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REPORT

The Right to Freedom of
Religion or Belief in Turkey
– Monitoring Report
January–June 2013



NORWEGIAN HELSINKI COMMITTEE



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Norwegian Helsinki Committee:
Freedom of Belief Initiative



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The Freedom of Belief Initiative's project on monitoring of the right to freedom of thought, religion and belief in Turkey is a project of the Norwegian Helsinki Committee and it is sponsored by the Norwegian Foreign Ministry.

The Norwegian Helsinki Committee is an Oslo-based non-governmental organization established in 1977 to ensure that human rights are respected in practice. It achieves this goal through monitoring, reporting, teaching and democracy support. NHC bases its work on international human rights instruments adopted by the United Nations, the Council of Europe, and the Organization of Security and Cooperation in Europe (OSCE). It has projects in a variety of countries, including in Central Asia.

The Freedom of Belief Initiative was launched in September 2011 with the aim of monitoring issues related to freedom of thought, religion, of belief in Turkey, and to make legal standards and monitoring reports related to such topics accessible to all stakeholders. In this regard, it has presented reports on the protection of the freedom of thought, religion, and belief in Turkey under the framework of the Universal Periodic Review and the Human Rights Council, both mechanisms of the United Nations. Since March 2013, it has continued its activities with the support of the Norwegian Helsinki Committee with the Right to the Freedom of Belief Monitoring Project, which encompasses both monitoring and reporting activities.

The Right to Freedom of Religion or Belief in Turkey – Monitoring Report January–June 2013 is written by **Mine Yıldırım**. Mine Yıldırım is the Head of the Freedom of Belief Initiative Project. She has published nationally and internationally on the topic of the right to freedom of religion or belief and is currently a doctoral candidate at Åbo Akademi University Human Rights Institute in Finland.



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1. PREFACE

Dilek Kurban¹

In Turkey, the right to freedom of religion and belief has mainly been discussed within the framework of the boundaries that the state draws based on the visibility of religion in societal life. Since the foundation of the Republic, the state has decided who worships where and under what conditions; which religions and strands within Islam are legal and legitimate; what the religious officials and pious individuals are allowed to wear and where; where, by whom and the ways in which religious education is provided. The state continues to make these decisions. Such oppression on religion and worship has also caused discussions regarding freedom of religion or belief to be within the boundaries drawn by the state.

However, freedom of religion and belief does not only involve the rights of religious people to believe, worship, dress and be educated in accordance with their religion. It also involves non-believers' rights to express their opinions with regard to religion and the right not to believe. For that reason, this freedom is defined as "freedom of thought, conscience and religion" in international human rights documents. This freedom involves the freedom of questioning and discussing every type of religion, religious belief and God. It not only concerns the freedom to believe in the Islam that the majority of the population professes, but also other religions and beliefs and the right of the non-religious to express their opinions about religion and the right not to profess any religion or belief.

There are two main factors that render this study valuable and unique. First of all, freedom of thought, conscience and religion is discussed from a holistic point of view which does not discriminate between religions including strands within Islam, those who follow a belief and those who do not follow any belief. Thus, Sunni Muslim women's right to wear headscarves and Baha'is' demands for religious freedom, Alevi's right to demand legal status for the *cem* houses and atheists' and agnostics' demand for the removal of the religion section from birth certificates are analyzed within the same legal and conceptual framework. Secondly, with reference to the interdependence of the fundamental rights and freedoms, the relation between the freedom of thought, conscience and religion and property rights and freedom to organize is emphasized. For instance, the necessity to think about the demands of believers to practice their religion freely and the desire of atheists to express their skepticism and discuss religion in the public sphere is also discussed within the same legal and conceptual framework.

¹ Dilek Kurban earned her B.A. degree in International Relations from Boğaziçi University and M.A. degree on human rights at the faculty of International and Public Relations of Columbia University. She graduated from the Columbia University Law School in 2004. She joined the TESEV Democratization Program staff as program manager in 2005. Kurban has widely published nationally and internationally on minority rights, forced displacement and European human rights law.

The human rights violations listed in the report demonstrate in striking ways that state discrimination surrounds believers, religious minorities, atheists, agnostics and secular individuals. The report reveals the legally established hierarchy among individuals based on their religion, belief, or indeed choice not to identify them with any religion – within a constitutional and legal framework which extends from the Constitution to the Turkish Energy Market Law. The reality behind the legal jargon in the legal provisions is the arbitrary, unlawful and unethical discrimination among citizens by the Turkish state and the discrimination that individuals face in every aspect of their daily lives. On the other hand, the report demonstrates another fact behind the court decisions. Although Turkish courts provide legal legitimacy for discrimination with the decisions they make, this does not change the fact that the lawsuits mentioned in those decisions were brought before the courts. The fact that certain Armenians, Protestants, Alevi, Jehovah's Witnesses, atheists and religious Sunni Muslims claim their rights, rather than keeping silent, is one of the most impressive examples of the social transformation that Turkey is experiencing.

On the other hand, it is obvious that the number of lawsuits that are filed is very limited compared to the potential numbers of lawsuits that could be filed. In addition, it is a fact that the level of awareness with respect to human rights is still very low. Many people who face discrimination every single day are not yet familiar with the fact that law is not only an instrument of discrimination but also an efficient means of fighting against it. For the ones who are aware of this fact, the social and political cost of filing a lawsuit against the state might be extremely high compared to the potential benefits. This concern about the potential costs is not groundless. Considering the declarations made by the state officials and headlines of mainstream newspapers with respect to the Greek Orthodox foundations that have applied to the European Court of Human Rights against Turkey this is understandable. Besides this, it is also an obvious fact that the legal instruments and mechanisms to which minorities can resort have significant limitations, even if people have the sufficient will power and courage to use them. Turkey does not yet have a law that regulates anti-discrimination and an independent and autonomous equality institution. The Draft Law for Anti-Discrimination and Equality prepared by the government in March 2009 – thanks to the initiatives and contributions of human rights organizations – has been waiting for four and a half years to be put on the agenda of the Grand National Assembly.

It is certain that in Turkey, as in other countries, attempting to struggle against discrimination invites hostile publicity, ostracism and oppression – and it requires courage. On the other hand, there exist various strategies that can be used in order to reduce the risks and maximize the gains. The most important strategies are:

- Widening the grounds for social legitimacy via collaborating with other individuals and groups exposed to discrimination;
- Highlighting the collective dimension of the problem in the lawsuits filed with the legal and technical help of human rights organizations;

Mobilizing all available national and international legal mechanisms, rather than being limited to domestic courts;
Collectively deciding and acting to bring strategic lawsuits which have a high possibility of success.

In the past few years, new legal mechanisms to seek legal remedies and combat discrimination have come into existence in Turkey. Now, everybody has the right to make individual applications to the Constitutional Court if their rights under the European Convention of Human Rights are violated. In addition, new extrajudicial dispute resolution mechanisms have been established. The Human Rights Institute of Turkey and the Ombudsman are among the most prominent examples. While fighting against discrimination is not explicitly stated within their mandates both institutions are obliged to protect individuals' rights *vis a vis* the state. It would certainly not be realistic to expect major gains from these institutions. Only collective action by all the groups that are exposed to rights violations can make these institutions adopt practices that secure the freedom of thought, conscience and religion. Human rights organizations, universities, bar associations and civil society organizations will have an important role in the future, as they have had in the past, to take steps to enable such cooperation.

2. MAIN TRENDS

In Turkey, drastic steps need to be taken and they should be implemented decisively in order for *everybody's* freedom of thought, religion or belief,² to be protected in a way compatible with at least the minimum standards of international human rights law. Even though periodic reforms ameliorate the situation to a certain extent, a holistic approach should instead be taken. In this way, the state, instead of having a hegemonic and regulative role in the realm of religion – might evolve into a liberating one, which removes the barriers that prevent individuals and groups from practicing their freedom of belief fully and effectively.

This report presents findings, assessments and recommendations on developments regarding freedom of religion or belief between January and June 2013. The assessments are based on the international human rights conventions to which Turkey is a party. The provisions relied upon consist of the main components of the right to freedom of religion or belief and other relevant rights such as the right to association, right to property and freedom of expression.

It is possible to detect five main and closely related trends concerning the legal changes, court decisions and practice that took place in the reporting period.

Firstly, the right to freedom of religion or belief is not protected with all of its components. For example, conscientious objection to military service is not protected despite the fact that there are numerous decisions of the European Court of Human Rights (ECtHR) against Turkey. Similarly, due to the continuing state monopoly in this sphere religious or belief groups are still not allowed to establish religious educational institutions – which are an important way of manifesting belief in teaching. Even though there are legal protection mechanisms for a number of components of the right to freedom of belief, it is not possible to say that the protection is effectively implemented. In this regard, many rights such as the right not to believe, the right to change one's religion or belief, the right to establish places of worship and freely appoint religious leaders are not sufficiently protected in law or practice. It is disturbing that those who do not believe in any religious faith and members of certain religious groups feel obliged to hide their beliefs and think that they will be targeted if they do not hide their beliefs. Freedom of religion or belief includes the right to manifest one's religion or belief in worship, teaching, practice and observance. These practices might involve diverse acts depending on the doctrines of the beliefs. Turkey needs to guarantee all elements of the right to freedom of religion or belief in accordance with its obligations derived from international law.

2 Even though the appropriate expression is "freedom of thought, conscience and religion" the term "freedom of religion or belief" will be used in the report for easy readability. In this report this term includes traditional religions, more recent beliefs and philosophical worldviews including atheism and agnosticism.

The second important trend is that there are flaws in the observance of the principle of neutrality, which directly derives from the right to freedom of religion or belief. States are required to be neutral in all their transactions and practices regarding religion or belief. Decisions pertaining to the legitimacy of any form of belief or act of worship by the state are incompatible with the principle of neutrality. Determining which actions should be regarded as manifestation of belief in worship or practice, and which beliefs should be recognized as belief or religions are not within the competency of the state. With respect to such issues, the reference point should be the believer's own individual doctrines and interpretations.

Decisions by the state, following the views of a certain religious authority, as to which beliefs or manifestations of them are religiously legitimate, are also incompatible with the principle of neutrality. Despite this, the state has decided that *cem* houses are not considered as places of worship, the Baha'i faith and Jehovah's Witnesses are not regarded as religions, and conscientious objection to military service is not accepted as a manifestation of a deist or a philosophical belief. The fact that the point of view of the Directorate of Religious Affairs is decisive in all these decisions casts serious doubts on Turkey's compliance with the obligation to observe the principle of neutrality.

Thirdly, regarding the obligation to protect pluralism, developments in the reporting period indicate that a limited and selective understanding of pluralism by the state is dominant rather than a comprehensive one. The freedom of thought, religion or belief protects deist, non-deist and atheist beliefs and the right not to profess any religion or belief. In addition, the notions of "belief" and "religion" need to be interpreted broadly.³ Freedom of religion or belief is not limited to the so-called traditional religions the ones whose institutional structures are similar to the former.⁴ It is difficult to say that the transactions and practices of public officials reflect the pluralistic reality of Turkey. The state has to improve its policies by grounding them on the existing plural nature of society, rather than regulating Turkey's pluralism but imposing a certain hierarchy. In order to achieve this, fundamental changes of mentality are needed.

As a natural consequence of the aforementioned problems, fourthly, it can be observed that the decisions of international human rights mechanisms regarding the right to freedom of religion or belief in Turkey are not implemented to any significant extent. As can be seen in the decisions and implementations table, which is found in the appendix of this report, despite the fact that their enforcement is obligatory Turkey has not taken necessary steps regarding decisions. The removal of the religion section from birth certificates, recognition of the right to conscientious rejection, introduction of changes to the mandatory Religious Culture and Knowledge of Ethics course in order for the course to reflect objectivity and pluralism or removal of its obligatory status are some of the necessary general measures that need to be taken in order to prevent similar violations.

³ UN Human Rights Committee, General Comment No. 22, para. 2.

⁴ *Ibid.*

The fifth trend concerns the facilitating role of the state with respect to religion. Through legal changes that took place in the reporting period, the state provided various types of religious services and/or facilitated them to a certain extent. These changes include payment of the electricity bills of places of worship that are recognized as such by the state from the Directorate of Religious Affairs' budget based on the Energy Market Regulation Law, provision of religious education in prisons and consideration of attendance at such education in the evaluation of good conduct of prisoners, the problematic introduction of optional Islamic religion courses in secondary and high schools. Discussions and governmental initiatives regarding the new constitution also indicate that the special constitutional status of the Directorate of Religious Affairs will remain in place. However, as the state continues to claim responsibility for religious services as a service provider and facilitator, due to the existing problems in the implementation of the principle of neutrality and the obligation to ensure pluralism, this is likely to lead to the deepening of discrimination.

In conclusion, it is of great importance for Turkey to formulate a policy to efficiently protect all aspects of the right to freedom of belief, as guaranteed under international human rights standards, in a way that ensures neutrality and pluralism. A law on freedom of religion or belief, prepared with this approach and with the collaboration of all the stakeholders, would be an important start in protecting and advancing the rights of all individuals and groups in Turkey, regardless of their beliefs.

3. METHOD

The main aims of human rights monitoring and reporting are to provide objective and factual information regarding human rights practices (especially those of the state), to detect incompatibilities between laws, their implementation and international law standards, to reveal recurring patterns, and to identify the necessary steps that need to be taken in order to bring national legislation and practice in line with international human rights law.

The Freedom of Religion or Belief Monitoring Report is prepared within the scope of the *Norwegian Helsinki Committee Freedom of Belief Initiative*, with the aim of recording and assessing developments related to these freedoms in Turkey between January and June 2013. In the preparation of the report the components of the right to freedom of religion or belief based on international law is adopted as the general conceptual framework. The situation of vulnerable individuals, such as children and individuals whose liberty is restricted, is evaluated separately. Moreover, evaluation of rights, which intersect with the right to freedom of religion or belief, such as freedom of expression and property rights, are also included.

Monitoring activity is not only limited to domestic legal norms and rules related to the obligations, which are derived from international law. It also involves official practice and court decisions. In addition, other relevant phenomena are also presented, including those, which might indicate the fulfilment of obligations and free exercise of rights, as well as any difficulties.

Monitoring and observation with the aim of revealing human rights violations require actively collecting, verifying and recording the data.⁵ Monitoring activity conducted with this aim includes various data collection and sharing processes. In the preparation of this report national legislation and relevant court proceedings were followed, face to face interviews with representatives of religious or belief groups were carried out, and focus group meetings were held. In addition, media monitoring focused on the issues addressed in the report provided important data.

In order to verify the data provided in the report, various public officials were interviewed. Where this was not possible, applications for information were made. Developments within the framework of international human rights protection mechanisms regarding the right to freedom of religion or belief in Turkey were also evaluated. The aim here is to reflect the real situation regarding laws and actual practice.

5 United Nations Commission on Human Rights, *Training Manual on Human Rights Monitoring*, (Geneva 2001), p. 9.

During this study, it was observed that individuals who belong to minority religions and those who do not profess any religion or belief did not always wish to share information about interferences with the exercise of their human rights. The reason for this is their perception that reporting the information they share would risk drawing hostile attention to themselves and make their situation worse. This situation alone shows that serious steps need to be taken in Turkey to protect human rights.

4. LEGAL FRAMEWORK

4.1. International law

Freedom of thought, religion or belief is one of the fundamental freedoms that is protected by international human rights law. Numerous international and regional conventions and political documents guarantee this right. This report is based on the international human rights norms regarding the freedom of thought, religion or belief.

Article 18 of the Universal Declaration of Human Rights (UDHR),⁶ Article 18 of the United Nations International Covenant on Civil and Political Rights (ICCPR),⁷ and Article 9 of the European Convention on Human Rights (ECHR)⁸ guarantee everybody's right to freedom of thought, religion or belief. According to Article 9 of the ECHR,

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.⁹

However, issues regarding the right to freedom of religion or belief can also arise with regard to other complementary provisions. As will be seen in the following pages, Article 9 of the ECHR is closely related, textually and with respect to the supporting values, to Article 10, which guarantees freedom of expression, and Article 11, which concerns the right to association.¹⁰

The right to freedom of religion and belief is also supported by Article 2 of the First Protocol of the ECHR, which concerns the right to education and sets forth an obligation for states to ensure such education and teaching in conformity with the parents' or legal guardians' religions and philosophical convictions.¹¹

6 Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948.

7 The International Covenant on Civil and Political Rights entered into force on September 23, 2003 in Turkey. Turkey made a reservation to Article 27 which protects individuals belonging to minorities. Thus Turkey interprets Article 27 in line with the Treaty of Lausanne.

8 The European Convention on Human Rights (or the Convention for the Protection of Human Rights and Fundamental Freedoms, as is its official name) entered into force in Turkey on 18.05.1954. Turkey made a reservation to Article 2 of the First Protocol of the ECHR in light of the Law on Unity of Education.

9 ECHR, Article 9.

10 Corresponding ICCPR provisions are, respectively, Article 19 and Article 22.

11 Corresponding ICCPR provision is Article 18 para. 4.

In addition to the aforementioned conventions, the United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief is also fundamental, in that it particularly elaborates on the collective dimension of international norms regarding the right to freedom of religion or belief.¹²

The commitments within the context of the Organization for Security and Cooperation in Europe (OSCE) and its predecessor the Conference on Security and Cooperation in Europe (CSCE) with regard to the freedom of religion or belief are politically binding.¹³

The Treaty of Lausanne also enshrines important provisions regarding the protection of non-Muslim minorities.¹⁴

4.2. National law

The most fundamental national legal norms regarding the right to freedom of religion or belief are found in the Constitution. Regarding freedom of religion and conscience, Article 24 of the Constitution of the Turkish Republic reads as follows:

Everyone has the freedom of conscience, religious belief and conviction. Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14.

No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions. Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.

Article 10 of the Constitution guarantees that everyone is equal before the law without distinction of any kind, such as language, race, color, sex, political opinion, philosophical

12 The United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted by the UN General Assembly Resolution 36/55 on November 25, 1981.

13 These commitments include but are not limited to a detailed list of commitments included in Article 16 of the Concluding Document of the 1989 Vienna Meeting of Representatives of the Participating States of the OSCE.

14 Treaty of Lausanne, July 24, 1923, Articles 37-45.

belief, religion and sect, or any such considerations, and that all citizens shall be treated equally by state organs and administrative authorities in all their proceedings.

Under Article 90 of the Constitution, which regulates the status of international treaties in domestic law, the international agreements which Turkey is a party to are superior to national law; when there are contradictions between the international agreements and national laws concerning human rights the provisions of international conventions prevail.

Although Turkey is a party to two important human rights conventions which guarantee the right to freedom of thought, religion or belief, the United Nations International Covenant on Civil and Political Rights (ICCPR) and the European Convention of Human Rights (ECHR), it must be emphasized that Turkey has made reservations to some provisions of both treaties impacting the right to freedom of religion or belief.¹⁵

In Turkey, there is not a specific law regarding the right to freedom of religion or belief. However, various laws and regulations include provisions affecting the right to freedom of religion or belief.¹⁶ These laws are: Turkish Civil Code,¹⁷ Law of Associations,¹⁸ Law of Foundations,¹⁹ Law on Assembly and Demonstrations,²⁰ Public Works Law,²¹ Turkish Criminal Code,²² Basic Law on National Education,²³ Law on Private Educational Institutions,²⁴ Law on the Closure of Religious Dervish Lodges and Shrines,²⁵ Law on the Prohibition of Wearing Certain Garments.²⁶

15 For instance, Turkey made reservations on Article 2 of the First Protocol of the ECHR declaring that the provisions of the Law on Unity of Education shall prevail and on Article 27 of the ICCPR, which protects individuals belonging to minorities, declaring that the provisions of the Treaty of Lausanne shall prevail. The validity of these reservations, however, is questionable. According to Article 19 of the Vienna Convention on the Law of Treaties, reservations should be compatible with the purpose and subject of the relevant treaty.

16 Laws and regulations affecting the right to freedom of religion or belief will be mentioned below to the extent that they are relevant.

17 Türk Ceza Kanunu [Turkish Civil Code] No. 4721, November 22, 2001.

18 Dernekler Kanunu [Law on Associations] No. 5253, November 4, 2004.

19 Vakıflar Kanunu [Law of Foundations] No. 5737, February 20, 2008.

20 Toplantı ve Gösteri Yürüyüşleri Kanunu [Law on Assembly and Demonstrations] No. 2911, October 6, 1983.

21 İmar Kanunu [Public Works Law] No. 3194, May 3, 1985.

22 Türk Ceza Kanunu [Turkish Criminal Code] No. 5237, September 26, 2004.

23 Milli Eğitim Temel Kanunu [Basic Law on National Education] No. 1739, June 14, 1973.

24 Özel Eğitim Kurumları Kanunu [Law on Private Educational Institutions] No. 5580, February 8, 2007.

25 Tekke ve Zaviyelerle Türbelerin Seddine ve Türbedarlıklar ile Bir Takım Unvanların Men ve İlgasına Dair Kanun [Law on the Closure of Dervish Lodges, Hospices and Shrines and on Abolition and Prohibition of the Use of Certain Titles] No. 677, December 13, 1925.

26 Bazı Kisvelerin Giyilemeyeceğine Dair Kanun [The Law on the Prohibition of Wearing Certain Garments] No. 2879, December 3, 1934.

5. FREEDOM OF THOUGHT, RELIGION OR BELIEF

5.1. The right to believe and the right to change one's religion or belief

Freedom of belief “protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed.”²⁷ In Turkey, constitutional norms protect the right to freedom of belief, the right not to believe, and the right to change one's belief.

In practice, however, serious problems remain which affect the right not to believe and the right to change one's religion or belief. Throughout the reporting period, individuals belonging to minority beliefs, and those not professing any beliefs, declared that they are either exposed to discrimination or are at risk of being discriminated against. Especially individuals who convert to a religion other than Islam, or who do not profess any religion or belief, experience a significant degree of oppression, exclusion and intolerance. Such oppression, exclusion and intolerance come from their families and society in different forms and degrees. There is a general view that this situation is more tangible and widespread in small cities. Many people declared that they felt obliged to conceal their belief.

Exclusionary and negative discourse targeting individuals who do not belong to any religion has an adverse effect on their right to freedom of thought, religion or belief.

In addition to this, slanderous discourse targeting minority belief groups contribute to the formation of negative opinions in various segments of society regarding these groups. Consequently, such an attitude in society adversely affects the protection of the right to freedom of religion or belief of minorities. In this regard, the Hate Speech Report published by the Hrant Dink Foundation observes – in the reporting period – hate discourse against Armenians, Jews and Christians.²⁸

Court hearings regarding religion or belief related hate crimes, where crimes aim to send a message to the relevant communities while harming individuals, continued during this period. It is very important for the *Zirve Case* and the *Hrant Dink Case* to be effectively investigated so as to reveal all individuals (including public officials) and organizations behind the murders and finalized without leading to impunity.

Necessary measures must be taken in order to establish an approach based on respect for the freedom of religion or belief of individuals, who have beliefs other than well-known religions, who change their religion and who do not profess any religion or belief.

27 Human Rights Committee, General Comment 22, Para. 3.

28 Hrant Dink Foundation, Media Watch on Hate Speech Periodical Report, January-April 2013.

Public officials and media representatives should refrain from discourses that may harm the exercise the right to freedom of religion or belief by targeting any religious group – including the ones who do not hold any belief or who belong to minority beliefs.

5.2. Coercion to declare one’s religion or belief

No one can be forced to reveal his or her religious belief.²⁹

The religion section on national identity cards requires individuals to declare their beliefs in many aspects of their lives. Regarding the identity cards, the European Court of Human Rights (ECtHR) declared in its decision on the *Sinan Işık v. Turkey* case (21924/05) that “the deletion of the “religion” box on identity cards could be an appropriate form of reparation to put an end to the breach in question.”³⁰ However, the religion section on identity cards remains. As is well known, a legislative amendment allowing this section to remain empty was passed in 2006.³¹ However, in the reporting period it was observed that freedom of religion or belief related problems regarding the religion section on identity cards persisted in different ways.

While leaving the religion section on identity cards blank is a legal option, many individuals feel obliged to state their beliefs on their identity card. Whether registered by families after birth when identity documents are issued, or whether it is kept or changed, in reality, the religion section on the identity cards forces individuals to declare their religion or belief. Identity cards are frequently used in areas of life such as education, occupation, health and private life. This leads to individuals being forced to reveal their beliefs to public officials or to third parties contacted by them.

Children of Jewish and Christian families are exempt from the “Religious Culture and Knowledge of Ethics” lessons during their education.³² However, in order to be able to use the right to exemption, students and parents have to present a copy of their identity cards with the respective religion stated in the religion section. This results in an obligation to declare one’s religion. Forcing individuals to reveal their beliefs in the course of applications for exemption from the religion classes at schools is not compatible with the ECHR.

To claim exemption from Religious Culture and Knowledge of Ethics classes, a new procedure – which would not compel one to declare one’s religion – should be established.

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

30 *Ibid.* para. 60.

31 With the amendment of Article 35 of Nüfus Hizmetleri Kanunu [Law on Population Services] No. 5480 of September 29, 2006, the religion section may be left blank upon written request.

32 Decision of the Council of Higher Education, July 9, 1990.

Given that identity cards are used in many areas of life,³³ the existence of the religion section on identity cards exposes individuals to the risk of discrimination.

Many individuals contacted by the project, all of whom requested their names to be kept confidential (especially atheist and agnostic individuals and those who converted to a religion other than Islam), declared that they prefer not to change their identity cards as they think they will be discriminated against. Many individuals who have beliefs other than Islam prefer to leave the religion section empty due to the risk of being discriminated against.

The religion section on the identity cards should be removed.

While not overlooking the incompatibility of the religion section on the identity cards with human rights standards, it should also be emphasized that the restrictive options of which religions and beliefs are allowed to be recorded in the religion section are also incompatible with the principle of state neutrality.

Freedom of religion or belief in international law protects beliefs that have a certain degree of cogency, seriousness and cohesion,³⁴ which is not limited to well-known religions. However, in Turkey only a limited number of religions can be indicated in the religion section.³⁵ For instance, Alevi faith, Jehovah's Witness or the Baha'i faith cannot be indicated on identity cards. The reason for this is the opinion of the Directorate of Religious Affairs stating that these religions or beliefs are not religions. In relation to the impossibility of indicating "Alevi" belief on identity cards, the ECtHR concluded in the *Sinan Işık v. Turkey* case that "the assessment of the applicant's religion by the domestic authorities, on the basis of an opinion issued by an authority responsible for Islamic religious affairs, is in breach of the State's duty of neutrality and impartiality."³⁶

As long as the religion section is kept on identity cards, the religion or belief indicated in this section should be the individuals' own choice, not limited by a list decided on by public officials including a limited number of religions of beliefs.

5.3. Coercion to act in a manner contrary to one's religion

Objection to military service, which is also known as conscientious objection, is a human right protected within the scope of the right to freedom of religion or belief.³⁷ Although Turkey can be deemed to have accepted the right to conscientious objection by virtue of

33 In relation to education, health, military service, occupational life, identity checks by the law enforcement agencies.

34 ECtHR, *Campbell and Cosans v. UK*, Application No.7511/76; 7743/76, February 25, 1982.

35 "The information in the religion section of birth records is decided based on the opinions of the institutions which provide religious services, universities and the decisions of the Council of State, Court of Appeals and the Constitutional Court." The answer of the General Directorate of Population and Citizenship Affairs to the request for information on 27.07.2010.

36 *Sinan Işık v. Turkey*, Application No. 21924/05, 02.02.2010, para. 46.

37 ECtHR concluded in its *Bayatyan v. Armenia* decision of July 7, 2011 that the right to conscientious objection is integral to the obligations under the freedom of thought, conscious and religion protected under Article 9 of the ECHR and that the individuals' right to conscientious objection should be respected.

its obligations under the ECHR, no legislation recognizing this right exists. The Constitution of the Turkish Republic does not identify military service as an obligatory national service. There are no regulations in the Constitution that preclude conscientious objection. The “national service” indicated in Article 72 of the Constitution regulates the political rights and duties of citizens. However, military service is not specifically mentioned here. This article defines “national service” within a much broader framework. However, the concept of national service in this provision is read as military service by public officials, resulting in interference in the right to conscientious objection.

The fact that there is no legislation which recognizes the right to conscientious objection results in findings and judgments against Turkey by international human rights mechanisms. Following the ECtHR *Bayatyan v. Armenia* decision, numerous applications regarding conscientious objection to military service in Turkey resulted in judgments finding that Turkey has violated Article 9.³⁸

In addition to these decisions, the opinion of the Human Rights Committee (within the framework of the United Nations International Covenant on Civil and Political Rights (ICCPR)) on the *Atasoy and Sarkut v. Turkey* case demonstrates that Turkey violated Article 18 of the ICCPR by not recognizing the right to conscientious objection.³⁹

The right to conscientious objection to military service has been recognized by a vast majority of the members of the Council of Europe. The only country, which does not legally recognize this right, is Turkey. All European Union member states recognize the right to conscientious objection. Within the reporting period, the Turkish Constitutional Reconciliation Commission has not reached an agreement regarding the recognition of the right to conscientious objection.⁴⁰ The statement by the Directorate of Religious Affairs that the protection of this right is “not permitted in Islam”, may have a negative influence on acceptance of the right to conscientious objection by society.⁴¹

Two Military Courts have recognized the right to conscientious objection in 2012 with reference to Article 9 of the ECHR. However, they discriminated based on the beliefs of applicants. The request of Barış Görmez, who is a Jehovah’s Witness, for conscientious objection was accepted and he was acquitted. But that of Serdar Delice, who is a Muslim, was rejected on the grounds that conscientious objection has no place in Islam.⁴² However, even

38 ECtHR, *Erçep v. Turkey*, Application No.43965/04, February 22, 2012; ECtHR, *Feti Demirtaş v. Turkey* Application No. 5260/07, April 17, 2013; ECtHR, *Savda v. Turkey*, Application No. 42730/05, June 12, 2012; ECtHR, *Tarhan v. Turkey* Application No. 9078/06, July 17, 2012.

39 Human Rights Committee, *Atasoy and Sarkut v. Turkey*, Communication No. 1853/2008 and 1854/2008, 19.06.2012, CCPR/C/104/D/1853-1854/2008.

40 The proposal by the Peace and Democracy Party with regard to including the right to conscientious objection in the provision regulating the freedom of belief was rejected by the other political parties. Sabah, “Memura Müjde”[Good News for Public Servants], 03.08.2013.

41 Radikal, Diyanet’in Vicdani Ret Fetvası [The Presidency of Religious Affairs’ Opinion on Conscientious Objection], April 19, 2013.

42 Serdar Delice, Malatya Military Court, March 7, 2012 decision; Barış Görmez, Isparta Military Court, March 13, 2012 decision.

if national military courts recognized – although in a limited way – the right to conscientious objection with reference to international law there was no initiative to adopt a regulation on conscientious objection which is non-discriminatory, predictable and available to everyone.

According to the Conscientious Objection Association, higher courts are still pursuing the appeal cases of four individuals who want to exercise their right to conscientious objection.⁴³

According to an information note, presented by the European Association of Jehovah's Christian Witnesses (EAJCW) to the Committee of Ministers of the Council of Europe, despite the ECtHR judgments the prosecution of Demirtaş continues and is pending at the Supreme Military Court. The legal process concerning the other four lawsuits opened by Jehovah's Witnesses continues.⁴⁴

The steps that the ECtHR listed in the *Savda v. Turkey* case to prevent the repetition of the violation of Article 9 of ECHR are still to be initiated:

The Court emphasized the State's obligation to provide a regulatory framework introducing a mechanism to protect the rights of individuals [...] There was therefore an obligation on the authorities to provide Mr. Savda with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested.⁴⁵

In its Concluding Observations, the Human Rights Committee made recommendations concerning the right to conscientious objection:

The State party should adopt legislation recognizing and regulating conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.⁴⁶

On this background, the Norwegian Helsinki Committee Freedom of Belief Initiative recommends that:

Legislation, which recognizes the right to conscientious objection to military service, should be passed. This legislation should provide alternative civilian service options which do not include punitive or discriminatory elements.

43 E-mail correspondence with Conscientious Objection Association, September 2013.

44 The European Association of Jehovah's Christian Witnesses, Letter to the Department for the Execution of Judgments of the ECHR, 05.02.2013.

45 Information Notice of Turkey regarding *Erçep, Demirtaş, Savda* cases 1157 DH Meeting (December 4-6, 2012), Action Plan (29.10.2012), November 5, 2012.

46 Concluding Observations on the report presented by Turkey and accepted by the Committee at the 106th General Meeting on October 15-November 2, 2012, para. 23. Turkey needs to inform the Committee within a year on the implementation of the recommendations about conscientious objection.

Individuals who declare their conscientious objection to military service should cease to be prosecuted by military courts. Instead, a civilian mechanism should be introduced for conscientious objection applications.

The Military Service Law should be revised and reformed in order to comply with the standards pertaining to the right to conscientious objection.

6. FREEDOM TO MANIFEST RELIGION OR BELIEF

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

6.1.1. Attacks targeting places of worship

Freedom of worship includes the right to assemble for worship.⁴⁷ Hence, safety of places of worship is of great importance. In this regard, places used for religious purposes need to be protected in accordance with human rights. Any conditions, which would make them open to attacks, should be prevented.

In the reporting period various attacks targeting places of worship took place. Attacks against the New Hope Protestant Church in Ataşehir,⁴⁸ Ayois İonis Orthodox Church in Burgazada,⁴⁹ and the Gedikpaşa Surp Hovhannes Armenian Church in Istanbul⁵⁰ caused apprehension among belief groups. In addition to this, despite the fact that a possible attack which was detected to be targeting the İzmit Church was prevented, the conditions around the attack were not rectified. The targeted religious leader was not provided with protection.⁵¹ During the period from January 2013 to the day this report was written, the existence of a confidentiality decision and denial of access by the victim's lawyers to the case files is unacceptable.⁵²

In addition, it can be observed that the disclosure of the plans for attacking churches and synagogues has caused insecurity among the minorities.⁵³

Despite the fact that providing protection to places of worship is a responsibility of the state, many places of worship have to take individual security measures such as installation of camera systems and purchase of services from private security companies. This creates extra financial costs for the belief groups.

Public officials should take the necessary precautions to efficiently provide protection to places of worship so as to eliminate the need for individual security measures.

Attacks targeting places of worship should be effectively prosecuted and vulnerable individuals protected. Those responsible for attacks should not have impunity from prosecution and punishment.

47 UN Human Rights Committee, General Comment 22, para. 4.

48 Sat7 Türk, "İstanbul'da Kiliseye Saldırı" [Attack on Church in Istanbul], April 27, 2013.

49 Radikal, "İstanbul'da Ermeni Kilisesi'ne Saldırı" [Attack on Armenian Church in Istanbul], May 5, 2013.

50 *Ibid.*

51 İstanbul Protestant Foundation, e-mail correspondence with T.T., 06.08.2013.

52 Radikal, "Kocaeli'de 'kilise operasyonu'" ['Church Operation' in Kocaeli], January 17, 2013.

53 Bugün, "Kiliselere ve Havralara Saldıracaklardı" [They Were Going to Attack Churches and Synagogues], March 2, 2013.

6.1.2. The right to establish places of worship

The right to freedom of worship includes the right to establish places of worship.⁵⁴ During the reporting period significant limitations on the right to establish places of worship continued. Despite reforms, the need to approach the issue of places of worship in line with Turkey's obligations regarding freedom of religion or belief, pluralism, and neutrality remains. In legal and administrative procedures the term "places of worship" is understood to mean mosques, *masjids*, churches and synagogues. Such a narrow definition does not recognize the plural religious structure of Turkey.

In some cases legislation refers solely to mosques and *masjids*. For instance, according to the Village Law, for a site to be considered as a village, one of the required elements is the existence of a mosque.⁵⁵ During the reporting period, the Ministry of Environment and Urban Planning brought forward a proposal to open *masjids* in airports and shopping malls rather than opening prayer rooms available to everybody's use.⁵⁶

The definition of worship place should be reformed so as to recognize the pluralist religious structure of Turkey.

The wording of the Article 2 of Village Law should be changed; "mosque" should be replaced by "place of worship".

Some of the main problems regarding the right to establish places of worship can be listed as follows:

Non-recognition of places of worship

Individuals professing various beliefs are generally able to worship individually or collectively in various places. The denial of place of worship status for some of these places however undermines the exercise of the right to freedom of religion or belief. For example, buildings that do not have place of worship status cannot enjoy certain privileges that are given to buildings that have this status. According to the Energy Market Law, which entered into force in the reporting period, the electricity bills of mosques, *masjids*, churches and synagogues, which have place of worship status, are paid by the Directorate of Religious Affairs.⁵⁷ However, *cem* houses and churches that do not have this status and meeting places of Jehovah's Witnesses have to meet these costs themselves.

The Draft Law on the Collection of Aid (Article 2(2)) drafted by the Directorate of Associations of the Ministry of Internal Affairs prescribes tax exemption for associations which have the purpose of opening or maintaining places of worship. This draft law has been criticized by

54 UN Human Rights Committee, General Comment 22, para. 4.

55 Köy Kanunu [Village Law] No. 442, 18.03.1924, Article 2.

56 Sabah, "Tiyatro ve Operaya Mescit" [Masjid at the Theatre and Opera House], June 05, 2013.

57 Provisional Clause 6(3) of Enerji Piyasaları Düzenleme Kanunu [Energy Market Regulation Law] No. 6446, March 14, 2013.

civil society organizations.⁵⁸ Exemption granted to places of worship that are regarded as legitimate by the state is bound to create both legal and practical inequalities.

Among the groups whose buildings could not gain place of worship status, despite the fact that they applied to the authorities for it, are Alevis, Protestants and Jehovah's Witnesses. According to government information there are 598 *cem* houses,⁵⁹ 50 churches⁶⁰ and 22 buildings of the Jehovah's Witnesses which are used as places of worship without official status.⁶¹

Provincial governors state that the justification for denial of applications for places of worship for the Alevi *cem* houses is a Directorate of Religious Affairs opinion that "the places of worship of Muslims are mosques."⁶²

During the reporting period, significant developments took place regarding a court case the focal point of which is the question of whether *cem* houses are places of worship or not. Ankara 16th Court of First Instance decided (with reference to ECtHR decisions and the neutrality obligation of the state regarding the status of *cem* houses) in a case regarding the closure of *Çankaya Cemevi Yaptırma Derneği* (*Çankaya Cem House Construction Association*) that the association statute which refers to *cem* houses as places of worship does not constitute a crime.⁶³ The 7th Chamber of the Appeals Court reversed this judgment arguing that *cem* houses cannot be accepted as places of worship. The justification of the decision was the Law on Directorate of Religious Affairs: "places other than mosques and *masjids* cannot be accepted as places of worship with respect to the Law No. 633 [on the Directorate of Religious Affairs] and relevant regulations."⁶⁴ In the court case following the reversal, Ankara 16th Court of First Instance confirmed its decision, referring to the duty of the state to observe neutrality.⁶⁵ The final decision on the case will be given by the General Council of Appeals.

It is worth noting that the ECtHR has stated that "in principle the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed."⁶⁶

58 Bianet, "Cami için Yardım Toplarken Hesap Verme Zorunluluğu Kalkıyor" [No More Accountability When Collecting Funds for Mosques], May 10, 2013.

59 The answer by the Prime Ministry to a parliamentary question of an MP, Document No. B.02.0.004./954, 16.07.2012, http://bianet.org/files/doc_files/000/000/646/original/Türkiyedeki_Cemevleri_soru_ve_cevap.PDF. Following this declaration, other statements were made. Different figures are given about the number of *cem* houses and the exact number is not known.

60 E-mail correspondence with the representative of Association of Protestant Churches, June 29, 2013.

61 E-mail correspondence with the representative of Jehovah's Witnesses, April 01, 2013.

62 Directorate of Religious Affairs, Script 1277, March 30, 2005.

63 Milliyet, "Yargıya göre cemevi ibadethane" [According to the Judiciary Cem Houses are not Places of Worship], 02.11.2011.

64 Sabah, "Yargıtay: Cemevi İbadethane Değildir" [Court of Appeals: Cem House not a Place of Worship], 26.07.2012.

65 Radikal, "İbadet Yerini Devlet Belirlemez" [State Does not Determine What is a Place of Worship], 30.01.2013.

66 ECtHR, *Metropolitan Church of Bessarabia v. Moldova*, Application No. 45701/99, 27.03.2002, para. 117.

The state should honour its obligation to observe neutrality in decisions regarding the recognition of places of worship and should not be guided by any opinion of any religious institution.

Allocation of places of worship in city plans

Another problem frequently mentioned by belief groups is that municipalities do not allocate any space for places of worship other than mosques. The applications made to various municipalities for establishing other types of places of worship were answered by statements that “except for the mosques, there is no area set aside for religious purposes in our construction plan.”⁶⁷ A well-publicized example was the answer that the Hacı Bektaş Veli Anatolian Cultural Foundation received after its application to the Ankara Metropolitan Municipality, which responded saying that there is no available space for a *cem* house.⁶⁸ The only positive example from this period is the Istanbul Metropolitan Municipality’s approval of the establishment of a new church in Yeşilköy upon the request of the Beyoğlu Meryem Ana Kadim Süryani Kilisesi Vakfı (Beyoğlu Virgin Mary Chaldean Church Foundation). This Foundation serves 17,000 people with only one church building in Istanbul.⁶⁹ However, in order for the process to be completed the approval of Preservation Board is needed and is still awaited. It should be noted, however, that the land in question had been given to the Latin Catholic Church in Ottoman times by an imperial decree, and its ownership transferred to the Municipality as a result of a land survey in 1950.

In the preparation of city plans, municipalities should also take into account the requests for not only mosques and masjids but also, places of worship requests of all religious groups. When fulfilling their duty to allocate land for places of worship they should take into account the religious pluralism within society.

Municipal bylaws regarding places of worship

Numerous belief groups state that only mosques are taken into account in the drafting of the bylaws of municipalities regarding the construction of places of worship. For instance, among many other criteria that are difficult to be met, according to the bylaw of Izmir Metropolitan Municipality, a worship place cannot be built on a plot that is less than 2.500 m². However, the size and shape of a worship place should be determined with respect to the belief groups own assessment of their needs, their doctrines, their economic resources and the communities’ own preferences.

Bylaws of municipalities should enable belief groups to decide the area that their places of worship cover as well as other matters affecting the building’s construction

67 Interview with the representative of Jehovah’s Witnesses.

68 Birgün Gazetesi, “Ankara’da Cemevine Yer Yokmuş” [There is no Place for Cem House in Ankara], 1 March 2013, http://www.birgun.net/actuels_index.php?news_code=1362130087&year=2013&month=03&day=01.

69 Interview with the representative of Beyoğlu Virgin Mary Chaldean Church Foundation, June 24, 2013.

according to the preferences of the community concerned. These bylaws should take full account of the pluralist nature of the society.

The approval of civilian authority

The Public Works Law requires the approval of the highest civilian authority for the site of the building in question, in order for place of worship status to be granted.⁷⁰ The criteria by which the civilian authorities grant approval remain uncertain.

The decision processes of the civilian authorities should be foreseeable. The criteria under which decisions are taken should be public and available to every person.

Inability to claim rights due to the absence of legal personality

Belief groups which do not have legal personality have in the past and present lost properties they have used as places of worship, as they cannot prove that they own these places. The fact that they do not have legal personalities both prevents these belief groups from availing themselves of legal protection and violates their property rights.

For example, in the reporting period the ownership of Izmir Santa Maria Church was transferred to the Treasury.⁷¹ In Anatolia a number of places of worship which were unwillingly abandoned cannot be returned to their owners due to the fact that these religious and belief groups do not have legal personalities. The fact that rights regarding the places of worship cannot be used is an important problem, which should urgently be solved.

In this regard, it should be noted that the Venice Commission's recommendation of 2010,⁷² which called on Turkey to initiate measures to recognize the legal personality of religious groups, has still not been implemented.⁷³

Legislation that would enable all belief groups to gain legal personality should be drafted without delay. Until this is done the link between belief groups and their places of worship should be taken into consideration and necessary precautions should be taken to prevent religious groups from losing the ownership of their places of worship.

The return of places of worship

That certain places of worship, which were about to collapse, were renovated is a positive development. For instance, the Assyrian Mor Kuryakos Church was renovated by Dargeçit

70 İmar Kanunu [Public Works Law] No. 3194, Additional Article 2.

71 İzmir Port, "Adalet Hz. İsa'ya Baba Adını Sordu" [Justice Asks Jesus His Father's Name] June 30, 2013.

72 The Venice Commission, or the European Commission for Democracy through Law, established in 1990, is the Council of Europe's advisory body on constitutional matters.

73 Council of Europe, Venice Commission, Comment No. 535 / 2009, March 15, 2010.

Municipality and designated to the use of the Assyrian community.⁷⁴ The restoration of the Meryem Ana Kaya Church in Giresun was completed and opened to tourism.⁷⁵

The General Directorate of Foundations continued to return places of worship used by non-Muslim citizens. However, some are not used according to their original purpose. The Armenian Protestant Surp Pirgiç Church is rented by the General Directorate of Foundations to Sur Governorship and has been transformed into a center providing handcraft training to women.⁷⁶ The transfer of this building to the Armenian community living in Diyarbakir and Turkey would be an important step to advance the protection of freedom of religion or belief. Similarly, in the reporting period the Gaziantep Synagogue was given by the General Directorate of Foundations to the Gaziantep University to be used as a cultural center, rather than being designated to the use of the Jewish community.⁷⁷

The necessary legal regulations should be made in order for buildings administered by the General Directorate of Foundations – to be returned to the communities they belong to. Until this regulation is made, the places of worship transferred by the General Directorate of Foundations should be designated for the use of the communities who originally owned them.

6.1.3. Holidays and days of rest of special importance for religions and beliefs

“The concept of worship extends to [...] the observance of holidays and days of rest.”⁷⁸ Religious holidays which are officially recognized as national holidays are Ramadan and the Feast of Sacrifice which are important days for Muslims.⁷⁹ *Aşure Day*, *Hidrellez Festival* and *Gadir Hum Festival* (important for Alevi), Christmas and Easter (celebrated by Christians), Rosh Hashanah (of special importance to Jews) are religious festivals during which believers attend to activities related to their religions or beliefs and special days on which they fulfill the requirements of their religions or beliefs.

These are the days in which believers usually come together, worship and participate in various rituals and religious traditions. They are also important for the development of individual and group identity. Their importance in terms of transferring belief to the next generations cannot be underestimated.

The fact that these days are not taken into consideration when regulations are made regarding the days of exams and activities in schools makes it difficult for children and the youth to attend the festivals and special days of their religion. Similarly, if individuals cannot

74 Agos, “Süryani Mor Kuryakos Kilisesi Yenilendi” [Syriac Mor Kuryakos Church is Renewed], February 11, 2013.

75 Cihan Haber Ajansı, “Giresun’da Tarihi Kaya Kilise Gün Yüzüne Çıkarıldı” [A Historical Church has been Restored in Giresun], June 7, 2013.

76 Radikal, “Orası Kilisemiz, Halı Kursu Değil” [That’s our Church not a Carpet Weaving Center], December 28, 2012.

77 Şalom, “Gaziantep Sinagogu Kültür Merkezi Olacak” [Gaziantep Synagog will be a Cultural Center], 09.04.2013

78 UN Human Rights Committee, General Comment No. 22, para. 4.

79 Ulusal Bayram ve Genel Tatiller Hakkında Kanun [Law on National Holidays and General Vacations] No. 2429, 17.03.1981, R.G. Sayı 17284, 19.3.1981.

take leave of absence in the special days of their religion the consequence might be that they are unable to attend rituals and celebrations. Likewise, the right to free-visitation is permitted in prisons only on the festivals designated by law.

The authorities should take the necessary steps in relation to schools, work places and prisons in order to ensure that individuals can take the time to meet the requirements of their religions if they so wish.

6.2. The right to manifest one's religion or belief in teaching

6.2.1. The right to spread one's religion

The right to freedom of religion or belief extends to the rights to manifest one's religion in practice and teaching as well as to spread one's religion or belief.⁸⁰

In Turkey, acts which aim at spreading religion individually or collectively are not prohibited. On the contrary, Article 11(1) of the Turkish Criminal Code states that activities which prevent the sharing of religious views will be punished: "Any person who forces another person, by using violence or threat, to disclose or change his religious, political, philosophical beliefs, conceptions and convictions, or *prevents disclosure and the spread of the same*, is punished with imprisonment from one year to three years."⁸¹

In the reporting period there were at least two incidents in which individuals who wanted to share their religion were attacked. In both cases perpetrators were not prosecuted and the victims were not provided with protection. On 12 April 2013 the Church of Diyarbakir opened a stand at the city centre with the aim of answering frequently asked questions regarding their religion and promoting it. However, the stand was removed due to passers-by targeting the stand and the individuals by it.⁸² Later on, the religious officials of the church requested protection from Diyarbakir Governorship for a similar activity. However, this request was declined. As a result, church members gave up this activity which was aimed at sharing their religion.

In Samsun, some people attacked the stand in front of the Agape Church and tore down the Bibles on it.⁸³ No investigation into this issue was initiated and no protection was provided to the church.

When activities to share religious views are obstructed by public officials or private persons, it is the state's obligation to protect this right regardless of whether they are individual or collective activities.

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

81 Emphasis ours.

82 E-mail correspondence with A.G., 28.05.2013.

83 Sat7Turk, "Samsun Agape Kilisesi'ne Saldırı" [Attack on Samsun Agape Church] 5 Mayıs 2013 .

Attempts to obstruct activities aimed at spreading a belief should be effectively investigated, whether or not the perpetrators are public officials or private persons. Such obstruction should not go unpunished.

All public officials, starting with law enforcement officers, should be educated in their duty to guarantee the right to share religious views.

Officials should be made aware that the right to promote religion does not only belong to individuals who believe in the religion of the majority of the population but also to those who follow other beliefs.

6.2.2. The right to establish schools that provide religious education

The manifestation of religion or belief in teaching is one of the fundamental components of the right to freedom of religion or belief.⁸⁴ This right can be exercised in different ways. The most common ways are the establishment of educational institutions in order to train religious officials and trainings and education programs in order to educate individuals that are affiliated with belief communities.

Article 24 of the Constitution does not explicitly protect the right to manifest religion or belief in teaching. Instead, it regulates religious instruction and education with the following statement: "Education and instruction in religion and ethics shall be conducted under State supervision and control." Institutions that provide religious education can be opened by the state. According to the Article 3 of the Law No. 5580 on Private Educational Institutions "education institutions identical or similar to one's which provide religious education cannot be opened."⁸⁵ The state has the monopoly on both opening religious schools and determining obligatory or optional courses regarding religious education.⁸⁶

A positive development in the reporting period has been the annulment of Article 263 of the Turkish Criminal Code, which prescribes imprisonment of individuals who open education institutions contrary to the law and teach in these institutions. This article has been used as the grounds for closing unauthorized Koran courses and punishing individuals who teach there. This change eliminated the legal ground for the punishment of the individuals who provide religious education. It does not, however, prescribe any regulation with regard to opening religious education institutions.

Due to these restrictions, no religious group in Turkey is able to open private institutions which provide religious education and instruction. As a result, belief groups cannot train religious officials and open formal educational institutions for the benefit of their own

84 UN Human Rights Committee, General Comment No. 22, para. 4.

85 Özel Öğretim Kurumları Kanunu [Law on Private Educational Institutions] No. 5580, February 8, 2007

86 Anayasa Mahkemesi (AYM) [Turkish Constitutional Court], E 2012/65, K 2012/128, September 20, 2012, R.G. 18.04.2013-28622.

communities. Such restrictions on this right negatively influence various religious or belief groups in Turkey in terms of preserving their identities and existence.

Halki Theological Seminary (which is still closed) has long been a symbol of this type of restriction. The college is still closed despite declarations made by public officials that they wish to reopen it. The request of the Armenian Apostolic Church to open an education institution under the General Directorate of Higher Education has not been answered for six years. This project asked the Council of Higher Education whether there is any state initiative that will result in the opening of an education institution providing theological education in any belief other than Islam. The Council responded saying that there is no such initiative.⁸⁷

In Turkey only the state is permitted to open educational institutions to train religious teachers or officials and it only opens religious institutions for Islam. Individuals who are affiliated with other religions have to attend foreign colleges. There are also Muslim groups who want to open their own colleges to teach Islam from a theological perspective different from that of the state schools and universities. They are also prevented from opening their own educational institutions.

During the reporting period, the Constitutional Court adopted a new interpretation of secularism when deciding on the constitutionality of the Primary Education Law and Law on the Amendment (also known as “4+4+4”).⁸⁸ This interpretation, defined as liberal secularism, of the Constitutional Court stated that according to the domestic law only the state could make decisions regarding religious education. It also created a positive obligation of the state to provide religious education. However, the state’s positive obligation regarding the freedom of religion or belief requires the elimination of obstacles to the manifestation of religion or belief in teaching.

Representatives of religious or belief groups stressed the necessity of establishing institutions to train religious officials in Turkey. The high costs of education abroad, limited participation due to language restrictions, and the fact that it is not always possible for the individuals who went abroad to come back were noted as recurrent problems.

There are different opinions regarding whether education to train religious officials should be provided by public universities or private educational institutions and whether the cost should be covered by public or private funds.

The authorities should take the necessary measures to ensure the right to manifest religion or belief in teaching, to recognize the right to train religious officials for all religious communities and to enable all belief groups to open educational institutions to train their own religious officials.

⁸⁷ Answer to our Information Request Application, 12.02.2013.

⁸⁸ *Supra* note 85.

Policy makers should develop procedures, in accordance with human rights standards, regarding the funding of institutions established with the aim of training religious officials, as well as cooperation strategies between the state and private sector on financing such institutions.

6.3. The right to manifest one's belief in practice

6.3.1. Religious symbols and/or garments

Restrictions on public officials' right to manifest their religion or belief in practice remain. The main legal ground of the restriction is Article 5 of the Regulation on the Dress of the Civil Servants. This article requires women to leave their hair uncovered and men to shave their beards.⁸⁹

Various campaigns were initiated in the reporting period in order to allow the wearing of headscarf in public institutions. However, no regulation has yet been made on the dress code of civil servants.

In the reporting period, 8th Chamber of the Council of State declared that lawyers cannot be considered civil servants in the meaning of the definition found in the Constitution, although they provide public services. This decision suspended the application of part of the occupational rules of the Turkish Bar Association which requires lawyers to work with "uncovered hair".⁹⁰

Under Law No. 2596 on the Prohibition of Certain Garments, the wearing of garments which represent a religious status or post are restricted regardless of the religion or belief.⁹¹ According to this law, no religious official can wear garments representing his or her office. However, only one representative of a *certain* religious group can wear such garments in public places relying on a decision of the Council of Ministers.⁹² So far this provision has been applied to the so-called Lausanne minorities. Despite the fact that Article 9 of the ECHR does not always guarantee the right to act as one's religion commands,⁹³ it would be appropriate to re-regulate these rules so as to assure the right to manifest one's religion in practice using clothing or other such symbols. The restriction criteria can only be applied when a person's religious garment, which symbolizes certain status, is used to impose his/her religion unto other and/or to serve his/her own interest.

89 Council of Ministers Decision No. 16/7/1982-82/5105, Kamu Kurum ve Kuruluşlarında Çalışan Personelin Kılık Kıyafetine İlişkin Yönetmelik [Regulation on the Dress of the Personnel of Public Institutions and Organizations], R.G. 25.10.1982/17849.

90 NTVMSNBC, "Danıştay'dan başörtülü avukata vize" [Council of State Permits Headscarf for Lawyers], 24.01.2013.

91 Bazı Kisvelerin Giyilemeyeceğine Dair Kanun [Law on the Prohibition of Certain Garments] No. 2596, December 3, 1934, Article 1.

92 *Ibid.*

93 ECtHR, *Pichon and Sajous v. France*, Application No. 49853/99, 02.10.2001.

Under the ECHR the right of both individuals and public officials to wear religious symbols and garments can only be restricted by law and if it is necessary within a democratic society and within the limits of the restriction clauses found in the relevant provisions of human rights conventions.

The state should create conditions in which religious symbols and garments can be worn, paying due regard to the state's neutrality and pluralism obligations. Nobody should be (in law or in practice) forced to wear a religious symbol or garment.

6.3.2. The right to learn and use the language that is traditionally used in religious practices

The practice of religion or belief also includes a belief group's right to use the language that is traditionally used by that particular group.⁹⁴ The opportunity to learn the language used in ceremonies and prayers must be available. During the monitoring period, people from the Syriac Church did not have that opportunity. It is very important for this group to pray in their mother tongue and to provide opportunity for its young people to learn its language. This enables the continuation of their religious practices and culture.

A Syriac community, the Virgin Mary Syriac Chaldean Church, applied to the Ministry of Education in order to establish a kindergarten to teach Syriac. Yet, their application was rejected on the ground that they were not a "minority group" (a group protected under the Lausanne Treaty).⁹⁵ On the other hand, the permission of the Ministry of Education for the opening of a Greek school on the island of Gökçeada should be noted as good practice.⁹⁶

The difference between these two applications came from the fact that the Turkish government considers the Greek Orthodox Church to be a minority group, while it does not regard the Syriacs as being under the protection of the Lausanne Treaty. Yet, the Lausanne Treaty refers to "non-Muslim minorities" without naming particular groups.⁹⁷

Necessary measures should be taken in order to ensure the teaching of languages that are used in religious ceremonies.

The "non-Muslim minorities" statement of the Lausanne Treaty must be understood as including all non-Muslim groups and individuals.

Turkey should ratify and implement the Council of Europe European Charter for Regional or Minority Languages.

94 UN Human Rights Committee, General Comment No. 22, paragraph 4.

95 Agos, "Süryanilere anadilde eğitim reddi: "Azınlık değilsiniz yabancı dilde eğitim yapamazsınız" [Syriacs are Denied Education in Mother-Tongue: "Education in a Foreign Language Not Possible if you are not a Minority"], 17 August 2012.

96 Radikal, "Gökçeada'ya Rum Okulu Müjdesi" [The surprise of The Greek Orthodox School in Gokceada], 23.03.2012.

97 For the further information see Baskın Oran, *Türkiye'de Azınlıklar* [Minorities in Turkey], İletişim, 2010.

Turkey should ratify and implement the Council of Europe Framework Convention for the Protection of National Minorities.

6.3.3. The right to appoint religious officials

The autonomous existence of religious groups is “essential for the plurality of a democratic society, thus, it is protected under Article 9 of the ECHR” and “were the organizational life of a community not protected under Article 9, all other aspects of the individual’s freedom would become vulnerable”.⁹⁸

In many cases ECtHR has acknowledged that religious leaders are important for religious groups and that the right to participate in society is protected by Article 9 of the ECHR which notes the individual’s freedom to express his or her religion. According to ECtHR case-law:

[T]he right of believers to freedom of religion encompasses the expectation that the community will be allowed to function free from arbitrary State intervention in its organization. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 of the Convention affords. Were the organizational life of the community not protected by Article 9 of the Convention, all other aspects of the individual’s freedom of religion would become vulnerable.⁹⁹

In addition, “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers”.¹⁰⁰

In Turkey, restrictions on appointments of religious officials stem from the existing laws, and extra-legal state actions.

Restrictions on appointment of religious officials

During the reporting period, different rules were applied in relation to the appointment of religious officials based on their religious affiliation. The Directorate of Religious Affairs appoints imams who work in mosques. There have also been some interventions on the appointment of non-Muslim high-level religious officials of the Armenian Apostolic Church, the Greek Orthodox Church, and the Jewish community. These interventions do not result from laws, but from arbitrary state interference.

On the other hand, there has been no intervention in the appointment of religious leaders of religious groups such as the Alevis, Protestants, and the Jehovah’s Witnesses.

98 ECtHR, *Holy Synod of the Bulgarian Orthodox Church and Others v. Bulgaria*, Application No. 412/03 and 35677/04, January 22, 2009.

99 *Ibid.*

100 UN Human Rights Committee, General Comment No: 22, para. 4.

Some belief groups receive training from religious officials or teachers who are not Turkish citizens. Although there are many reasons for this, the main reason appears to be that it is not permitted to train religious officials in Turkey. For example, some religious groups might have connections with foreign co-believers and chose religious officials or teachers from these groups. Or there may be a need to appoint foreign clergy to work in worship places used by ex-patriots.

Recently, it has been observed that such foreign religious workers have encountered problems in obtaining or renewing work permits.

Here, the problem is the lack of clear and accessible criteria and procedures to regulate the status of foreign religious workers and applications to obtain work permits. It has been reported that J.M. who was working in the Diyarbakir Protestant Church, was deported and the church was penalized since he could not renew his employment visa.¹⁰¹ He had applied many times to the Ministry of Foreign Affairs in order to learn how to renew his visa, yet no response was ever received. Foreign religious workers who minister in the worship places of ex-patriots normally receive their employment visas from the Ministry of Internal Affairs.¹⁰² However, in Turkey, there is no regulation governing the appointment of a foreign religious worker in a religious institution owned by Turkish citizens.

Interviews during the monitoring period have revealed that there are also problems with obtaining work permits for foreign religious workers employed in the places of worship of non-Muslims who reside in Turkey but are not Turkish citizens.

State officials indicated that priests who work in the General Synod of the Greek Orthodox Church must be Turkish citizens.¹⁰³ Officials also stated that members of the Greek Orthodox Church (whose numbers of religious officials and members are declining) could apply for Turkish citizenship.¹⁰⁴ Yet there is no legal basis for a requirement that members of the General Council must be Turkish citizens.

Religious or belief groups have the right to choose and appoint religious officials. According to international law, Turkish citizens and foreigners must be treated equally in regard to their freedom of religion or belief, including the practice of religion through participation in the life of their community. These rights can be restricted only if limitations are prescribed by law and are necessary to protect

101 E-mail correspondence with the representative of the Diyarbakir Protestant Church, and Agos, "Diyarbakır'da Rahibe Şok Sınırdışı" [Deportation Shock to Priest in Diyarbakır], 22.02.2013.

102 According to the response we received to our request for information from the Ministry of Labor and Social Security, "Under Article 54 of Application Regulations 'The work permits are given by the Ministry of Internal Affairs to foreign professors who work in the schools within the scope of embassies and consulates in Turkey, to officials who work in the cultural organizations of foreign countries in Turkey, and to religious officials to be appointed for the religious institutions. The application of work permits in those cases is realized by means of the Ministry of Foreign Affairs'", 16.08.2013.

103 In June 2007, The Council of State indicated that in order to be a candidate in the elections of the Eastern Orthodox Council, one must be a Turkish citizen and should be working in Turkey during the elections.

104 Hürriyet, "Ekümenik Sıfatı Rahatsız Etmiyor" [The adjective of Ecumenical does not bother], 15.05.2010.

public safety, order, health or morals, or the fundamental rights and freedoms of others.

A transparent, accessible, foreseeable, and clear procedure should be established, in accordance with international law, in order to ensure that foreign religious workers could be appointed to work for religious institutions whether the institution serves Turkish citizens or not.

Restrictions on the usage of religious titles

The use of religious titles forms part of the internal affairs of belief groups and should not be a legal issue. The right to freedom of religion or belief also includes the autonomy to appoint religious officials.

Under Law No. 677 the following titles are banned: *şeyhlik, dervişlik, müritlik, dedelik, seyitlik, çebeilik, babalık, emirlik, nakiplik, halifelik, falcılık, büyücülük, üfürükçülük and nüshacılık*.¹⁰⁵

Although Law No. 677 bans numerous titles, few people are penalized based on it. Judicial practice has indicated that the use of those titles is forbidden when a person tries to take advantage of someone or something using his/her title.

Abolishing this law, which only bans specific religious titles, would be a step forward in honouring Turkey's human rights obligations.

Even though there is no domestic legislation that regulates the use of other religious titles, administrative warnings have been given in cases involving the use of certain titles. There is no legal provision that prohibits the Patriarch of the Greek Orthodox Church from using the title "ecumenical" or requiring the Armenian Apostolic Patriarch to use the title "Patriarch of Turkish Armenians". The interference of public officials banning the usage of the adjective "ecumenical" for the Patriarch of the Greek Orthodox and warning the Chief Rabbi to change his title to "Chief Rabbi of Turkish Jews" instead of "Turkish Chief Rabbi" are examples of interferences in the right to freedom of religion or belief.

Religion or belief groups must be free in their internal affairs to choose the titles used by their religious officials. In line with Turkey's international human rights obligations, the legal and de facto obstacles to this should be removed.

105 Tekke ve Zaviyelerle Türbelerin Seddine ve Türbedarlıklar İle Bir Takım Unvanların Men ve İlgasına Dair Kanun Law No 677 [Law on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles], 30.11.1925, Article 1. The titles are given in Turkish.

6.3.4. The right to have a funeral in accordance with one's religion or belief and cemeteries

In Turkey, metropolitan municipalities and village administrations provide services regarding cemeteries.¹⁰⁶ In terms of cemeteries, there appear at least two issues related to freedom of religion or belief. The first one concerns the need of people from different belief groups for different cemeteries, and the other one is to conduct the funeral of a person according to his/her beliefs.

According to the Court of Appeals, "it is not possible under any circumstances that municipalities provide cemetery services only for Muslims. The municipalities are supposed to provide permanent cemetery services for non-Muslim Turkish citizens. Therefore, for instance, the control of Orthodox cemeteries belongs to municipalities, not the Greek Orthodox Church."¹⁰⁷ However, according to Article 42 (3) of the Lausanne Treaty, "the Turkish government has to provide protection for the churches, synagogues, cemeteries, and other religious institutions of the minorities".¹⁰⁸

During the reporting period, the request of the Istanbul Protestant Foundation for a cemetery was not met.¹⁰⁹

When plots for cemeteries are allocated the religious diversity and requests of belief communities as well as the principle of neutrality and the obligation to ensure pluralism should be taken into account.

In Turkey, bodies cannot be cremated, yet the ashes of a Turkish citizen or the ashes of his/her first-degree relatives can be preserved in a suitable cemetery in Turkey.¹¹⁰ This situation creates an obstacle for people, who wish to be cremated after death or who wish to preserve their ashes.

Individuals should have the right to decide what to do with their bodies after death and this right can be only restricted for objective reasons necessary in a democratic society.

106 Büyükşehir Belediyeleri Kanunu [Metropolitan Municipality Law], No: 5216, Article 7.

107 The General Council of the Court of Appeals for the Harmonization of Jurisprudence, 16.11.1968 T. E. 1968/6 K. 1968/14.

108 AYM [Constitutional Court] 27.12.2002 T. E. 2002/146 K. 2002/201- RG: December 11, 2003 – 25313. Also, according to Article 16/A of the Cadastral Law, general cemeteries should be registered in the name of municipalities. Court of Appeals, 16th Chamber 6.2.2003, E. 2003/323 K. 2003/251.

109 Interview with the representative of the Istanbul Protestant Foundation, July 24, 2013.

110 Mezarlık Yerlerinin İnşaatı ile Cenaze Nakil ve Defin İşlemleri Hakkında Yönetmelik [The Regulation Pertaining to the Construction of Cemeteries and Transportation and Burial of Funerals], Article 38 (1).

6.3.5. Freedom of association

The case law of the ECtHR emphasizes that the right to freedom of religion or belief is not only an individual, but also a collective right.¹¹¹ In that context, ECtHR usually highlights the necessity of interpreting Article 9 in light of Article 11 which protects freedom of association:

Moreover, since religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.

In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 must be seen not only in the light of Article 11, but also in the light of Article 6 [the right to fair trial].¹¹²

In conclusion, necessary legislative changes should be made in order to ensure that belief groups may manifest their religion or belief collectively, if they wish to do so.

The United Nations Special Rapporteur on Freedom of Religion emphasized the responsibility of states in this sphere:

Such an administrative decision should not be misconceived as an act of mercy, however. Under international law, States are obliged to take an active role in facilitating the full enjoyment of human rights, including freedom of religion or belief. By not providing appropriate legal options that, de jure and de facto, are accessible to all religious or belief groups interested in obtaining a legal personality status, States would fail to honour their obligations under the human right to freedom of religion or belief.¹¹³

In Turkey, since there is no legal regulation on this issue, belief groups cannot acquire legal personality.

The Opinion of the Venice Commission on the issues of legal personality of non-Muslim belief groups in Turkey still stands up-to-date:

111 ECtHR, *Hasan and Chaush v. Bulgaria*, Application No. 30985/96 Sept. 36, 2000.

112 ECtHR, *Bessarabiya Metropolitan Church Moldova*, Application No. 45701/9913, Dec. 2001.

113 United Nations Special Rapporteur on Freedom of Religion, A/HRC/19/60, Dec. 22, 2011, para. 43.

The Venice Commission therefore encourages the Turkish authorities to continue the reform process and introduce legislation making it possible for all non-Muslim religious communities as such to acquire legal personality. There are many models in Europe how to do this and the Turkish authorities are free to choose the model they consider most suitable for the situation in their country as long as it is in full compliance with the requirements of the European Convention on Human Rights. Pending such legislation, the existing rules, including the laws on foundations and associations, have to be interpreted in such a way as to minimize the restrictions on freedom of religion following from the fact that the religious communities do not themselves have legal personality.

This opinion is relevant for all belief groups in Turkey.

During the reporting period, the Santa Maria Church in Izmir transferred its possessions around the church to the treasury due to the fact that it did not have legal personality and could not claim ownership of these properties.

In addition, since some religious institutions such as the Greek Orthodox Patriarchate and Armenian Apostolic Patriarchate, do not have legal personality and as a result restrictions on their rights to freedom of religion or belief, fair trial and property remained during the reporting period.

The institutional models which can be used by religious or belief groups for some of their activities are foundations and associations. There are however several problems connected with these models. Firstly, none of these models have been formulated according to the nature of belief groups and their traditional activities. Neither of them helps the belief groups to acquire legal personality, as such. Secondly, both models involve significant restrictions.

Similarly, the need to formulate a certain legal entity status for the institutions of certain belief groups continued. For instance, the foundation and association models cannot meet the organizational need of the Armenian Apostolic Patriarchate, Greek Orthodox Patriarchate, and the Chief Rabbinate.

The necessary legislative changes must be made to ensure that all belief groups and their high level institutions can acquire legal personality.

In addition, during the reporting period, agnostic and atheist individuals and the representatives of such groups indicated that they intentionally refrain from being organized as a foundation or an association. In Turkey, agnostics or atheists do not have an organized structure, such as a foundation or an association. The main reasons for this lack of organization are that public authorities may obstruct them from establishing an association or a foundation as well as a concern about becoming a target of intolerant attacks as a result

of increased visibility. Although there is no legal obstacle for the organization of atheist individuals or groups, the fact that they cannot effectively exercise their rights results in interference with their right to freedom of religion or belief and the right to association.

The necessary measures should be taken to ensure that all belief groups, including atheists, can effectively exercise their right to associate.

In order to ensure respect for all belief groups, awareness should be raised about the right to freedom of religion or belief as a right of all. Especially public authorities should refrain from negative discourse about atheists.

The right to acquire legal personality¹¹⁴

The right to acquire legal personality, as distinct from establishing a foundation or association, includes the right to have legal entity status as a belief group. The right to acquire legal personality is an “enabling” right. This kind of legal personality, which may be called a “belief community”, provides belief groups the right to manifest their religion or belief collectively. When a belief community has legal personality the belief group becomes empowered; also, activities and assets of groups are legally protected. For example, when a belief group buys a land in order to build a place of worship, this land will directly belong to the belief group, not to an institution or association. In Europe, various models of legal entity status for belief groups exist. These models may be summarized under four categories:

1. There is a state church for the majority religion and other belief groups are subject to other rules (Some Scandinavian countries and the UK).
2. In some countries the most important or majority religious groups and their institutions which may also carry out certain public functions have public law status. Other religious or belief communities and other groups are given other kinds of legal entity status. (In countries affected by the German tradition).
3. Many European countries have a special legal status for belief communities, as such.
4. In some European countries there is no special legislation for the legal status of religious communities. They have to use the ordinary association models. For example, in the UK religious communities have the possibility to register as charities.

In many European countries, there is a special kind of legal entity status for belief groups. These different national structures are established taking the features, organizational structures, activities, and function of religious or belief groups into consideration. These have different status than foundations or associations. For instance, in Norway, while the Norwegian State Church is a part of state administration, there is a special code for other belief communities. As a result of this special legal status these other groups enjoy rights, privileges, and financing similar to those of the state church.

114 Based on the Council of Europe Venice Commission Opinion No. 535/2009, 15 March 2010.

7. VULNERABLE GROUPS

7.1. The right of the child to freedom of religion or belief

Article 9 of the ECHR is applicable to children, as well as adults. In addition, Article 2 of the First Protocol of the ECHR complements the right to freedom of belief or religion by providing protection for the right to education:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Though, Turkey had made an interpretive declaration in relation to Article 2 of the First Protocol and indicated that this clause must be interpreted in accordance with the principles of the Law on the Unity of Education.¹¹⁵

Turkey's declaration to Article 1 of the First Protocol of the ECHR should be abandoned.

The United Nations Convention on the Rights of the Child protects the right to freedom of thought, religion or belief of the child under Article 14:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

The right of the child to freedom of thought, conscience and religion is thus protected by international law.

In Turkey, the right to freedom of religion or belief of the child is dealt primarily within the framework of the rights of parents or legal guardians. However, a child has the right to make his/her own decisions in the exercise of the right to freedom of religion or belief.

The guiding principles on the participation of children outlined in General Comment No. 12 of United Nations Committee on the Rights of the Child must also be implemented in the context religion and education.

115 The Council of Europe Treaty Office.



As an individual, the child, has the right to thought, religion or belief, in accordance with his/her developing capacity.

At this point, the Religious Culture and Knowledge of Ethics lessons and the optional lessons, introduced in the school year of 2012-2013, such as the “Life of The Prophet Muhammad”, “Basic Religious Knowledge (Islam)” and “the Koran”, present several problems in relation to the child’s right to freedom of religion or belief.

In relation to the optional religion lessons in the public education system, the Education Reform Initiative observed in 2012 that, “the students who may not like to choose an optional religion lesson might encounter pressure from their peers, teachers, and family, thus, they may feel obliged to declare or hide their beliefs”.¹¹⁶

Some practices related to the optional religion lessons in the 2012-2013 academic year raise questions of whether the optional lessons are really optional. In some schools, the optional religious courses have been assigned to students by the school administration, but not selected by the student or his/her parents, or the students had to choose religion courses because the schools were not able to offer other optional lessons due to a lack of teaching staff. Parents, however, did not feel that they could report these situations, since

116 Education Reform Initiative, *Education Monitoring Report 2011*, Sabanci University, p. 111.

they did not want their children to be stigmatized. The reluctance to report such situations seems to result from parents' fear of having their children marginalized by teachers, school administration, and peers.

In Diyarbakir, a Christian high school student exempt from Religious Culture and Knowledge of Ethics course was *forced* to choose an optional religion lesson, since there were not alternative optional lessons in her school.¹¹⁷ Optional lessons other than the religion lessons were not offered because most students had chosen these lessons and the necessary attendance (at least 10 students) for other optional lessons could not be reached for any other lesson. First her family reported the situation to the school administration, however no precaution was taken. Following an application to the Ministry of Education, an optional lesson was introduced only for this student starting with the second semester.¹¹⁸

Necessary steps must be taken to make optional religion lessons, really optional.

In this context, the circular letter issued by the Ministry of Education stating that lack of teachers cannot be a reason for not offering optional lessons is an important measure.¹¹⁹ Its implementation, however, must be closely monitored.

Necessary steps must be taken in order to prevent schools from assigning optional lessons for students without their consent and knowledge.

An effective and independent investigation mechanism must be established in order to help parents to make a complaint confidentially in the face of such pressures.

Allowing high school students to choose optional lessons independently from their parents would be a significant step to advance the protection of the right of the child to freedom of religion or belief.

Considering that in some situations most students may chose the optional religion lessons, the condition of having at least 10 students to open an optional lesson must be abandoned, so that no student will be forced to take a religion lesson.

The second important issue relates to the right of students to express their religion or belief in practice. In the 2012-2013 academic year, different practices related to the optional religion lessons have been observed. According to a statement of the Minister of Education, covering one's head is allowed in the optional religion lessons.¹²⁰

117 E-mail correspondence with A.G., March 2013.

118 *Ibid.*

119 The Report of the General Directorate of the Ministry of Education on the Optional Lessons, Report No: 43769797/1325231 11.06.2013.

120 NTVMSNBC, "4+4+4'te Merak Edilen Sorular" [The Questions You Wonder in 4+4+4], 06.06.2012.

Interviews conducted with teachers demonstrate that teachers and school administrators play a key role in the choices of students to wear the headscarf and perform ablution. Even if students and parents chose optional religion lessons freely, the state is under an obligation to respect the rights of the parents and children to freedom of religion or belief in the classroom.

The Ministry of Education should prepare guiding principles for school administrators and teachers on the proper conduct in the classroom to ensure that the right of the child to manifest religion or belief, the right not to be forced to participate in religious practices and the right of parents to raise their children in line with their religious or philosophical beliefs are respected.

In addition to the above mentioned issues, two more points need to be emphasized about the Religious Culture and Knowledge of Ethics courses. First, despite changes in its program and books, the course continues to include elements of “religious instruction” and “teaching about religions”. In the reporting period, national courts reached contradictory decisions on the question of whether the content of the course lessons is compatible with the obligation to protect the right to freedom of religion or belief. Following a complaint made by an Alevi family for their daughter E.S.N., the 1st Administrative Court in Samsun declared that “compulsory” Religious Culture and Knowledge of Ethics courses are contrary to the right to freedom of religion and conscience, the provisions of ECHR and the case law of the ECtHR. Hence, the Court decided that the student had a right to exemption.¹²¹ The 8th Chamber of the Council of State, however, overturned the decision of the first-degree court arguing that the content of the course cannot be considered as “religious instruction”.¹²²

Although some improvement has been made in the curricula of the course through the inclusion of content on diverse interpretations of Islam, it is fair to conclude that “the course still violates the freedom of religion and belief and the freedom of parents to raise their children according to their religious and philosophical views”.¹²³

Secondly, the *arrangements* on exemption should not violate the right of the child to freedom of religion or belief. Some Jehovah Witnesses and Christian families, whose children have a right to be exempted from the course, indicated that their children are often excluded, especially in public schools, for not attending these lessons. Again, they are reluctant to make any complaints since they do not want their children to be stigmatized. Also, there are no alternative classes for those who are exempted from the course.¹²⁴ Since the exemption is indicated in the school report card, these students may run the risk of being discriminated against on this basis.

121 T24, “‘Alevi Aile Dava Açtı, Mahkeme ‘Din Dersi Zorunlu Olamaz’ Dedi”, [The Alevi Family Went to Court, The Court Said “Religion Course Cannot Be Obligatory”], 16.02.2013

122 Bugün, “Danıştay’dan Emsal Din Dersi Kararı”, 04.07.2013 [Precedent Decision of the Council of State on Religion Course] 4.07.2013.

123 Education Reform Initiative, *Education Monitoring Report 2011*, Sabancı University, 114.

124 ECtHR, *Grezelak v. Poland*, Application No. 7710/02, 15 June 2010.

The Religious Culture and Knowledge of Ethics course cannot be compulsory since the current content includes religious instruction.

If the course remains compulsory, it must be rearranged in accordance with TOLEDO principles on Teaching about Religions or Beliefs in Public Schools so that it is based on plurality and respect of all beliefs and worldviews.

The procedures on exemption should be reformed, allowing students to be able to exercise their right to be exempted without declaring their belief and the right should be available to all students, not only to Christians and Jews.

Alternatives classes, which would not violate freedom of belief, must be added to the school curriculum for those who do not want to take the Religious Culture and Knowledge of Ethics course.

7.2. Freedom of religion or belief of individuals whose freedom is restricted

Article 9 of the ECHR protects the right to freedom of religion or belief of individuals whose freedom is restricted. In addition, although not binding, United Nations Standard Minimum Rules for the Treatment of Prisoners¹²⁵ provides for guiding principles for the treatment of individuals in custody or in prison. According to these principles, discrimination on the basis of religion or belief is not permitted and the religious and moral views of prisoners must be respected.¹²⁶ In addition, the appointment of religious officials, the meeting of the prisoners with religious officials at a convenient time, providing prisoners the opportunities to practice their religion within the boundaries of what is possible, and possession of religious books should be accommodated.¹²⁷

It appears that arrangements for prisoners to meet with religious officials are made with a very restricted perspective. In 2012, such a request of an Alevi prisoner, in a Kandira F-type prison, was refused first based on the view of the prison, then based on the opinion of the Directorate of Religious Affairs.¹²⁸ This situation continued during the reporting period. Only in Bakırköy Closed Prison for Women and Children Christians were allowed to meet with Christian religious officials.

125 Approved by the United Nations Economic and Social Council in July 31, 1957 and May, 13 1977 with Decisions Number 663C (XXIV) and 2076 (LXII).

126 *Ibid.* Article 6.

127 *Ibid.* Article 41.

128 Radikal, "Alevi Tutuklunun Dede İsteğine F Tipi Engeli" [Refusal to Alevi Prisoner's Request to See an Elder], January 7, 2012.

In addition, a Council of Europe decision indicates that prisoners cannot be forced to practice a religion or belief, attend religious services or meetings, and join religious activities or to meet with a representative of a religion or belief.¹²⁹

According to national legislation:

1. In prisons, the prisoner can worship freely, provided that it does not disrupt order or work, and he/she can possess and keep articles and books necessary for worship.
2. Prisoner can be visited by religious officials of his/her religion and can contact them, provided that these do not endanger the prison.¹³⁰

A Protocol was signed between the Ministry of Justice and the Directorate of Religious Affairs in order to provide moral and religious development for prisoners and convicts with the purpose of contributing to the reintegration of these individuals to society by providing them religious services, moral development, and spiritual guidance.¹³¹ Fulltime personnel are appointed by the respective office of the *mufti* to be employed by the Directorate of Religious Affairs. This service is financed with public funds; from the budget of the Directorate of Religious Affairs. Prisons are responsible for providing a suitable space for Religious and Moral Knowledge courses, an office for the personnel working within the scope of the Protocol, and enabling the personnel to check religious books that are sent to the prison.¹³² There is no program similar to this for other religions. Neither is there public financing available for other religious officials to conduct such a program. The freedom of prisoners to meet with religious officials of their choice is restricted too.

The Regulation on Awarding Prisoners and Convicts, which came into force during the reporting period, states that “prisoners who attend work, education and training activities regularly- unless they have a valid excuse, will be awarded”.¹³³ Under the Regulation, the Religious and Moral Knowledge course is part of education activities and prisoners are therefore expected to be present in this course, unless they have a valid excuse. However, in light of the right to freedom of religion or belief, such an arrangement about religions lessons can be quite problematic. Prisoners must not be forced to attend religion classes or activities under any circumstances. The manner in which this Regulation will be implemented must be carefully monitored.

129 Council of Europe, Recommendation 2 (2006) of the Committee of Ministers to member states on the European Prison Rules.

130 Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun [Law on the Execution of Sentences and Security Measures] No. 5275, Article 70.

131 Adalet Bakanlığı ve Diyanet İşleri Başkanlığı Arasında Tutuklu ve Hükümlülerin Din ve Ahlâki Gelişimlerini Sağlamaya Yönelik Protokol [Protocol Signed Between Ministry of Justice and Directorate of Religious Affairs on the Religious and Moral Development of Convicts and Detainees], February 10, 2011.

132 *Ibid.*

133 Article 8(3).

Out of respect for the right to freedom of religion or belief, convicts and detainees should be allowed to meet with the religious officials they chose.

In prisons, arrangements concerning the facilities for prayer should be made taking into account the needs of all belief groups as well as those who do not profess any religion or belief.

Detainees and prisoners must be explained their rights related to freedom of religion or believe.

Effective complaint mechanisms must be established.

Prisoners and detainees cannot be forced to attend in religious meetings and participate in religious practices. Therefore religion lessons should not be considered within the criteria of the reward program. Instead alternative lessons compatible with freedom of belief or religion must be available for the prisoners.

The role assumed by the state on the moral and religious development of detainees and prisoners must be re-evaluated in accordance with the responsibilities of the state to protect the right to freedom of thought, conscience, or religion and to observe the principle of neutrality and pluralism.

8. INTERSECTION POINT – Freedom of religion or belief and the right to property

The right to property is protected under Article 1 of the First Protocol of the ECHR. When non-moveable property belongs to belief groups or is used as a means of worship, a direct link between the right to property and the right to freedom of religion or belief is established. When the right to own a non-moveable property that is used for worship purposes is violated the right to manifest religion or belief in worship will be affected. Therefore interferences in the right to property inevitably affect the right to freedom of religion or belief and create an intersection point between the two rights.

The land of Mor Gabriel Monastery

The approximately 70-acre land of Mor Gabriel Monastery Foundation was seized as a result of a judicial decision and this problem has not been solved during the reporting period. The Foundation has exhausted domestic legal remedies in order to claim the land back. After the refusal of the General Council of the Court of Appeals based on Article 14 of the Cadastral Law in November 2012,¹³⁴ the foundation applied to ECtHR.¹³⁵

In addition, the managers of the Monastery Foundation faced court cases as a result of the accusations made by local administrators of Yayvantepe and Eglence villages. It was argued that two third of the monastery walls were located in the forest, illegally occupying the latter.

Article 14 of the Cadastral Law which does not allow for acquisition of property by possession if the land is larger than 25 acres should be changed.¹³⁶

Articles 7 and 11 of the Law on the Protection of Cultural and Natural Heritage should be amended in order to ensure that belief communities will be able to re-acquire property which they have possessed in the past and have been denied ownership unlawfully.

The return of immovable property to the community foundations

The Directorate General of Foundations continued examination of applications made by community foundations based on the temporary Article 11 of the Foundations Law, which was adopted in order to ensure return of property to non-Muslim community foundations.¹³⁷

134 Milliyet, "Mor Gabriyel'e Ret" [Rejection for Mor Gabriel], November 16, 2012.

135 E-mail correspondence with the Representative of Mor Gabriel Foundation, September 2013.

136 Cadastral Law No 3402, June 21, 1987, Article 14.

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

From January 23, 2012 to May 29, 2013, the General Directorate for Foundations approved more than 200 applications, whereas it refused more than 800.¹³⁸

The reason behind the high number of refusals appears to be the fact that the properties of community foundations do not fit in the narrow description of the temporary Article 11. The high number of refusals indicates the need for a new legislative measure which would enable the return of the immovable properties that were not indicated in the Declaration of 1936, but the ownership of which can be proved by the community foundations.

Legislative changes should be made in order to ensure the return of the immovable property which has been seized through expropriation or any other way, from all belief groups.



Mor Gabriel Monastery, Mardin

138 Interview with the Representative of Community Foundations, Laki Vingas, September 2013.

9. INTERSECTION POINT – Freedom of religion or belief and freedom of expression

The right to freedom of thought, conscience and religion and freedom of expression complement and support each other. Yet, both rights have components which are not absolute and therefore may be restricted under very specific circumstances.

In addition, international law allows states to restrict hate speech directed at individuals' based on their ethnicity, religion or certain other characteristics – in fact in certain circumstances it requires it. Article 20 of the International Covenant on Civil and Political Rights stipulates that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

However, a clear distinction between insulting a religion or religious symbols and insulting the members of a religion is important for the protection of freedom of expression and freedom of belief.

In Turkey, freedom of expression and freedom of religion or belief are protected constitutionally.¹³⁹ Article 216(3) of the Turkish Criminal Code concerns an intersection point between the right to freedom of religion or belief and freedom of expression. The cases and prosecutions based of this provision continued during the reporting period.

Nişan Sevanyan¹⁴⁰ and Fazıl Say¹⁴¹ were sentenced to prison for 10 months and 13.5 months, respectively having been accused of violating Article 216(3) of the Turkish Criminal Code. The cases against the Metis Publication House that published “İllallah Ajandası” (Illallah Diary) and the caricaturist Bahadır Baruter continued.¹⁴² In the latter cases, the court has postponed the case based on Article 1 of Law No. 6352.¹⁴³ Though, the trials should be carried on, since the suspects demand acquittal. In the reporting period restrictions on websites with atheist content continued. Both the sentences against Say and Sevanyan, and the cases against Baruter and Metis have the effect of limiting the freedom provided by the internet.

139 Constitution of the Turkish Republic, Article 26 and Article 24.

140 Hürriyet, “Sevan Nişanyan’a Hapis Cezası” [Sevan Nişanyan Is Sentenced to Prison], 22.05.2013.

141 Hürriyet, “Fazıl Say’a 10 Ay Hapis” [Fazıl Say Is Sentenced to Prison for 10 Month], 15.04.2013.

142 E-mail Correspondance with the Representative of Metis Publications, September 2013.

143 Under Yargı Hizmetlerinin Etkinleştirilmesi Amacıyla Bazı Kanunlarda Değişiklik Yapılması ve Basın Yayın Yoluyla İşlenen Suçlara İlişkin Dava ve Cezaların Ertelenmesi Hakkında Kanun [Law on the Amendment of Certain Laws for the Effectiveness of Judicial Services and the Postponement of Trials and Sentences of Crimes Committed Through the Press] No. 6352, of July 2, 2012 certain cases can be postponed. The temporary Article 1 entitled “The Postponement of Trials and Penalties”, indicates that, in the prosecution process, the trial will be postponed if the case concerns a crime committed through the press or through an expression of thought and opinion, which requires to be sentenced to monetary fine or prison no longer than 5 years.

Although international law allows the restriction of freedom of expression, criminal sanctions made for the protection of religious sentiments are not compatible with any international treaty signed by Turkey, including the ECHR. The cases indicated above and the penalties are important obstacles to the enjoyment of freedom of thought and expression of those who approach religions critically, especially atheists.

In addition, it should be noted that although criticism against the religion of the majority is noticed and prosecuted, pejorative and offensive speech against minority religions are usually ignored.

Individuals have the right to express opinions that might offend, shock, or disturb the state or certain segments of the population.¹⁴⁴ The statements about religion need to be considered in the scope of this right.

It is usually easy to reach consensus on the need to discuss issues about religion or beliefs respectfully. Yet, the difficult part is to have a consensus on the limits of respect. A legal obligation to be respectful towards religions, usually, results in a pressure in the public sphere, on atheist people and people who have a critical approach towards religions.

The Turkish Criminal Code 216(3) should be re-formulated so that it becomes compatible with Article 20(2) of the ICCPR and Article 9 and 10 of the ECHR.

Statements that do not instigate others to discriminate and act violently should not be penalized.

While dealing with Article 216(3) of the Turkish Criminal Code, national courts must make systematic interpretation of the case law of the ECtHR instead of selective interpretation.

The recommendation of the UN Special Rapporteur on Freedom of Religion or Belief remains important for Turkey:

States should repeal any criminal law provisions that penalize apostasy, blasphemy and proselytism as they may prevent persons belonging to religious or belief minorities from fully enjoying their freedom of religion or belief.¹⁴⁵

¹⁴⁴ ECtHR, *Handyside v. UK*, Application No. 5493/72, 1976.

¹⁴⁵ United Nations Special Rapporteur on Freedom of Religion, UN Document A/HRC/22/51, 24.12.2012.

Case law of the ECtHR on insults against religion or belief and important religious symbols

Many European countries have already abolished laws on blasphemy or if they have these laws they are seldom used. On the other hand, in countries where there are laws against blasphemy it is more likely that these contribute to violation of human rights, instead of protecting them.¹⁴⁶

Although the ECHR allows states to penalize insult against religions, restrictions on freedom of expression are scrutinized. The *Otto Preminger Institut v. Austria* case concerns the seizure of a movie by the Austrian public officials following a complaint made by the Roman Catholic Church. In the movie important symbols of Christianity were depicted in unusual ways; God was portrayed as a senile old man, Virgin Mary as a seductive woman, and Jesus as a mentally deranged person. When the European Commission on Human Rights first dealt with the application, it indicated that the movie would be shown with a warning at late hours of the day and people would have to buy a ticket to see the movie.¹⁴⁷ Therefore, the children and those who might be offended by the movie could not see it incidentally. The ECtHR, however, adopted a different approach and focused on the right to freedom of religion or belief. The ECtHR argued that believers “must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”. It also found that states may be justified, even required, to protect religions against the harshest attacks:

[T]he manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right [to freedom of religion].¹⁴⁸

Consequently, ECtHR decided that the seizure of the movie by Austrian public officials was a “necessary precaution in a democratic society” to protect the rights of others. The ECtHR had a similar standing in the decision regarding *Wingrove v. UK*.¹⁴⁹ This case concerned a movie depicting the important figures of Christianity in erotic ways. The ECtHR emphasized the fact that there are different arrangements in Europe regarding blasphemy. Here, the principle highlighted by the ECtHR was the “margin of appreciation”. While indicating that states have a “margin of appreciation” on whether to take legal precautions regarding alleged insults against religions, the ECtHR, also, warned about “the breadth and open-endedness of the notion

146 Freedom House Report, *Policing Brief- The Impact of Blasphemy Laws on Human Rights*, Sept. 2010.

147 ECommHR, *Otto Preminger Institut v. Austria*, Application No. 13470/87, 07.04.21993.

148 ECtHR, *Otto Preminger Institut v. Austria*, Application No. 13470/87, 20.09.1994.

149 ECtHR, *Wingrove United Kingdom*, Application No. 17419/90, 25.11.1996.

of blasphemy and the risks of arbitrary or excessive interferences with freedom of expression under the guise of action taken against allegedly blasphemous material.”

On the other hand, it is important to note that a right to ensure that public authorities prosecute individuals does not exist. In the case of *Choudhury v. UK*, the applicant demanded prosecution of Salman Rushdie and the publisher of the book called “Satanic Verses” on the grounds that they offended Islam. Yet, the European Commission on Human Rights refused his application.¹⁵⁰ According to the Commission, freedom of religion or belief does not include a right to demand the prosecution of those who offend a person or a group of people through writing or publishing.¹⁵¹

A similar approach was taken in the *Dubowska and Skup v. Poland* case.¹⁵² The case concerned Jesus and Virgin Mary being portrayed with gas masks on their faces in a newspaper, public officials investigated the issue, yet did not take any precautions. In contrast to the *Otto Preminger Institut v. Austria* case, the ECtHR decided that the publication did not restrict anyone from exercising their right to freedom of religion or belief. Therefore that there was no prosecution, in itself, did not mean that the rights of the applicants were not protected.

150 ECommHR, *Choudhury v. United Kingdom*, Application No. 17439/90, 05.03.1991.

151 *Ibid.*

152 Europe Human Rights Council, *Dobowska & Skup Poland*, Application No. 33490/96; 34055/96, 18.04.1997

10. RECOMMENDATIONS

Recommendations to the Government

Necessary measures must be taken in order to establish an approach based on respect for the freedom of religion or belief of individuals, who have beliefs other than well-known religions, who change their religion and who do not profess any religion or belief.

The religion section on the identity cards should be removed.

Legislation, which recognizes the right to conscientious objection to military service, should be passed. This legislation should provide alternative civilian service options which do not include punitive or discriminatory elements.

Individuals who declare their conscientious objection to military service should cease to be prosecuted by military courts. Instead, a civilian mechanism should be introduced for conscientious objection applications.

The Military Service Law should be revised and reformed in order to comply with the standards pertaining to the right to conscientious objection.

The definition of worship place should be reformed so as to recognize the pluralist religious structure of Turkey.

The wording of the Article 2 of Village Law should be changed; “mosque” should be replaced by “place of worship”.

The state should honour its obligation to observe neutrality in decisions regarding the recognition of places of worship and should not be guided by any opinion of any religious institution.

The decision processes of the civilian authorities should be foreseeable. The criteria under which decisions are taken should be public and available to every person.

Legislation that would enable all belief groups to gain legal personality should be drafted without delay. Until this is done the link between belief groups and their places of worship should be taken into consideration and necessary precautions should be taken to prevent religious groups from losing the ownership of their places of worship.

The necessary legal regulations should be made in order for buildings administered by the General Directorate of Foundations – to be returned to the communities they

belong to. Until this regulation is made, the places of worship transferred by the General Directorate of Foundations should be designated for the use of the communities who originally owned them.

Attempts to obstruct activities aimed at spreading a belief should be effectively investigated, whether or not the perpetrators are public officials or private persons. Such obstruction should not go unpunished.

All public officials, starting with law enforcement officers, should be educated in their duty to guarantee the right to share religious views.

Officials should be made aware that the right to promote religion does not only belong to individuals who believe in the religion of the majority of the population but also to those who follow other beliefs.

The authorities should take the necessary measures to ensure the right to manifest religion or belief in teaching, to recognize the right to train religious officials for all religious communities and to enable all belief groups to open educational institutions to train their own religious officials.

Policy makers should develop procedures, in accordance with human rights standards, regarding the funding of institutions established with the aim of training religious officials, as well as cooperation strategies between the state and private sector on financing such institutions.

Under the ECHR the right of both individuals and public officials to wear religious symbols and garments can only be restricted by law and if it is necessary within a democratic society and within the limits of the restriction clauses found in the relevant provisions of human rights conventions.

The state should create conditions in which religious symbols and garments can be worn, paying due regard to the state's neutrality and pluralism obligations. Nobody should be (in law or in practice) forced to wear a religious symbol or garment.

Necessary measures should be taken in order to ensure the teaching of languages that are used in religious ceremonies.

The "non-Muslim minorities" statement of the Lausanne Treaty must be understood as including all non-Muslim groups and individuals.

Turkey should ratify and implement the Council of Europe European Charter for Regional or Minority Languages.

Turkey should ratify and implement the Council of Europe Framework Convention for the Protection of National Minorities.

Religious or belief groups have the right to choose and appoint religious officials. According to international law, Turkish citizens and foreigners must be treated equally in regard to their freedom of religion or belief, including the practice of religion through participation in the life of their community. These rights can be restricted only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

A transparent, accessible, foreseeable, and clear procedure should be established, in accordance with international law, in order to ensure that foreign religious workers could be appointed to work for religious institutions whether the institution serves Turkish citizens or not.

Religion or belief groups must be free in their internal affairs to choose the titles used by their religious officials. In line with Turkey's international human rights obligations, the legal and de facto obstacles to this should be removed.

The necessary legislative changes must be made to ensure that all belief groups and their high level institutions can acquire legal personality.

The necessary measures should be taken to ensure that all belief groups, including atheists, can effectively exercise their right to associate.

In order to ensure respect for all belief groups, awareness should be raised about the right to freedom of religion or belief as a right of all. Especially public authorities should refrain from negative discourse about atheists.

Turkey's declaration to Article 1 of the First Protocol of the ECHR should be abandoned.

Article 14 of the Cadastral Law which does not allow for acquisition of property by possession if the land is larger than 25 acres should be changed.¹⁵³

Articles 7 and 11 of the Law on the Protection of Cultural and Natural Heritage should be amended in order to ensure that belief communities will be able to re-acquire property which they have possessed in the past and have been denied ownership unlawfully.

Legislative changes should be made in order to ensure the return of the immovable property which has been seized through expropriation or any other way, from all belief groups.

153 Cadastral Law No 3402, June 21, 1987, Article 14.

The Turkish Criminal Code 216(3) should be re-formulated so that it becomes compatible with Article 20(2) of the ICCPR and Article 9 and 10 of the ECHR.

Statements that do not instigate others to discriminate and act violently should not be penalized.

While dealing with Article 216(3) of the Turkish Criminal Code, national courts must make systematic interpretation of the case law of the ECtHR instead of selective interpretation.

Public officials should take the necessary precautions to efficiently provide protection to places of worship so as to eliminate the need for individual security measures.

Attacks targeting places of worship should be effectively prosecuted and vulnerable individuals protected. Those responsible for attacks should not have impunity from prosecution and punishment.

The guiding principles on the participation of children outlined in General Comment No. 12 of United Nations Committee on the Rights of the Child must also be implemented in the context religion and education.

Recommendations to the Media

Public officials and media representatives should refrain from discourses that may harm the exercise the right to freedom of religion or belief by targeting any religious group – including the ones who do not hold any belief or who belong to minority beliefs.

Awareness should be raised on the fact that the right to promote religion does not only belong to individuals who believe in the religion of the majority of the population but also to those who follow other beliefs.

Recommendations to the Ministry of Education

To claim exemption from Religious Culture and Knowledge of Ethics classes, a new procedure – which would not compel one to declare one's religion – should be established.

The authorities should take the necessary steps in relation to schools, work places and prisons in order to ensure that individuals can take the time to meet the requirements of their religions if they so wish.

Necessary steps must be taken to make optional religion lessons, really optional.

Necessary steps must be taken in order to prevent schools from assigning optional lessons for students without their consent and knowledge.

An effective and independent investigation mechanism must be established in order to help parents to make a complaint confidentially in the face of such pressures.

Allowing high school students to choose optional lessons independently from their parents would be a significant step to advance the protection of the right of the child to freedom of religion or belief.

Considering that in some situations most students may chose the optional religion lessons, the condition of having at least 10 students to open an optional lesson must be abandoned, so that no student will be forced to take a religion lesson.

The Ministry of Education should prepare guiding principles for school administrators and teachers on the proper conduct in the classroom to ensure that the right of the child to manifest religion or belief, the right not to be forced to participate in religious practices and the right of parents to raise their children in line with their religious or philosophical beliefs are respected.

The Religious Culture and Knowledge of Ethics course cannot be compulsory since the current content includes religious instruction.

If the course remains compulsory, it must be rearranged in accordance with TOLEDO principles on Teaching about Religions or Beliefs in Public Schools so that it is based on plurality and respect of all beliefs and worldviews.

The procedures on exemption should be reformed, allowing students to be able to exercise their right to be exempted without declaring their belief and the right should be available to all students, not only to Christians and Jews.

Alternatives classes, which would not violate freedom of belief, must be added to the school curriculum for those who do not want to take the Religious Culture and Knowledge of Ethics course.

Recommendations to Municipalities

In the preparation of city plans, municipalities should also take into account the requests for not only mosques and masjids but also, places of worship requests of all religious groups. When fulfilling their duty to allocate land for places of worship they should take into account the religious pluralism within society.

Bylaws of municipalities should enable belief groups to decide the area that their places of worship cover as well as other matters affecting the building's construction

according to the preferences of the community concerned. These bylaws should take full account of the pluralist nature of the society.

When plots for cemeteries are allocated the religious diversity and requests of belief communities as well as the principle of neutrality and the obligation to ensure pluralism should be taken into account.

The authorities should take the necessary steps in relation to schools, work places and prisons in order to ensure that individuals can take the time to meet the requirements of their religions if they so wish.

Recommendations to the Ministry of Interior

As long as the religion section is kept on identity cards, the religion or belief indicated in this section should be the individuals' own choice, not limited by a list decided on by public officials including a limited number of religions of beliefs.

Out of respect for the right to freedom of religion or belief, convicts and detainees should be allowed to meet with the religious officials they chose.

The authorities should take the necessary steps in relation to schools, work places and prisons in order to ensure that individuals can take the time to meet the requirements of their religions if they so wish.

In prisons, arrangements concerning the facilities for prayer should be made taking into account the needs of all belief groups as well as those who do not profess any religion or belief.

Detainees and prisoners must be explained their rights related to freedom of religion or believe.

Effective complaint mechanisms must be established.

Prisoners and detainees cannot be forced to attend in religious meetings and participate in religious practices. Therefore religion lessons should not be considered within the criteria of the reward program. Instead alternative lessons compatible with freedom of belief or religion must be available for the prisoners.

The role assumed by the state on the moral and religious development of detainees and prisoners must be re-evaluated in accordance with the responsibilities of the state to protect the right to freedom of thought, conscience, or religion and to observe the principle of neutrality and pluralism.

APPENDIX:

Applications to international human rights compliance mechanisms regarding freedom of religion or belief in Turkey and implementation of decisions

European Court of Human Rights

Applications

Case	Application Number / Date	Articles
<i>Abdullah Yalçın v. Turkey</i>	34417 / 19.06.2013	Article 9 The applicant claims that his right to freedom of religion protected under Article 9 has been violated as a result of the refusal by the Diyarbakir High Security Prison authorities to make the necessary arrangements for his participation in the Friday prayers that are required by Islam.
<i>Doğan and Others v. Turkey</i>	62649/10 / 31.08.2010	Article 9 together with Article 14 Alevi applicants claim that Turkey fails to fulfil its positive obligations under Article 9 by refusing to provide to members of their community religious public services, as it is provided for the Sunni individuals who comprise the majority in the country. They emphasize that the state is not impartial towards religious belief.
<i>Sofuoğlu and Others v. Turkey</i>	21163/11 / 02.02.2011	ECHR First Protocol Article 2 / Article 9 and Article 14 The applicants claim that the manner in which the compulsory Religious Culture and Knowledge of Ethics course is taught in primary and middle schools violates the rights ensured under Article 2 of the First protocol of the Convention.
<i>MIHR Vakfı v. Turkey</i>	10814/07 / 26.02.2007	Article 6, Article 9, Article 10, Article 11 and Article 11 together with Article 14 The applicant claims that the process resulting with the dissolution of the Foundation has been unfair. In addition, since the Foundation could not continue with its publication activities there are claims concerning Articles 9 and 10. The applicant claims that their rights protected under Article 11 have been violated while the Foundation was dissolved. It is claimed that the prosecutions following process starting with the National Security Council decision of February 28, 1997 have been the legitimization of an unlawful oppression and that the transfer of ownership of their property to the General Directorate of Foundations has been without foundation.

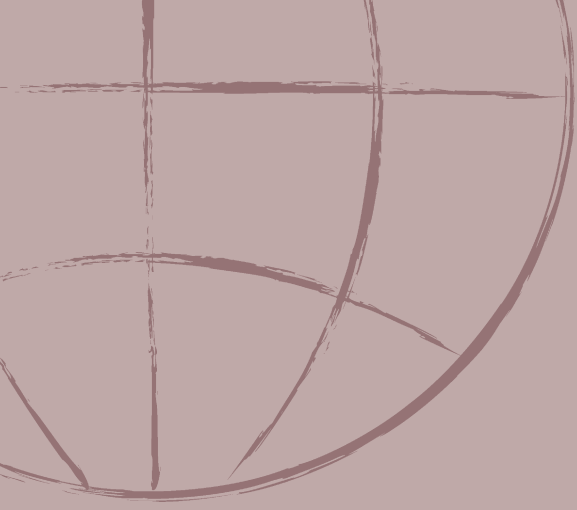
Cases decided by the ECtHR and measures that need to be taken to prevent similar violations

Case	Application Number / Date	Individual and General Measures
<i>Erçep v. Turkey</i>	5260/07 / 22.02.2012	The applicant was acquitted of crimes related to desertion in March 2011. He, however, still has to pay an administrative monetary fine because since March 2011 desertion is considered a misdemeanour. According to legislation the applicant is under an obligation to perform military service, however, there is no arrest warrant or prosecution related to him. Necessary measures should be taken in order to remove the obligation to pay the administrative monetary fine. Regarding general measures, measures need to be taken in order to prevent the process of repetitive prosecution and sentencing of conscientious objectors. Also effective and accessible mechanisms to determine conscientious objector status should be established. Conscientious objectors should not be tried by military courts.
<i>Feti Demirtaş v. Turkey</i>	42730/05 / 17.04.2012	The applicant is exempted from military service because of "anti-social" behaviour following a medical report of 2007. He, however, was sentenced to prison on May 16, 2012 based on the refusal to follow a military order on December 1, 2006. The applicant challenged this sentence and the appeal process is not concluded. There is no arrest warrant against the applicant.
<i>Mehmet Tarhan v. Turkey</i>	9078/06 / 12.07.2012	The decision to arrest the applicant has been lifted.
<i>Halil Savda v. Turkey</i>	42730/05 / 12.06.2012	The applicant has been exempted from military service because of his "anti-social" behaviour according to a medical report of 2008.
<i>O.M. Ülke v. Turkey</i>	43965/04 / 24.04.2006	The applicant's name has been taken out of the list of wanted individuals and the arrest warrant has been lifted. Turkish authorities have ensured that the applicant can use his civil rights and travel abroad.
<i>Sinan Işık v. Turkey</i>	21924/05 / 02.05.2010	The ECtHR has held that the removal of the "religion" section on the national identity cards would be an appropriate general measure which would prevent similar violations. The action plan submitted by the Turkish authorities on June 29, 2011 outlines preparations to introduce a new citizenship card that would take the place of identity card. The citizenship card will not include religious affiliation. No action has yet been taken.
<i>Ahmet Arslan v. Turkey</i>	41135/98 / 04.10.2010	The enforcement of the judgment is still under consideration.

Case	Application Number / Date	Individual and General Measures
<i>Hasan and Eylem Zengin v. Turkey</i>	1448/04 / 09.01.2008	The ECtHR held that the Turkish education system was inadequate because it has not been able to develop a method that would meet the conditions of objectivity and pluralism and respect for the religious beliefs of parents. The Committee of Ministers has noted that the harmonization of the Turkish education system and domestic legislation with Article 2 of Protocol 1 will be a positive step in solving the problem. Turkish authorities, however, have not yet submitted an action plan on the matter.

United Nations Human Rights Committee (HRCttee) Opinion

Case	Application Number / Date	Individual and General Measures
<i>Atasoy and Sarkut v. Turkey</i>	1853/2008 and 1854/2008 / 19.06.2012	The HRCttee, decided that the right to freedom of religion or belief, that is protected under Article 18(1) of the International Covenant on Civil and Political Rights, of the applicants who are conscientious objectors was violated. The reason for this is the lack of any mechanism regarding conscientious objection and the repetitive prosecution and prison sentence the applicants have undergone as a result. Decisions to arrest applicants remain. The HRCttee has called for the introduction of a mechanism that would protect the right to conscientious objection effectively and the suspension of all sentences imposed on the applicants. Turkey has yet to take these steps.



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