vibrant debates on how freedom of religion or belief should be protected and positions reflecting the status quo have been challenged by demands for the state to make more space for pluralism and equality by observing equal distance to all religions or beliefs in the country.

Numerous fundamental steps taken following the establishment of the Republic brought about a unique state-religion arrangement that was in fact an evolved version of the Ottoman arrangement, rather than a complete rupture from the former. The Republic was founded on the rump of the Ottoman Empire and a nation state with a secular system replaced the Ottoman system of '*millet*s' (confessional communities). This new arrangement, put simply, consists of a secular state with a majority Muslim population where public religious (Islamic) services are administered under the *Diyanet İşleri Başkanlığı* ('Presidency of Religious Affairs', hereinafter the '*Diyanet*') and the non-Muslim communities are left to the provisions of the Lausanne Treaty. However, as the normative standards of the Council of Europe and the European Union in the sphere of freedom of religion or belief have been, increasingly, put before the public authorities as the criteria with which the Turkish legislation and practice should comply, the unique Turkish arrangement is repeatedly challenged. While the authorities have been able to respond with minor improvements, fundamental changes that are required have not taken place. Yet the claims around religious identity, neutrality of the state, the collective dimension of freedom of religion or belief as well as the religious diversity of the society cannot be overlooked for much longer.

As a potentially influential actor of domestic change, the European Court of Human Rights (ECtHR) has been a progressively more relied upon remedy for individual believers as well as institutions related to religious communities, in particular minorities. Community foundations that remain the life source of non-Muslim communities in Turkey have taken property cases to the ECtHR and have successfully achieved their return.⁴ On the other hand, many key cases dealing with *sensitive* religious freedom issues for Turkey, have not led to changes in Turkey. The numerous applications brought by conscientious objectors have resulted in decisions finding violation of Article 9.⁵ In addition, a case brought by an

Alevi parent concerning the compulsory Religious Culture and Knowledge of Ethics courses led to a decision which found that Turkey had violated Article 2 of the First Protocol of the ECHR because the instruction of these courses “cannot be considered to meet the criteria of objectivity and pluralism and, more particularly in the applicants’ specific case, to respect the religious and philosophical convictions of Ms Zengin’s father, a follower of the Alevi faith, on the subject of which the syllabus is clearly lacking.”⁶ Furthermore, the religion section of the national identity cards has also been the subject of a claim at the ECtHR and, again, a violation of Article 9 has been found.⁷ Despite an obligation on the part of Turkey to take necessary measures to prevent similar violations from occurring, this obligation has not been met. The reason for this is that such measures require fundamental changes that would ultimately alter Turkey’s state-religion relationship and bringing about such change has proved to be a significant challenge.

It is important to note that the, often, quoted presumption that Turkey’s population is 99 per cent Muslim may lead to a lack of understanding of the religious diversity in Turkey, both within the Islamic communities and amongst non-Muslims. The lack of statistics on the size of various religious or belief groups in Turkey may be, in itself, indicative of the reluctance to acknowledge the diversity of these communities, including, of course, atheists and agnostics. Policy in the field of religion is formulated on the assumption that 99 per cent of the population is Muslim while the rest are non-Muslims who enjoy special protection under the Lausanne Treaty. A closer look, however, will reveal that there is tremendous diversity within the Muslim community which is not officially recognized. There are non-Muslim communities which, due to the narrow interpretation of the Turkish state, are not afforded the protections ensured under the Lausanne Treaty. Finally, individuals who are non-believers are rarely taken into account in policies concerning religion and religious freedom. These issues are underlined in the report of international governmental and non-governmental organisations. For instance, the reports of United Nations Special Rapporteur on Freedom of Religion or Belief and the EU progress reports point to same problems.⁸

Each of the articles in the book contributed to this collaborative work reveal issues that remain test cases of whether the right to freedom of religion or belief is effectively protected and whether genuine substantive equality is achieved. Together they provide a broad picture of the state of freedom of religion or belief in Turkey. They aim to contribute to the understanding of Turkish secularism, religious freedom and the claims of members of belief communities as well as non-believers and to the debates

on the democratization process in Turkey. In a comprehensive manner, they present the contemporary challenges facing religious freedom for all in Turkey, while at the same time pointing to the complex nature of problems. We ask questions such as:

- What are the implications of Turkish secularism for freedom of religion or belief in Turkey?
- What is the relationship between state and religion in Turkey?
- How does the *Diyanet* figure in a secular state- can its presence be viewed as compatible with a neutral state that protects religious freedom in line with international human rights law for all?
- What is the basis of the reluctance to recognize the right to conscientious objection to military service despite numerous decisions of the ECtHR?
- How is the lack of recognition of religious diversity reflected in practice in the exercise of the right to freedom of religion or belief, in particular the right to manifest religion or belief in establishing places of worship?
- What does the failed new constitution-making process reveal about the challenges before the full protection of freedom of religion or belief and a commitment to observing the principle of neutrality and respecting diversity?
- What is the role of the judiciary in protecting religious freedom in Turkey? How do they justify legislation or practice that seem to conflict with international human rights norms in the name of, for example, secularism?
- According to international human rights law what are the obligations which Turkey has regarding freedom of religion and belief? What is Turkey's level of compliance with these obligations? In order for Turkish domestic law to comply fully with international norms what reforms still need to be made to Turkish law?

Thus, this book aims to provide an overview of recent developments pertaining to the protection of the right to freedom of religion and belief in Turkey, a country that in its constitution is defined as a democratic and secular state. As it is not feasible to examine all questions in one book, this study will confine itself to the most topical and urgent issues.

İştar Gözaydın presents legal regulations and political issues regarding religion in Turkey with a particular focus on the '*Diyanet*'. She also offers an overview of the concepts of '*laïcité*', 'secular', 'secularizations', 'secularisms', and 'post-secular' in order to contextualize the Turkish

case. She asserts that the creation of the Diyanet, as an organization that offers religious public services for the majority of the population which is affiliated to Islam, yet has an ambiguous mandate – conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion- makes the organization incompatible with a secular state. As regards the right to freedom of religion or belief, the existence of the Diyanet as an institution that serves a single religion, rather than all religions in Turkey, poses a significant obstacle before the protection of religious freedom according to Gözaydın. In addition, she criticises the AKP's interpretations of religion and conservatism as a new social engineering project similar to the one devised by the founding elites in 1920s and 1930s. She draws attention to a current danger, namely, the transformation of religious practices and their ethical rules into legal rules.

Hasan S. Vural outlines discussions by constitutional law scholars concerning the right to freedom of religion and belief in Turkey, concentrating in particular on how this right has been interpreted by domestic judicial mechanisms. A study such as this is crucial in order to comprehend how and in which ways this freedom is perceived in Turkey and how political, social and religious life in the country is affected. Vural points to two distinct existing generations of debate, the first of which developed as part of a quest to determine the correct stance of the secular nation-state towards Islam; whereas the second has adopted a more pluralistic approach as regards the protection of religious rights and freedoms, under the rule of law for a more diverse population. The first generation of debate reached an impasse with two competing ideas: Freedom *to* manifest religion *v.* freedom *from* the obligation of religion. As for the second generation, it has focussed on a plurality of concerns. The first generation has established a solid base of jurisprudence, whereas the second generation has yet to create a similar legacy. However, Vural concludes by arguing that the second generation will in all probability leave a stronger legacy than the first.

Freedom from religion is analysed though an overview of Turkey's historical, political and legal panorama. Following a comparative constitutional law analysis of freedom from religion, Tolga Şirin traces the state-religion relationship starting with the establishment of the Turkish Republic primarily in the context of laicism, which he qualifies as a certain synthesis of nationalism and Islamism under official control. Then he goes on to explore specific constitutional problems of freedom from religion; the national identity card, education, the Directorate of Religious Affairs, freedom of expression, and funerals. The official laicism, based on the syntheses of nationalism and Islamism under official control, cannot

solve the problem of freedom from religion. Irreligiousness still cannot be revealed with ease, therefore, the non-religious seem to be obliged to put up with the injustices to which they are exposed. He argues that the shift that is visible in the Constitutional Court's decisions after 2010 and the current political developments, have not, for the most part, brought a positive amendment as regards the position of the non-religious, as they have only resulted in a change in the manner in which Islam is controlled.

Berke Özenç analyses Turkish secularism in the context of the religion box in the Turkish national identity cards. First, laying out international norms, he provides an analysis of the transformation process that led to the ECtHR's judgment which recognises an individual's right not to be obliged to disclose his/her beliefs and the dynamics involved in this transformation. He also critically assesses the approach of local courts and the Constitutional Court in Turkey and highlights the cooperation between the Diyanet as a religious authority and the secular courts. Despite a clear norm in the Turkish Constitution on an individual's right not to be obliged to declare his/her religion or beliefs, the religion box on identity cards is deemed to be lawful. The reason for this, according to Özenç, is that the Turkish type of secularism remains a central element of the Turkish state's *raison d'être* and allows for such incompatible decisions.

The headscarf controversy and legal developments related to it in the context of Turkey are examined by Rossella Bottoni. In particular, the headscarf ban – which until recently prevented women working at public institutions from wearing a headscarf, is traced in the transition from the Empire to the Republic as well as throughout the recent reforms. The recent reforms have followed the 2011 election which confirmed the AKP as the biggest political party in Turkey, and this success favoured the carrying out of policies and practices more consistent with its orientation. Bottoni also discusses whether these reforms indicate that the AKP is engaged in Islamic fundamentalism and suggests that, now that the most sensitive issue of decades has been resolved, the problems of religious minorities should be tackled.

Özgür Heval Çınar deals with another controversial issue that lies at the heart of the right to freedom of religion or belief; the right to conscientious objection to military service. In addition to providing a human rights based analysis he also, looks at the internal dynamics relating to the right to conscientious objection in Turkey, and in this context includes historical and sociological analysis. Despite Turkey's international human rights obligations, under which it has a commitment to protect the right to conscientious objection, it has failed to create legislation recognizing this right. This has resulted in repeated decisions of

the ECtHR finding that Turkey has violated Article 9 of the ECHR. This resistance on the part of Turkey is explored as well. Why is this right not recognised in Turkish law? What are the historical and sociological reasons for this lack of recognition? Çınar argues that when the Turkish Republic was established, the goal of Turkey's founders was to create a new nation which was based on the idea of the military-nation. Therefore in order for the right to conscientious objection to be accepted as a legitimate expression of the freedom of thought, conscience and religion in national law Turkey must find a way to reconcile this right with the notion of its nationhood. Before examining the internal dynamics of Turkey, Çınar also takes a brief look at the history of conscientious objection. He subsequently explores the present situation of the right to conscientious objection as regards the level of recognition of this right at the national and international levels.

The issue of places of worship and the restrictions around it are depicted in Mine Yıldırım's article. She argues that despite legislative changes made in the European Union Harmonization process the right to establish places of worship has not been effectively protected. This is particularly the case for the Alevi community as well as the relatively newer belief communities like the Protestant community and the Jehovah's Witnesses. The Alevi community that makes up a fifth of the population, and as such can hardly be ignored,⁹ has for years argued that the state has persecuted them with a Sunni understanding of Islam. As far as the Alevi case is concerned the main issue appears to be the assessment of the legitimacy of the *cem* (gathering) houses as places of worship by the public authorities. Although the rights of non-Moslems were safeguarded by the Treaty of Lausanne, they face similar problems, which are discussed here. Numerous administrative obstacles make it virtually impossible for the churches of the Protestant community and the kingdom halls of the Jehovah's Witnesses to acquire place of worship status. She also presents a critical analysis of the European Court of Human Rights' lack of in-depth scrutiny in cases dealing with places of worship and argues that the Turkish case shows that international compliance control mechanisms need to exercise strict scrutiny when assessing restrictions on the right to establish places of worship.

Özgür Heval Çınar also examines the question of compulsory religious education in Turkey. Ever since the founding of the Republic of Turkey in 1923 there has been debate over the issue of religious education because it has been the subject of criticism on account of its Sunni Islam bias. This debate has intensified now Turkey has embarked on the process of joining the EU. Following the 2007 judgment in *Hasan and Eylem Zengin* at the ECtHR

Turkey's obligations regarding international law have been the subject of closer scrutiny. Çınar asks if this 'religious education' involves the exclusive teaching of Sunni Islam and whether there should be any compulsory religious education in schools. Çınar examines this question from two angles. Firstly, he looks at religious education in member states of the Council of Europe, and follows this by exploring the historical process in Turkey and the present legal situation regarding this question.

The drafting of the constitutional framework consisting of the provision on freedom of religion or belief, secularism and the Diyanet in the relatively recent constitution-making process is presented and analysed in the piece co-authored by Özge Genç and Mine Yıldırım. The process is analyzed with rich references to the submissions of religious or belief communities, opinions of the society at large and the position of political parties. This illuminating overview sets forth a constitutional framework that will be conducive to protect freedom of religion or belief for all in line with international human rights law. It appears that to a large extent political parties have failed to move beyond their traditional positions.

In conclusion, it is essential that the Turkish state make the necessary legislative changes and ensure practice that establish an effective legal framework for the protection of the right to freedom of religion or belief for all. If the existing restrictions on freedom of religion or belief are maintained or even extended, individuals and communities will not enjoy the right to manifest their identity or to freely exercise their civil and political rights and freedoms. During its accession process to the EU, attention has been focussed, rightly so, on Turkey's approach to the right to freedom of religion or belief; we hope that this study will prove useful to those endeavouring to understand this question.

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Notes

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¹ *Kokkinakis v. Greece*, 25 May 1993, European Court of Human Rights, No. 14307/88.

² Universal Declaration of Human Rights, UNGA Res.172 A (III), adopted on 10 December 1948; International Covenant on Civil and Political Rights, 999 UNTS 171, adopted on 16 December 1966, entered into force on 23 March 1976; Charter of Fundamental Rights of the European Union, 2000/C 364/01, OJ C 83 of 30 March 2010, adopted on 7 December 2000; European Convention on Human Rights, ETS 5, adopted on 4 November 1950, entered into force on 3 September 1953.

³ Norwegian Helsinki Committee: Freedom of Belief Initiative, *Monitoring Report on the Right to Freedom of Religion or Belief in Turkey January- June 2013*, <<http://inancozgurlugugirisimi.org/wp-content/uploads/2014/01/NHC-1%CC%870%CC%88G-FoRB-Report-Eng.pdf>>, accessed 30 April 2014.

⁴ *Yedikule Surp Pirgiç Armenian Hospital Foundation v. Turkey*, 26 June 2007 (resulted in friendly settlement), European Court of Human Rights, No. 50147/99 and 51207/99; *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey*, 8 July 2008, European Court of Human Rights, No. 14340/05.

⁵ *Erçep v. Turkey*, 22 November 2011, European Court of Human Rights, No. 43965/04; *Fethi Demirtaş v. Turkey*, 17 January 2012, European Court of Human Rights, No. 5260/07; *Savda v. Turkey*, 12 June 2012, European Court of Human Rights, No. 42730/05; *Tarhan v. Turkey*, 17 July 2012, European Court of Human Rights, No. 9078/06.

⁶ *Hasan and Eylem Zengin v. Turkey*, 9 October 2007, European Court of Human Rights, No. 1448/04, para. 70.

⁷ *Sinan Işık v. Turkey*, 2 February 2010, European Court of Human Rights, No. 21924/05.

⁸ E.g. United Nations Special Rapporteur on Freedom of Religion or Belief, 'Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief: Situation in Turkey', 11 August 2000, A/55/280/Add.1; European Commission, '2013 Regular Report on Turkey's Progress Towards Accession', 16 October 2013, SWD(2013)417 Final; European Commission, '2012 Regular Report on Turkey's Progress Towards Accession', 10 October 2012, SWD(2012)336 Final.

⁹ United States Department of State, *International Religious Freedom Report 2008*, <<http://www.state.gov/g/drl/rls/irf/2008/108476.htm>>, accessed 30 April 2014.

MANAGEMENT OF RELIGION IN TURKEY: THE *DIYANET* AND BEYOND

İŞTAR GÖZAYDIN*

Judicial and governmental “neutrality” with regard to matters of faith, ecclesial denomination, religious and theological education, the care for life, marriage, and death, is a condition *sine qua non* for the flourishing of modern democracies and political liberalism.¹

I. Introduction

This article discusses legal regulations and political issues regarding religion in Turkey, and focuses on the role, historical foundations and legal structure of the Presidency of Religious Affairs (*Diyanet İşleri Başkanlığı* – hereinafter ‘*Diyanet*’), an administrative unit founded in 1924 “to organize the religious affairs” in a secular state apparatus. In order to contextualise the issue, concepts of ‘*laïcité*’, ‘secular’, ‘secularizations’, ‘secularisms’, and ‘post-secular’ are explored. Thus the triangle between state, society and religion, with a special focus on a decade of successive AK Party (Development and Justice Party) governments, is scrutinised in the light of the right to freedom of religion and/or belief in Turkey.

It is a rare blessing to be surrounded by colleagues and friends from different disciplines. I am grateful to those that have presented me with the opportunity to discuss and improve the opinions that I developed during my formal education in law schools over the 30 years that I have been struggling with religion and politics. I am in debt to Professor Şerif Mardin, for helping me in comprehending the phenomenon of religion as a social matter and with my humble endeavor to read/understand the effects of Islam on the cultural operational mechanisms of Turkish society. Similarly, I am also indebted to Professor Talal Asad for the theoretical structuring of my work, primarily, in relation to the formation of secularism/laicism. The case of the *Diyanet* is a clear illustration of his

argument that the secular, like religion, has a history and is mutually constitutive with religion, and can not be separated either conceptually or historically. Needless to say, all the mistakes and defects are mine alone.

II. Historical Foundations of Religion and Politics in Turkey

I think that analysing the relations between religion and state in Turkey, just like other structures of Turkey's Republican era, is not possible without making comparisons with the Ottoman period and determining the points of rupture and continuity between the two eras. Three different approaches appear in the literature of Ottoman studies for matters of state and religion. As for the first approach, if one starts by recognizing a duality in legal norms existing in the Ottoman world² it may be proposed that the Ottomans had two separate sources of legitimacy: those depending on Islamic canon law and those on the Sultan's acts; although apparently this did not constitute a structure that would be called "the secular". Nevertheless, the system that was established in the Republican era may be traced back to the dual structure of the Ottomans starting from the 15th century when Mehmet II (the Conqueror) had his profane codification.³

There also exists a second approach which states that the Ottoman structure did not have such duality as described above; on the contrary, religion and the world, together, had constituted a whole embodied in the person of the Caliph-Sultan. According to this view, the Ottoman state was a theocratic one, and thus, the entire state structure took shape according to the rules stipulated by Islam. This thesis is supported by the fact that the Caliph-Sultan had religious as well as political identities, and both the vizier and the *Sheikh ul-Islam*, the chief religious official of the Ottoman Empire, were second to the sultan in political and religious matters.⁴

In addition to these two approaches, a third one claims that in the period from the Ottoman Empire to the Republican era, there has always been state control of religion.⁵ The Caliph/Sultan had the power to appoint as well as to dismiss the *Sheikh ul-Islam*; and the *Sheikh ul-Islam* would attend to religious matters on behalf of the Sultan.⁶ In this context a separate institutionalized power, like the Roman Catholic Church in the West, was never permitted to religious authorities in the Ottoman system.⁷

Scrutinizing the institutional dimensions of the relations between state and religion, one may observe that there exist both continuity and ruptures in various institutional bodies from the office of *Sheikh ul-Islam* to the *řer'ıye ve Evkař Vekāleti* (Ministry of Religious Affairs and Pious Foundations) and finally to the Presidency of Religious Affairs. While

Sheikh ul-Islam was responsible for judicial, legal, scholarly, administrative and political duties as well as religious ones,⁸ the *Şer'îye ve Evkâf Vekâleti* founded by the Ankara government on 4 May 1920 was an institution responsible only for religious matters and pious foundations, but this very effective institution was at the ministerial level as far as its place in the administrative hierarchy was concerned.⁹ The founding political authority of the Republican era had preferred to configure the institution of Presidency of Religious Affairs as an administrative unit under the Prime Ministry.

It seems that the Turkish Republic's founding elite designed the new Turkish state as a modernity project and therefore, no means that would satisfy this goal was spared. Actually the radical program of reform and Westernization that the Republican cadres pursued in the 1920s and 1930s had earlier started within the Ottoman Empire in the mid-nineteenth century, especially by the reception of Western codes and political principles. However, the purpose of the new leadership in this period was to secularize and modernize not only the state and the 'political', but also to transform society into a modern body. Thus, in my view, the biggest difference between Republican and Ottoman Westernizations was the spectrum of their *telos*; and laicism was one of the pillars for the Republican founding elite.

III. *Laic(ité)*, the Secular, Secularizations, Secularisms, Post-secular

Laïcité/laicism/laic is the term used for the state's control of religion in the public sphere as opposed to secularism which implies the separation of state and religion;¹⁰ and *laiklik (laïcité)* is the concept that is preferred by Turkey's Republican decision-making elite in all legislation and other legal regulations which actually shape its substance. I assert that, as a state's approach to religion, the laicism/secularism distinction is significant. However, since every society has different socio-political circumstances, the interpretation of secularism and laicism in political and thus legal systems exhibits differences as well. Both secularism and laicism are about state politics, law-making, and constitutional principles, but for the most it permeates and establishes the rhythm of a phenomenology of everyday life practices.¹¹ Neither laicism nor "(s)ecularism is . . . a 'neutral', power-free space and a set of abstract principles; (they are) embodied in people's agencies and imaginaries."¹² In other words, these concepts are socio-political constructions; thus various secularizations, secularisms, and laicism emerge in different socio-political climates.¹³ In this context, for

example, in the US, it has been preferred to interpret secularity as a state of impartiality towards religions and beliefs. In addition to a principle that bans the introduction of legislative activities designed to prevent the free practice of any religion, the First Amendment to the US Constitution, by means of the establishment clause, prevents the Congress from making a law establishing a religion. The Supreme Court's formulation regarding the establishment clause in the *Lemon v. Kurtzman* case¹⁴ may be a key to a particular understanding of secularism: (i) the purpose of no legislative or administrative procedure may be religious (*secular purpose*); (ii) religion must not be affected, either positively or negatively, by the implementation of the procedure (*primary effect*); and (iii) the state must not show excessive concern for religion because of the procedure (*excessive entanglement*). On the other hand, in the case of France, where the shadow of the Catholic Church is still felt, and with issues that have been emerging by increasing populations of Islam and other faith systems like Sikhism, a harsher interpretation of laicism has been preferred where the *Conseil d'Etat* has a regulative role.¹⁵

In all countries and in every historical period, secularization has been a coercive process in which the legal powers of the state, the disciplinary powers of family and school, and the persuasive powers of government and media have been used to produce the secular citizen who agrees to keep religion in the private domain. Sometimes this has been done by putting external and forcible constraints on the public political presence of religion, as in the Jacobin tradition of *laïcisme*, or in the Soviet Union and contemporary China, or in Kemalist Turkey.¹⁶

The formations of the secular follow different historical trajectories and have different religious genealogies in different places too, yet they are closely interconnected with hegemonic impositions of Western modernity and colonialism.¹⁷ Talal Asad, whom in the religion-secular debate,¹⁸ by following the work of Michel Foucault and Edward Said, focuses on genealogies of power, characterises “the secular” as an epistemic category, “secularism” a “political doctrine”, and “secularization” as a historical process.¹⁹ Both religion and the secular for Asad are “processual” rather than fixed ideologies.²⁰

It was Jürgen Habermas who first introduced the term post-secular in the German Peace Prize lecture in 2001, which he further elaborated in his later writings. Habermas labels the present era as “postsecular”, in which he has been increasingly stressing the importance of cultivating a stance that both reckons with the continuing global vitality of religion and emphasizes the importance of ‘translating’ the ethical insights of religious traditions with a view to their incorporation into a ‘postmetaphysical’

perspective, or in other words into a secular idiom.²¹ For Habermas, we live in a postsecular society where the classical assumption of the secularization thesis, whereby religion would disappear from the public sphere has been shown to be wrong. Two important elements – within the societal context of Germany and Western Europe – have refuted this theory: first, the appearance of public normative debates, such as abortion, stem cell research, etc., which also involved clerical institutions as legitimate public actors. Second is the visibility of Islam in Europe and its claim for Muslims' rights within the frame of citizenship based rights.²²

In his book, *Public Religions in the Modern World* published in 1994,²³ José Casanova states that the core and central thesis of the theory of secularism is the conceptualization of the modernization process with regard to the structure, organization and operation of society, and he points to its three components considered as essential, since Max Weber, in the development of modernity:

- (i) the separation of religion from politics, economy, science, etc., because of the increasing structural differentiation between the social areas;
- (ii) the privatization of religion within its own field;
- (iii) the decreasing social importance of the religious beliefs, attachments and institutions.

According to Casanova, only the first and third elements can be implemented. Even though the privatization of religion within its own field is part of laicism, it is not essential from the perspective of modernization. Casanova's argument is that whether or not unmaking religion a private matter threatens modernity depends on how religion becomes public. If it advances, as in Poland, the formation of a civil society, or encourages, as in the USA, public debates about liberal values, then the politicized religion and modernity are in perfect harmony with each other. However, on the other hand, if it tries to undermine civil society, as in Egypt, or individual liberties, as in Iran, then the politicized religion really turns into an uprising against modernity and the universal values of the Enlightenment.²⁴

Charles Taylor is another prominent scholar to exemplify liberal secularism. In *Secularism and Freedom of Conscience*, Charles Taylor and Joselyn Maclure aim to provide “an adequate conceptual analysis of the constitutive principles of secularism”, by stating that any understanding of secularism must “be approached within the broader problematic of the

state's necessary neutrality toward the multiple values, beliefs, and life plans of citizens in modern societies."²⁵

Ahmet Kuru coins the terms “passive secularism” and “assertive secularism” to imply a state’s neutrality toward various religions by allowing their public visibility in the former; and a state’s confining religion to the private sphere in the latter.²⁶

In this context, José Casanova’s related remarks may provide a suitable hint to answer the question, “to what extent has Turkey been a secular country?²⁷”: “Turkey is seen as too secular for the Islamists, too Sunni for the Alevis and too Turkish for the Kurds where Turkish values are strongly showed up.”²⁸ Fuat Keyman adds another statement: “for non-Muslim minorities Turkey is too Muslim.”²⁹

IV. “Diyanet”

I think that in order to understand religion, politics and the politics of religion in Turkey, as an initial step, a governmental organization, namely the *Diyanet İşleri Başkanlığı* (Presidency of Religious Affairs—hereinafter *Diyanet*)³⁰ should be scrutinized. *Diyanet* is a secular/laic administrative unit in the Republic of Turkey established in 1924 to execute services regarding Islamic faith and practices; to enlighten society about religion, and to carry out the management of places of prayer.

Diyanet was established by the Act dated 3 March 1340 (1924) no. 429 “on the Abolishment of The Ministries of *Şeriyeye* (Religious Affairs) and *Evkaf* (Pious Foundations).” By abolishing the *Şeriyeye Vekaleti* (Ministry of Religious Affairs), a new administrative unit called the *Diyanet İşleri Reisliği* (Presidency of Religious Affairs) was constituted. In other words, the new regulation placed the management of religious affairs in the hands of an administrative bureau, not to a ministry in the cabinet. In terms of administrative law, ministry is hierarchically the highest position in the central administration, and it is a political unit. Not to place the institution of “religion” in a political body was a key part of the overall policy of the founding political decision-making elite of Turkey who wished to establish a secular state and to transform society into a modern one. They did not want to have a unit within the cabinet dealing with religious affairs. Instead, by assigning religious affairs to an administrative unit, the ruling elite both took religion under their control and at the same time tried to break the potentially sacred significance of the *Diyanet*.

In my opinion, Act no. 429 is very significant in the construction of a secular system in Republican Turkey. The first article of Act no. 429 states that the Presidency of Religious Affairs has been formed as a part of the

Republic to administer all provisions concerning faith, rituals and the institutions of Islam. The article also explicitly pronounces that all other affairs are legislated by the parliament, namely the Grand National Assembly of Turkey and executed by the Cabinet formed by that body. This was an attempt by the decision-making elite of early Republican Turkey to secularise the sources and references of the legal system, an attempt that has mostly been successful.

It is apparent that the temptation to make secularism the equivalent of religion seems generally stronger in countries where secularism came about at the cost of a bitter struggle against a dominant religion; think, for example, of the Catholic church of Restoration France or Islam in the former caliphate of Turkey.³¹

The purpose of the new leadership in this period was to secularize and modernize not only the state and the 'political', but also to transform society into a modern body. In fact, the radical program of reform and Westernization that the Republican cadres pursued in the 1920's and 1930's had already started earlier in Ottoman times, namely in the mid-nineteenth century, especially by the reception of Western codes and political principles. Thus, in my view, the biggest difference between Ottoman and Republican westernizations/secularizations was the spectrum of their *telos*; and *laïcité* was the pillar for the Republican founding elite, which designed the 'Presidency of Religious Affairs' as an administrative tool to 'regulate' Islam.

Since 1924, the *Diyanet* has been under the auspices of the Prime Ministry, and the president of the institution has been appointed by the President of the Republic of Turkey upon the proposal of its Prime Minister. This administration regulates the operation of more than 85,000 registered mosques and employs more than 117,000 imams, Quran instructors, muezzins, and other religious workers, all of whom are civil servants with regular salaries. In time, the mission of the *Diyanet* has been expanded from simply supervising faith and worship.³² Article 154 of the 1961 Constitution of Turkey provided that the *Diyanet* was incorporated in the general administration to discharge the function prescribed by a special law.³³ That particular law was put into power after a long process of debate on 15 August 1965. Act no. 633 on the organization and duties of the *Diyanet*, redefined its task by Article 1, in terms of "conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion."

To create an administrative body to offer services to meet the general, daily needs of practicing Islam may be justifiable as 'public service' where a majority of the population belongs to Islam; however to assign to this

organization a function such as ‘conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion’ whose content is legally ambiguous, indicates that the state preferred to use the organization as an ideological tool in a manner different from the original intent of the founding elite. Such a wording on an issue as political as the regulation of religion in a secular state reveals that the state's choice of propagating and protecting a particular religion is completely incompatible with the notion of a secular state. However, one may assume that the legislators of the 1961 Constitution aimed to correct the Kemalist mistake of not adequately recognising the role of Islam in the formation of Turkish individuals’ identity.³⁴ The effort to create a moral order based on Islamic values through the state apparatus was consolidated by Article 136 of the 1982 Constitution that provided the *Diyanet* to carry out its mission within the framework of the principle of secularism and with the goal of achieving national solidarity and integrity. This actually is a pronouncement of the significant relationship between religion and nationalism which has been going on within the context of the Turkish nation-building process with roots not only in Republican times but in the late Ottoman period as well.³⁵ In the framework of the *coup d'état* political climate, legal arrangements to protect the status of the *Diyanet* were made by Article 89 of the Law of Political Parties, Law 2820 of 22 April 1983. This article, which is still in force, bans political parties that propagate the abolition of the *Diyanet*.

The absence of a clergy in Islam³⁶ has been a means of legitimising the state’s intervention in religion, and categorizing it as a public service.³⁷ Defining public services as activities managed by public legal entities or by private entities supervised by the state for the purpose of meeting a shared and general need which has acquired a certain importance for the people, the state’s involvement in religious affairs, in my opinion, does not conflict with laicist/secularist principles. An assessment of the duties of the *Diyanet* in this context reveals that duties such as ‘the management of places of prayer’ and ‘providing correct publications of the Koran’ are indeed public services that may be justified as fulfilling a collective need. However, the state makes use of the *Diyanet* as an administrative tool to indoctrinate and propagate official ideology regarding Islam while fulfilling duties like “enlightening society about religion” and “religious education”. An interesting point here is the differing policies of administrations over time. Certainly institutions are organisms constituted by human agents that process their own dynamics according to their agendas, thus sociologically and anthropologically it is interesting to scrutinize texts produced by various authorities of the *Diyanet*.

It is agreed by various authorities of the *Diyanet* over the years that production and transmission of religious knowledge is a prominent task of the institution. Religious in this context refers predominantly to Islam. Professor Ali Bardakoğlu, a former president of the institution, has emphasised this mission on many occasions. He states that “the *Diyanet* has a particular role in the production and transmission of religious knowledge.”³⁸ Bardakoğlu suggests, it “. . . provide(s) sound religious information.”³⁹

The *Diyanet* takes religious demands and traditional forms into account when delivering its services. However, if and when there is a departure from the shared and sustained perception, the *Diyanet* then promotes authentic knowledge; it strives to educate people about their religious beliefs and practices in the light of sound knowledge and scholarship. (. . .) Sound knowledge helps in fighting superstitions, ignorance, false ideas, misuses of religion and abuses in the name of religion.⁴⁰ “We are trying to understand religion as religion . . . to perceive it through its sources in a true knowledge, and to transmit it to our people in that way.”⁴¹

A preference for using adjectives like sound, authentic, true,⁴² healthy⁴³, “objective and true accurate”⁴⁴ indicates an essentialist approach that produces categories of legitimate and illegitimate religions. This may be read as a predictable outcome of the legal and political construction of religion in the Republican epoch of Turkey. As for Islam, it has been the task of the *Diyanet* “to define, represent, organize, and regulate its public forms. (. . .) Religious activities outside the oversight of the state are still perceived as a threat.”⁴⁵ What is interesting is to observe the state reflexes thereof. There appears to be a lot less difference than may be expected between the early Republican era with its strong Kemalist rhetoric, and the last decade with a series of pro-Islamic AK Party governments, as regards religious activities outside the oversight of the state.

The most important work of the *Diyanet* regarding the Koran was in the first years of the Republic; Elmalı’s interpretation titled *Hak Dini Kuran Dili* (Righteous Religion Quranic Language), which has been an important interpretation until the present day, was commissioned by the *Diyanet* and published in 1936.

Elmalı indicates that while he was writing his interpretation he followed the Sunni branch of Islam with regard to the creed and the Hanafite sect with regard to the practice. It is likely that he was asked to write his interpretation this way and he obeyed it, because whereas he shows a more dynamic and relaxed attitude in his other works, he shows a more conservative attitude in his interpretation.⁴⁶

When the Association of Turkish Women reacted to the statements given below in the hadith work of the twelve-volume *Sahih-i Buhari Muhtasari Tecrid-i Sarih Tercümesi ve řerhi* (Sahih al Bukhari: Translation and Commentary), the *Diyanet* commented that this book was published solely for commercial purposes:

The testimony of two women is equal to the testimony of one man. The women are deficient in both reason and religion. The women are bad luck. The things that spoil praying are dogs, donkeys, pigs and women. Hand contact with a foreign woman is hand adultery. Most of the people in hell are women.⁴⁷

In a decision, dated 2 June 2003, about women becoming witnesses in judicial process and on gendered principles of inheritance, the High Council of Religious Affairs stated the following:

According to Islam, ontologically and also with regards to religious responsibility, legal competence, and fundamental rights and freedoms, there is, in principle, no difference between a man and a woman. The difference indicated in the verse about borrowing emerges in the light of the conditions of the period which reflected a passive role for the women in the commercial activities, and does not contain a general arrangement. When the verses regarding this subject are considered as a whole, the testimony of a woman is equal to the testimony of a man; however, on the inheritance law,

a) (. . .) Women are not usually responsible for providing subsistence for others. However, men are on the contrary obligated to ensure subsistence of their spouses, their daughters, their mothers or sisters in nearly all societies. Therefore, in accordance with the principle of ‘blessing as much as the burden experienced’, a man, who is responsible for ensuring the subsistence of his spouse, daughter and mother or sister, is given twice the share of a woman who does not have such an obligation.

b) A woman has the right to use her financial assets any way she wants. Even if her financial condition is good, she does not have to take part in the family expenses. Therefore, from this perspective, in the case when both a woman and a man take equal shares, since he is under obligation to provide for his family and she is not, this will upset the balance against him.

c) A man is obligated to give *mehir* (some amount of property and goods) to his spouse. However, not only that a woman does not have such an obligation, but she also earns the right to get *mehir* from her spouse.

d) Although during the Islamic waiting period of a divorce process, the man is obligated to cover his wife’s expenses such as housing, food, clothing and medical treatment, the woman does not have such an obligation towards her husband.

As one can see, concerning the financial obligations, far from being equal to a man, in fact, a woman is in an advantageous position. In many areas, the financial obligations are imposed on the man. Therefore, because of the reasons given above, in dividing the inheritance among the siblings, the man receives, in accordance with the weight of his financial obligations, two shares; and having no financial obligations, the woman receives one share. This is the fairest and the most just inheritance division.⁴⁸

Efforts at balancing gender equality and Islamic principles by the *Diyaset* through *khutbas*⁴⁹ and in expanded services to women under the generic of family guidance within the last decade is an interesting process in order to read especially the continuities and ruptures of patriarchal mentalities of not only the Turkish state over time but also of society.⁵⁰

A *Diyaset* publication, entitled ‘21. Yüzyıl Türkiye’sinde Hurafeler’ (Superstitions in Turkey of the 21st Century) pursues the goal of “raising awareness of the people against superstitions” with a list that includes among others the following:⁵¹ “to hope for help from places like tombs and holy burials”; lighting a candle at a holy person’s grave and making a wish; believing that getting married between two religious holidays is unlucky; that itching right palm means money will come, itching left palm means money will be gone, and itching under the foot means a trip will be taken; walking under a ladder is bad luck; having a complete Koran reading or Islamic memorial service on the 7th, 40th and 52nd days and the anniversary of the funeral; believing that the pictures drawn on sand or soil by the seaside on the day of the ‘*Hidrellez*’⁵² celebration will be owned later on; fortune reading of a drunken coffee cup, going to the fortune tellers and wizards; to believe that whoever (the bride or the groom) steps on the foot of the other one during a marriage ceremony will be the boss in the house; to have an evil eye bead, to carry an amulet. Thus, many practices encountered frequently in the Turkish ‘folk’ Islam culture⁵³ appear to be disapproved by the *Diyaset*.

Diyaset announced the recruitment of Kurdish Islamic clergymen, called *meles* by the Kurds, as imams in south-eastern parts of Turkey. A *mele* is a traditional religious figure of vital importance among the Kurds, and he takes a leadership role in resolving societal issues such as tribal matters, honour crimes and blood feuds. They are highly respected community leaders, who have a great impact on the Kurds.⁵⁴

Currently, the *Diyaset* is a significant actor in the Turkish Islamic sphere⁵⁵ internationally on account of the Turkish state’s financial and organizational support. Whereas until the military coup of 1980 the *Diyaset*’s access had been limited to Turkey’s Muslims, after the coup the

Diyanet expanded its activities into countries with Turkish immigrant populations.⁵⁶ Since the early 1980's, the *Diyanet* has sent imams to Europe to counterbalance the influence of other Islamic communities on Turkish Muslims and to maintain their loyalty to the Turkish state.⁵⁷ "To counter undesirable Islamic influences, *Diyanet* is to propagate the 'correct' Sunni Islam through the mosques and compulsory classes on Islam, with a strong emphasis on ethics, human rights, and each citizen's duties towards state and country."⁵⁸ It seems in this context that the majority of the *Diyanet* followers do not have a collective identity of being a member of a separate *Diyanet* community, and consider the *Diyanet* to be above any Islamic community.⁵⁹ However, the *Diyanet*'s claim in international affairs is not limited to migrants with a Turkish background; but also claims a role as an actor thereof.⁶⁰

Diyanet as an institution has produced its own dynamics in spite of the official ideology which tried to shape it. Thus, it has taken on a meaning and significance that renders virtually meaningless the suggestion that the institution should be abolished and the religious realm left to the religious communities. Moreover, the extensive network of the *Diyanet* all over Turkey and abroad, which no other administrative body enjoys in the Turkish system, is a great opportunity for all governments, regardless of their positions in the political spectrum. However, the institution should not cling to its status and should be reorganized in accordance with the demands of the interested actors. It is not possible for those who use political power in a contemporary democratic state and present themselves as the representatives of society to ignore the wishes of the social corpus. Thus, those that seek to be represented in the *Diyanet* should be given the opportunity. Also those that demand to have similar institutions should be legally facilitated.

V. In the Scope of Freedoms of Thought, Conscience and Religion

The principle of equality, construed and applied as 'equality in blessings and burden' by the Turkish Constitution of 1982⁶¹, requires that all persons eligible for a public service should be able to benefit from such service in a free and equitable manner. The first problem that arises when the subject of a public service is religion is that the state is focused on a single religion rather than on services including all religions in the territory. As concerns our present subject matter, this problem is relatively easy to deal with, because Islam is the religion of the majority of the people and services related to other religions are provided by the

respective communities according to the provisions of the Lausanne Treaty⁶². However, problems emerge in services to be offered to other non-Muslim groups that are not recognized by the Lausanne Treaty like the Protestants, Bahai Faith groups, Jehovah's Witnesses, Yazidis or the Assyrians/Syriacs that belong to churches like the Syriac Orthodox, Syriac Catholic, and Chaldean Catholic, and to other Islamic understandings with different practices like the Alevis.

A draft law prepared in 1963 for defining the organization and duties of the *Diyanet* proposed the establishment of a "Presidency of Religious Sects." This proposal, however, was criticized on the grounds that it could "pave the way for official separation" and was never implemented.

The *Diyanet* claims that Alevis and Sunnites are not subject to discrimination because, except for certain local customs and beliefs, there are no differences between these two interpretations regarding basic religious issues; hence this indicates a denial of a separate 'Alevi' religious identity.⁶³ The fact that Sunnites constitute the majority apparently appears to be justifiable to the Turkish Republican laic elite, as the state disregards other sects. The *Diyanet* pretending to be unaware of the religious belief of the Alevi population, and its building of mosques in Alevi villages, is a pressure exerted by the state to implant the Sunnite belief in this section of society.⁶⁴

Legal recognition of religious group autonomy and places of worship is a pillar of religious freedom. A state that denies a religious community the very opportunity to establish and operate a place of worship is surely under a severe burden to justify it.⁶⁵ The European Court of Human Rights has taken a dim view of such matters. In *Manoussakis and others v. Greece*, the state was held to be "restricting the activities of faiths outside the Orthodox church."⁶⁶ In *Hasan and Chaoush v. Bulgaria*, the applicants complained that the state had interfered with their right to organise their faith. The Court maintained that "the personality of the religious ministers is undoubtedly of importance to every member of the community".⁶⁷ In 2001 a similar violation of Article 9 was found by the European Court of Human Rights regarding the Moldavian government's refusal to recognize and register the Metropolitan Church of Bessarabia.⁶⁸ The common theme held by the Court in these cases is no State is capable of arguing against definitions of rituals or places of worship of a faith-group. In Turkey, the state institutions including the *Diyanet* have continued to be reluctant to accept *cemevis* (cem houses- gathering houses), that Alevis define as their places of worship. This case has not been taken to the international human rights' judicial field yet; however, in the light of the above-mentioned