

Minorities in Constitution Making in Turkey

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By

Eduard Alan Bulut

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To Maria, my great-grandmother, and Zakia, my orphan grandmother

“What has happened to the concerns of the politically oppressed?”

(Elisabeth Anderson 1999, 288)

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ABOUT THE AUTHOR

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ABOUT THE BOOK

This book addresses the constitutional journey of religious minorities in modern Turkey, specifically the Lausanne minorities, who have been both coded and blacklisted in the official records for decades. It focuses on the non-Muslim citizens who have maintained their lives with confidential codes without knowing that these codes have been instrumentally used for strategic purposes. In spite of such discriminatory practices, they are on the way to a new democratic and civil constitution. It is significant to note that this will be their first constitutional experience in post-republic history.

The first book to document the role of religious minorities in constitution making in modern Turkey, it lists recent discussions and findings on this controversial process. One of the important findings of this study is that government-led initiatives endeavouring to be inclusive have had the opposite effect.

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Eduard Alan Bulut

September 2017

PREAMBLE

We are coded. We are stigmatized and blacklisted. And our records are secretly kept and saved.

In early August 2013, an item of news became a very hot issue and it was at the top of Turkey's agenda. It was about *ethnic coding*. This item of news hit the headlines in *Agos*, a weekly Armenian newspaper. Basically, it was something that everybody had heard of for the first time, though no one was surprised.

A rough summary of the story is as follows. A lady with Turkish citizenship wanted to go back to the religious and ethnic identities that her parents and ancestors once had and she fulfilled all religious duties and requirements to this end. She was baptized in accordance with the Armenian Church creeds and she revealed her religious and ethnic identity that she had kept secret until then for various reasons and pressures. Furthermore, she applied to the Civil Registry Office to change the term written in the small box reserved for *religion* on the back of her ID card and she requested Christianity be written instead. Later on, she wanted to enrol her little child in an Armenian nursery school, but the school administration asked for a document certifying that there was no problem with her enrolment according to the regulations. This document was a certificate of approval, issued by the directorates under the Turkish Ministry of Education. Upon request, the Provincial Directorate of National Education in Istanbul issued the document and it was given to the lawyer of the family so that he would present it to the District Directorate of National Education in Sisli. After the document was considered by a lawyer, its content came out. In the document, it reads that

“As per the referenced Law (No 5580, the Law on Private Educational Institutions), these schools are founded by the Greek, Armenian or Jewish minorities and guaranteed by the Treaty of Lausanne. And only students with Turkish citizenship from their particular communities are allowed to attend these schools.

“Article 5 of the same Law says that it is obligatory for these schools to accept only the Turkish citizens from their own particular minority communities.

“In this context, it is necessary to know whether either parent of a candidate student has changed his or her religion, name or sect by court decision. In the same vein, it is essential to keep their confidential ethnic code in the ‘official records’ of identity register which has been in use since 1923. (In the official records of identity register of our Armenian citizens, their ethnic code is 2.) Provided that the confidential ethnic code of the parent is ‘2’ on the official record of the identity register according to the Civil Registry Office, then it is allowed to accept the student enrolment.”

Thanks to this document, it was discovered that “ethnic codes” were used confidentially in the official identity register and citizens were stigmatized and blacklisted. And then a series of questions invaded the forums. What is this “ethnic code”? How is it applied? And who is coded? For how long has it been in use? And more importantly, why is this practice in use and which institutions demand it?

When the case of the lady with Armenian ethnicity gained wide coverage in the press, it assumed importance and was the subject of a number of questions. This new discovery and its confidential nature was the main focus of increasing reactions. However, this new discovery caused uneasiness, so these reactions should be taken to be quite normal. The most important question in this regard was posed to the Ministry. What would the Ministry say about it? Everybody was curious about the response to be given by the Ministry. After all, people were looking forward to hearing an explanation from a governmental authority. Very soon, the Undersecretary of Press and Public Relations in the Turkish Ministry of Interior sent a letter to *Agos* by way of explanation and clarification. In this letter (date 1.8.2013, number 90756879/221), the Ministry of the Interior said that the need for an explanation arose due to incorrect and baseless claims released in the given item of news. The “explanation” says that

“The data that are required to be kept in family genealogical records are given in Article 7 of the Law on Civil Registry Services No 5490 and there is no room for any expression or term that evokes race, ethnicity, or sect.”

In essence, this explanation was not an explanation at all because it was not explaining anything. It was based on the news item being incorrect and baseless; however, it was no more than a confirmation. For the scandalous practice, which was claimed to be confidential, it was offering an explanation by giving the number of a well-known law and its

article, which is open to the public. Therefore, it proved unsatisfactory and useless. Silence would have been a better policy.

Ethnic codes appear to be used for non-Mussulman citizens, each of whom is given a secret code which is inserted in their civil registry records. However, it would be a hasty jump to conclude that the Muslims or some others who are Muslim on paper are exempt from this coding practice. As is clear from the above story, the lady with an Armenian ethnic background had an ID, on the back of which “Islam” was written, before it was changed. Despite this, the coding practice, apparently, continued. Thus, the term “Islam” on the back of the ID does not guarantee the end of this underhand practice.

According to the information given, there are five different ethnic codes. They are inserted on databases in the form of ordinal numbers, 1, 2, 3, 4 and 5. Each of these numbers corresponds to a group of people. The ethnic codes of the Greeks, Armenians, Jews, Assyrians and Others are 1, 2, 3, 4 and 5, respectively. When, say, a citizen with Greek ethnic background comes to the Turkish Civil Registry Office, he is coded and is given code 1 without his knowledge or implicit approval. In the future, this code will definitely play crucial roles in all spheres of his life, but he will not be aware of it. Even if he changes his religion and his name in accord with the LAST (Laic, Atatürkist, Sunni, Turk) format, this code is kept without having his prior consent or knowledge. This code could play a determining role in school enrolment procedures, scholarship decisions, or in military service procedures or applications for a position in a governmental agency.

In this coding practice, it is possible to see the factor of ethnic ties in the groups coded with the numbers from 1 to 4. However, when it comes to code 5, “Others”, it is vague. Who does this term “Others” cover? A director from a Turkish Civil Registry Office gave an explanation of this issue, but he did not want his name to be made public. Reportedly, he said that this fifth category covers those from “other religions” alone. However, this explanation left people with many questions.

First of all, there are some important points that are worth elaborating. As one may deduce from this clarification, there is a fusion of religion and ethnicity. Neither religion nor ethnicity alone is sufficient to consider the case at length because it is possible to see the effect of both. For instance, the Director, who did not want his name to be made public, said that code 5 was given to those from “other religions”. What does he mean by other

religions? Does he take the codes for “Greeks, Armenians, Jews and Assyrians” as religion? By “other religions”, does he actually mean religions other than these four? If these terms that connote ethnic affiliation are perceived as a “religion”, then one can conclude that there is a significant problem of perception and reasoning. It would be wrong to ascribe a different meaning to these terms because equating religion to ethnicity is unacceptable.

If one is forced to make a far-fetched correlation just for the sake of finding a connection, there may be a link, but it will be baseless and unsound, as already claimed. For example, one may assume that the Greeks are affiliated to Orthodoxy, the Armenians to Monophysitism, and the Jews to Judaism. Based on this reasoning, one may think that these terms have already assumed a religious meaning. However, when it comes to the Assyrians, it makes the case a little complicated. Now that the Armenians are assumed to be Monophysite, why does this category not include the Assyrians? The Assyrian Kadim Church is Monophysite, but they are coded with different numbers. Instead of code 2, they are coded 4. What is the reason? To tell the truth, there is no need to say more because it is clear enough. Apparently, the Turkish Civil Registry Offices distinguish their citizens based on their ethnic backgrounds. The reference point they resort to is certainly not religion as they have argued, but ethnicity instead. However, it is wiser to limit this coding based on ethnicity to codes 1 to 4. It is not technically acceptable to generalize it to code 5, “Others”, which is vague in content. Although it is insistently argued that the coding practice is based on religion, a couple of questions wait for an answer: i) Are all Armenians affiliated to the same sect or religion? ii) Are the terms “religion” and “sect” the same? Apparently, the Civil Registry Office falls into the trap of talking monolithically. Even if this Office bases its practice on religion, it is again a monolithic approach. If this Office continues its practice by supposing that all Armenians are religious and have the same faith, it is urgent to remind the authorities of the reality: an Armenian may belong to different sects and religions. There are Apostolic, Protestant and Catholic Christian groups within the Armenian community. In addition, there are atheists, who are not affiliated to any religious authority. Briefly, they do not necessarily belong to a particular sect. More importantly, they may also believe in other religions. Recently, a new term has been introduced in Turkey: Muslim Armenian. Now, in Turkey, there are some citizens with Armenian ethnic background and they do not want to go back to Christianity. They would like to continue with Islam and remain both Armenian and Muslim at the same time. It may sound weird, but this fact cannot be ignored at all. Bearing all

these different faiths in mind, one should ask what the Civil Registry Office actually means by the term “Armenian”. Do they refer to the Apostolic Armenians, or the Catholic Armenians, or the Protestant Armenians or the Muslim Armenians? The same applies to the Assyrians. Before giving an answer to this question, it is crucial for the Civil Registry Office to make the difference between religion and sect clear so that it would offer a reasonable clarification. Otherwise, equating religion to sect would solely result in misconceptualization and misunderstanding.

When the “Others” with code 5 are considered, one can only draw an inference based on the given explanations because this category is vague in content. If the case is considered from an odd perspective that equates religion to sect, Protestant and Catholic citizens might both have been put in this category. There may be a (faulty) grouping that distinguishes Protestantism and Catholicism from Christianity, as if they were completely different religions. Even in that case, one would ask whether there is no Protestant group within the Armenian community. Apart from this point, which institution can certify a citizen’s Protestant identity? As far as is known, the Civil Registry Office does not ask for any certified document from a church to confirm the affiliation, if any. All in all, it is hard to make this information clear and precise.

In the statement released by the Turkish Ministry of the Interior, it is emphasized that some religions, such as Hinduism, Confucianism, Buddhism, Taoism and Zoroastrianism, are recognized by the State and these religions may be listed under the category called the “Others.” The Ministry gives a list of religions, and implies that any of them might be listed in this category. Interestingly, the Ministry still does not use the names “Christianity” and “Judaism” for the “religions” coded from 1 to 4. When the statement is *carefully* considered, its true colour reveals itself. The Ministry says that

“As per the Articles 7 and 35 of the Law on Civil Registry Services, Abrahamic religions, i.e. Judaism, Christianity and Islam, and other religions, such as Hinduism, Confucianism, Buddhism, Taoism and Zoroastrianism, are allowed to be chosen as a religion, depending on the citizen’s preference.”

The point underlined in this statement is the religion section on the back of Turkish ID cards. It refers to what is or might be written in this section as a religion. In a sense, it is true because it writes Islam on the ID of a Muslim, or Christianity on that of a Christian, regardless of his or her sect, or Judaism on that of a Jew. As for the others with different

preferences, they may choose any religion from the given list. Nevertheless, the most sensitive and striking point that needs deeper consideration is surely not what is or might be written on the back of the ID cards. This is not the point because this is the visible part of the practice. They refer to a section on the back of ID cards that everybody can see. However, the point under consideration is the *invisible* part of the practice: the part that is not seen by ordinary citizens, even if the name of any given religion is written there. What is at work in the confidential coding practice? This is the question. In its statement, the Turkish Ministry of the Interior reiterates the information that everybody can see, so it does not say anything new. In short, it does not touch upon the point that needs clarification. After all, it is confidential, and the Ministry keeps it confidential.

Reportedly, the converts, who have changed their religions, *i.e. donmes*, are also included in this group. By converts are meant mainly those converted from Islam into any other religion. The same Director from the Civil Registry Office says that this practice may be needed “to know whether there is apostasy in one’s genealogical records”. In another statement, it is argued that the practice is demanded by the Turkish Armed Forces to detect the “turncoats”. The specific term “turncoat” is important here and it does not cover all converts. There is a common tendency that conversion to Islam is welcomed, so this tendency will definitely not call such conversions an act of “treachery”. However, when it comes to conversions from Islam to other religions, primarily Christianity, then it is a problem. Until the 1840s in the Ottoman times, converts from Islam were sentenced to capital punishment (called *murtet*). Even now, converts face social pressure and harassment in public. When these historical and current pressures are taken into account, one can figure out which converts are welcomed and which are blacklisted as turncoats.

Ironically, while the converts called “turncoats” could have been registered as code 1 or 2, which are both Christian, they might have been converted to Orthodoxy, coded 5. Even this single practice is evidence that the practice is not based on religion. If it were religion, why do they have more than one code for Christians with different ethnic backgrounds? If ever there is a new religious perception like *apostasy* or *treachery* in governmental organizations, it is understandable. Inasmuch as such a conceptualization, under normal circumstances, is unacceptable, the statements and arguments prove baseless.

Having stated that the converts are coded 5, we can discuss who else are considered in this category. In this coding, which is very evidently not based on religion, other non-Mussulman groups in Turkey can be clustered. These may include Chaldeans, Levantines, Assyrians etc. Basically, based on the information given as a footnote about the Ezidis in the book, the Ezidis can be included in this group. Even though some Ezidis in Turkey would like to be recognized as a part of Islam, they are considered to be heretics. Moreover, they are not a LAST. Thus, it is inevitable for them to be considered different, and coded 5. Basically, this list can be both narrowed down and broadened depending on how the State perceives and defines a group. It may include the Ezidis, Assyrians, Chaldeans, naturalized citizens and even Kurdish and Turkish people. New groups may have been added to those left from Ottoman times. Therefore, we can conclude that this last code is a flexible category.

According to the news item in *Agos*, this practice of ethnic coding has been active for 90 years; some others date it back to Ottoman times. The data about the family genealogical records of a citizen can be obtained from the Ottoman archives and sources, but it would be wrong to argue that the practice dates back to Ottoman rule because there was no need for such a practice. None of the sources report such coding practices, either. Some noted scholars have commented about the news, saying that this was the first time they had heard of it. We can conclude that ethnic coding started in republican Turkey. Similarly, *Agos* dates it back to the Treaty of Lausanne of 1923. The Treaty of Lausanne of 1923 is a landmark because some rights and liberties were granted to the non-Mussulman citizens in Turkey with this founding Treaty. This practice is in use in order to distinguish the members of minority groups whose rights and liberties were recognized in the Treaty of Lausanne of 1923.

Based on this given explanation, there are some questions to ask the State authorities about the controversies in practice. If the practice aims to distinguish citizens that would enjoy the rights arising out of the Treaty of Lausanne of 1923, why does it cover only the three minority groups defined by the State? Why does the State need codes 4 and 5? No sooner did an authorized representative declare on the first day of the news that the coding practice covers only three groups than another statement followed it and announced that there were more than three. If the other non-Mussulman groups are considered by the State within the scope of the Treaty of Lausanne of 1923, why is there a different perception and conceptualization of minority in Turkey? The number of such inconsistent and controversial statements is very high, so it is hard to ignore them. By

the same token, if it is argued that this coding practice originated in the Treaty of Lausanne of 1923, it would be considered that the non-Mussulman groups were taken into account. Why does it not apply to non-Mussulmans alone? Close attention to the news item that cracked the coding practice open tells that the heroine of the story is a lady who had a Muslim identity on her ID. When the news was released in the newspaper, reportedly her husband still had a Muslim identity on paper. Despite that, they were coded confidentially with code 2. It is clear from this example that there is no distinction between Mussulman and non-Mussulman citizens because being a Mussulman does not save one from coding. It is understood that the code given at the outset (and which is 2 in the given story) does not change even if one says that he has become a Muslim, a Christian or a Jew. Even when the lady had a Muslim identity, it was 2 and, similarly, when she converted to Christianity, it was still 2.

Whether there is a similar practice in the signatory countries has been barely discussed by those arguing that the coding practice dates back to the Treaty of Lausanne of 1923. What is the case in other countries? Do they have a coding practice similar to that in Turkey? If so, is it done confidentially? Answers to this set of questions may shed light on the case in hand.

In response to the questions asking which organizations demand this discriminatory practice for what purpose, education and military take the lead. As far as the former is concerned, there is cooperation between the ministries and the general directorates in keeping and sharing the confidential data to avoid confusion concerning the rights arising out of the Treaty of Lausanne of 1923. To illustrate, Turkish Directorates of National Education may request an “approval letter” as in the given example, and based on this approval letter, they confirm or reject the enrolment of students in a school. The Director who did not want his name to be made public emphasized that the practice was for “educational purposes” and put it as if it had been a reasonable justification. Notice that the Armenian community in Turkey is recognized as a minority group by the State and this community has schools. Referring to these schools, the authorities lay particular emphasis on the official procedures and stress that they need to know how to manage student admissions. They argue that these procedures need to be clear and neat, which is their justification for the practice. However, a question needs explanation. If it is argued that this coding practice is for educational purposes, what does it have to do with the Assyrians and many other non-Mussulman (or Mussulman) groups clustered under “Others”?

According to the State's conceptualization of minority, there are three minority groups and only these three groups are entitled to have their own schools. Apart from these three, no others, including the Assyrians and Others, are allowed to enjoy the rights arising out of the Treaty of Lausanne of 1923 because they do not have a minority status according to Turkish State policy. Therefore, none of these groups have any educational institution in the territory of the Turkish Republic. Nor, due to their status, are they officially allowed to open any. In the light of this controversy, how much more credible is the explanation stressing that only Turkish citizens from particular minority communities are allowed to study in the minority schools according to the Treaty of Lausanne of 1923 and membership of these communities is proved solely by the genealogical documentation report issued by the civil registry offices.

As far as the military is concerned, there are critical points to mention. Basically, it is hard to establish any relationship between the rights arising out of the Treaty of Lausanne of 1923 and the Turkish military. What may the Turkish army have to do with these rights? As far as is known, there are no special obligations that are expected to be fulfilled specifically by the non-Mussulman citizens under the Treaty of Lausanne of 1923, so there is no need for grouping people. Despite that, the Turkish army may ask for the ethnic codes.

In this context, the Director who did not want his name to be made public added that the ethnic codes might be requested by the Turkish Armed Forces to see "whether there is apostasy in one's family genealogical records". In other words, their goal is to know "whether there are turncoats". The Director had reservations and said that "he had not come across, but . . ." Actually, this uncompleted sentence tells much about the coding practice. Considering the status of this institution that regulated the institutional and social engineering in Turkey by taking an active "guardian" role thanks to its *de facto* authority with its both elected and unelected representatives since the country was founded, it is quite understandable why this institution asks for these confidential data. For security reasons, it is important for this guardian to know the foreigners and potential threats in the country.

The Director from the Civil Registry Office noted that he had not come across such cases, but this does not sound realistic and convincing. As a live witness, I can tell what I experienced during my service in the Turkish Army. For my military service, I was commissioned in a mechanized unit in the Land Forces on the eastern border. One week after I was recruited,

someone called out my name loudly in front of four hundred soldiers. It was a lieutenant and he called me “Edward –the one of the three (or the first third)!” in a strong voice. (This is a slang expression to mock people in Turkish. It has connotations with the male genital organs. It is used for humiliation.) In front of that mass of soldiers, he told many things, but they did not make any sense to me. (But now, they do make sense. It became clear that code 3 is used for Jews according to confidential ethnic coding.) These include what I used to be, and what I was then, my sneaking and lying nature, and continuous emphasis on the all-seeing and all-knowing capacity of the Turkish Armed Forces. One may guess the psychological breakdown I had at that time. Especially for a young man who rescheduled his military service to an earlier time, though he had the chance to postpone it and who started the proceedings without resorting to nepotism, that experience was somewhat traumatic. After I got closer to the lieutenant, I was informed that “my file” had arrived in the military unit. I was bombarded with questions, but not given a single moment of courtesy to respond back. Even if I had been, it would have been useless because they already had their own answers. Lastly, most probably the military officers in my unit “liked” me so much that they used to dedicate a song to me. Whenever the military band started playing the Janissary Anthem (*Mehteran*) as a stirring example of Turkish heroism, the lieutenants used to say loudly that “Edward, this is for you!” One may guess how much joy I had in my service.

As for the legal basis of this coding practice, it does not have any. Therefore, it is not legal and fair. In his comment about ethnic coding, Oran said that “it is a code to eradicate the non-Mussulman citizens. Even giving that number is an act of infringement.” What Oran indicates in his comment is not as innocent as the explanations offered by the governmental agencies so far. Moreover, the *confidential* nature of coding practice and the controversy over its explanations does not make its justification attempts innocent at all.

Stigmatizing and blacklisting is a well-known practice in Turkey, though it is not done in the form of coding all the time. It would be wrong to limit this practice only to the non-Mussulman citizens because it covers the whole population. When the case is considered from this perspective, it should be a reminder that blacklisting does not target only a particular group, but the whole population. The issue that became very popular as a result of the news story given at the beginning cannot be considered independently of the common practice of blacklisting. On paper, the procedures are different, but the goal is the same. The act of blacklisting

the Turks that gained impetus with the military coups and that was revealed thanks to the reports discovered during the Ergenekon Case investigations, on one hand, and blacklisting the non-Mussulman citizens, on the other hand, should be considered with the same approach.

Faik Tarimcioglu, a retired military prosecutor and judge, says: “Blacklisting is the greatest sickness in Turkish bureaucracy. There is such a sickness of perceiving the citizens as a potential threat.” As noted by Tarimcioglu, the State considers even its own citizens as a cause of problems and threats. The state of this sickness has become so severe that that one may easily call it “paranoia”. There are some circles attributing it to the Sèvres Syndrome, and some others seeking the cause in history. This mentality, which sees the State as a weak, extremely fragile and brittle crystal that can fail in an instant, keeps seeing its huge population from students to the retired, from military staff to doctors, as a potentially separatist and destructive threat. Everybody, including officers in government offices and students in schools, is blacklisted and their records are kept confidentially. A wave of investigations carried out as a part of Bati Calisma Grubu (Western Working Group), Cumhuriyet Calisma Grubu (Republican Working Group), Balyoz Davasi (Sledgehammer Case) and Ergenekon Davasi (Ergenekon Case) has discovered new evidence and thousands of reports that confirm this argument.

There are numerous examples and technically it is not possible to address them all here. However, a couple of examples can help to take it beyond abstract thought. For example, a high ranking soldier blacklisted the students and the practices in use in a Smyrnean school where he managed the classes in the National Security course. (In spite of high unemployment rates among university graduates, this particular course, completely based on rote learning, is in the hands of military staff. The visibility of the army in public schools needs a second thought.) Because of his illegal documentation and reporting, a complaint was filed against him. However, the Chief Public Prosecutor in Izmir concluded that “even if the reports and arguments are right, the confidential act of collecting and reporting data does not constitute a crime because the data were given to the Army Commander”. With this decision, this case was concluded and justified by the judiciary. The result is that the military can do blacklisting and there is no problem with that. After all, “if the homeland is in question, the rest is of minor importance and any means to the end is justifiable”. Broadly, this is a fight against the people who pay their taxes and fulfil their citizen obligations and serve their country. This is the fight of the State against its citizens.

Similarly, another blacklisting scandal came out in 2004. Again there was the Army, truly in the role of Leviathan, behind this blacklisting scandal. It was again the Army that had sustained its *de facto* authority in Turkey until recent history, and that determined the state policy and made the national agenda, and that played an (extremely) active role along with the elected ones though it was unelected and had neither vertical nor horizontal accountability in return. Openly, it was confirmed by the Army that the news report was true. Reportedly, it was done as a precaution. “In order to take effective precautions in the face of possible incidents, it is necessary to take precautions and make planning in advance,” they said. Again in this explanation, we come across a well-known justification: *national security*.

Even though it is argued to be illegal, what is the loophole in the Constitution that allows this actor to sustain its illegal practice? Concerning private information, the Turkish Constitution, Part II: Rights and Duties of the Individual, IV. Privacy and Protection of Private Life, A. Privacy of Private Life, and Article 20 is important. The original version of Article 20, when it was first published in 1982, was as follows:

“Everyone has the right to demand respect for his or her private and family life. Privacy of an individual or family life cannot be violated. The exceptions required by legal investigations and examinations are reserved.

“Unless there exists a decision duly passed by a judge, a written order of an agency authorised by law in cases where delay is prejudicial, neither the person nor the private papers, nor belongings, of an individual shall be searched nor shall they be seized.”

In 2001, this Article was amended. This amendment was not something that was demanded by the public or considered necessary by the Turkish bureaucracy. It was made as a part of the EU Harmonization. At the end of this process, the Law on Amending Certain Provisions of the Turkish Constitution (date 3.10.2001, number 4709) was adopted. In this document, Article 5, addressing the privacy of personal information issue, was as follows:

“Article 5 – The third sentence of the first paragraph of Article 20 in the Turkish Constitution is abolished and the second paragraph is amended as follows.

“Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights

and freedoms of others, or unless there exists a written order of an agency authorized by law, in cases where delay is prejudicial, again on the abovementioned grounds, neither the person, nor the private papers, nor belongings of an individual shall be searched nor shall they be seized. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall automatically be lifted.”

It is crucial to emphasize the terms “national security, public order, prevention of crimes” etc. in this particular Article. It is clear from the amendment that a judge’s decision is required, even if the excuse is one of these well-known justifications. In this case, the “right to decision” is given to the judiciary, a genuine branch of the principle of the separation of powers. It is not left to an institution which is not a part of these (legislative, executive and judiciary) powers.

When the wording is examined carefully, one can see that the term “national security” is listed in the first place. This is the very term that is offered as an excuse in all cases. Therefore, the inclusion of this term here serves a purpose. Nevertheless, the Article did not take its final form with this amendment. There was another missing point that needs to be included: privacy and the protection of private life and data. This is a special point referred to in international documents and human rights conventions. And it was missing in the Turkish Constitution. In fact, in none of the Turkish Constitutions is there an Article addressing private information and its protection. However, as a result of the blacklisting scandals and unjust treatments, some initiatives were taken to change it. In 2010, there was progress on this issue in the nationwide referendum. Quoting these changes may help us understand the case. Article 2 of the Law on Making Some Amendments in the Turkish Constitution (date 7.5.2010, number 5982) reads:

“Article 2 – Paragraph added to Article 20 in the Turkish Constitution on September 12, 2010; Act No. 5982. ‘Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.’”

It is not yet clearly known whether these amendments could prevent the blacklisting and coding practices. To say the least, we can conclude that the Turkish Constitution now has an article about this critical issue which is highlighted mostly in international documents. The practice in actual life remains to be seen.

Consequently, we can summarize the topic in a sentence, briefly, as follows: we are stigmatized, blacklisted and coded. However, it would be wrong to limit this practice only to a single group. This archiving practice covers all and it may affect the future career, positions, interpersonal relationships and status of all people. This fact is recognized in this study.

The members of Turkish society, who are perceived as a potential threat, rather than as citizens, are now discussing their new constitution: the new democratic and civil constitution. We can humorously conclude that the “potential threats are on the way to a new civil constitution”. The present study addresses the constitutional journey of the Lausanne minorities, who are both coded and blacklisted in the official records. It is about the experience of the non-Mussulman citizens coded for elimination. It is about the citizens who have maintained their lives with a confidential code and without knowing that these codes are shared for strategic purposes. It is about the citizens whose houses or doors were once marked and whose official records are now marked with secret codes. In spite of these discriminatory practices, they are on the way to a democratic and civil constitution.

This book is kindly submitted for readers’ further consideration with the goal of bringing a new perspective and making a contribution.

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INTRODUCTION

The Turkish Constitution, adopted in 1982, has undergone several serious amendments. Successive governments have made some reforms in a series of issues. Besides, most of the articles have been changed substantially. Particularly within the scope of harmonization packages for European Union (EU) membership, a number of articles were amended to conform to the EU *acquis communautaire*. In parallel with these amendments, critical intellectual debates took place over the deficiency of the 1982 Constitution. These intellectual debates mainly revolved around the idea of replacing this “crippled” constitution with a new democratic and civil constitution created through mass public participation.

Several initiatives have been taken to this end. Apart from the political parties in the Parliament,¹ some non-governmental organizations (NGOs) were involved in the process. For example, the Turkish Industry and Business Association² (TUSIAD), the Union of the Turkish Bar Association³ (TBB) and the Confederation of Progressive Trade Unions⁴

¹ As of 2013, there are four political parties in the Turkish Parliament. The AKP (Adalet ve Kalkınma Partisi, or Justice and Development Party) is the ruling party. The CHP (Cumhuriyet Halk Partisi, or Republican People’s Party) is the main opposition party. The MHP (Milliyetçi Hareket Partisi, or Nationalist Movement Party) is the third largest and the BDP (Barış ve Demokrasi Partisi, or Peace and Democracy Party) is the fourth largest political party in the Parliament. Note that the BDP became the HDP (Halkların Demokratik Partisi, or Peoples’ Democratic Party) in the following months.

² The Turkish Industry and Business Association made a joint attempt and facilitated the drafting of reports by a group of scholars. However, the reports failed. To see TUSIAD reports (see <http://www.tusiad.org.tr/arama/?keyword=yeni+anayasa>).

³ The Union of the Turkish Bar Association initiated a joint work and published a report titled “Proposal of Draft Constitution”. The Proposal, drafted by a specific committee of scholars, was alleged to be civil just because it was not imposed top-down unlike the former constitutions. Unfortunately, it was again neither democratic nor civil.

⁴ Concerning the official title of the Confederation, I have some reservations and need to make a correction. In order to give the true message behind its name, this point is necessary because the one used in their website euphemises the meaning

(DISK)⁵ are only a few of the NGOs playing significant roles in such initiatives for a new democratic and civil constitution that is not imposed top-down. Authors, individually or collectively, attributed importance to their works. Therefore, some of the reports and proposals released as a result of these initiatives ascribed civil and democratic features to their content. However, most of these works were severely criticized for various reasons.

First and foremost, these reports were again composed by specific groups of people. They were like a consortium of experts trying to produce the ideal draft. The opinions of interest groups, pressure groups, religious communities, business sectors, various associations and NGOs were not taken into consideration in the strict sense. In other words, particulars within a whole in general were simply excluded. In short, these reports and proposals gave voice only to a small segment of Turkish society so they were far from mass public participation and inclusivity.

Apart from the aforementioned ones, a new initiative taken by the Government gave fresh impulse to the constitution making process. The party in power, JDP, introduced the “Wise Men” formula in order to make progress. A committee of 63 popular names from different backgrounds was created to act in this process. The committee, consisting of seven sub-groups representing seven geographical regions in Turkey, did not include people from just one field of occupation. Rather, it included intellectuals, representatives from various associations, scholars and representatives from several NGOs, artists, journalists and authors. As a part of their terms of reference, the Wise Men held a number of meetings with different groups within society in order to give them a chance to raise their voice and present their opinions, recommendations and reservations freely. Politically, it was an unfolding. This proactive approach completed its task in late June 2013 and, at the end of their field survey, the Committee was supposed to submit a comprehensive report⁶ about their observations and

(see <http://www.disk.org.tr/>). Instead, “The Association of Revolutionary Workers’ Union” sounds better.

⁵ The Confederation took an initiative and facilitated the drafting of a report titled “Fundamental Principles for a Liberal, Egalitarian, Democratic and Social Constitution.”

⁶ Each sub-group released its own reports first. Some of them are available on the Internet. For example, the committee responsible for the Black Sea Region released the document available at http://file.yeniturkiye.org/Files/Pdf/20130725174520_akil-insanlar-karadeniz-grubu-raporu-28.06.2013.pdf (accessed in October 2013).