20.09.2012

Civil Society Response to Implementation of the ICCPR by the Republic of Turkey

Comments from İÖG- Freedom of Belief Initiative in Turkey- on the List of Issues

106th Session of the HRC

List of issues to be taken up in connection with the consideration of the initial report of Turkey (CCPR/C/TUR/1)
Non-discrimination, equality between men and women (arts. 2, para. (1), 3 and 26)

4. Please provide information on definitions in legislation or in jurisprudence relating to the principle of non-discrimination, including protection from direct and indirect discrimination, de facto and de jure discrimination, multiple forms of discrimination, discrimination by association, harassment and any other relevant concepts. Please identify the steps, if any, being undertaken to introduce comprehensive anti-discrimination legislation which would protect against discrimination on any basis and in relation to any right. Please indicate if such legislation would include definitions of the main concepts related to the principle of non-discrimination referred to above.

1. The recording of religious affiliation or lack of it in the Turkish national identity cards constitutes a risk for discrimination based on one’s religious affiliation. In the case of Sinan Isik v. Turkey (Application No. 21924/05, 02.02.2010), where the applicant had asserted that his right to freedom of religion or belief had been violated because he was not allowed to have his religious affiliation registered as Alevi, ECtHR ruled that “the breach in question had arisen not from the refusal to indicate the applicant’s faith (Alevi) on his identity card but from the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional”. The ECtHR further noted 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".

2. Turkish citizens are obliged to declare religious affiliation or lack of it.

3. Individuals who are 18 and older have the right to change their registered religious affiliation. Some individuals are afraid or hesitant to change their religion in the Public Registry because of the consequences that they will encounter because of the change, both from family and society.\(^1\)

4. Choosing to leave the section blank implies that one does not embrace Islam, or that in a particular year the individual changed their religion. Officials generally do not object to recording such changes, but those who change their recorded faith from Islam to another faith, or leave the designation blank, are obliged to make public their religious affiliation or lack of it.

5. The national identity card is used widely in one’s access and involvement in, among others, education, health services, employment and military service. Therefore one is always obliged to make one’s religious affiliation or lack of it public.

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6. While such declaration is a serious infringement on one’s right to have a religion or belief, it is also a factor increasing the risk of discrimination particularly for religious minorities where they have to make public their religious affiliation (of the fact that they are not Muslim, if they chose to leave this section blank, since generally Muslims leave it as “Islam”) in their daily dealings with public authorities as well as in the private sector.

7. The right to establish places of worship is also an area where de facto discrimination is experienced. The Alevi community cannot have their cem houses (Alevi place of worship) recognized as places of worship on grounds that “Muslims worship in mosques” as it has been expressed in the opinion of the Turkish Presidency of Religious Affairs (the Diyanet, which is often criticized for providing services to the Sunni Muslim majority and excluding the non-Sunni Muslims).²

8. As it has been held by the ECtHR the right to freedom of religion or belief, “excludes any discretion on the part of the State to determine whether religious beliefs or means used to express such beliefs are legitimate”.³ Such discretion as it is being exercised by Turkey leads to the denial of place of worship status to Alevi cem houses and results in discriminatory treatment of the Alevi.

9. The Jehovah’s Witnesses and the Protestants, which are relatively newer groups in Turkey, also experience discrimination in the exercise of the right to establish places of worship. With the exception of a single church (Altintepe Protestan Kilisesi) no other building has been able to have any of their places of worship recognized as places of worship. Their applications are refused either by the respective municipalities or governorships.⁴ The approval of both authorities are required by law.

Recommendation:

The state party should:

a. Take measures to end the recording information on religion or belief in national identity cards.

b. Provide information, including any available studies, that evaluates the impact of the recording of religion or belief in national identity cards in the areas of access to education, employment, health care and political and public life.

c. Take affirmative action in order to ensure participation by minorities, including religious minorities in political and public life.

d. Provide information on the reasons for the lack of non-Muslims employed in the Turkish Military force and judiciary as well as Government.

² Latest example, “‘No’ to cemevi causes resentment among Alevis”, in Todays Zaman, 15.07.2012.
e. Provide information on the number of applications for place of worship status and the number of official recognitions of these as a place of worship by religious communities that are outside of the Presidency of Religious Affairs (the Diyanet) structure.

Freedom of thought, conscience and religion, equality and non-discrimination (arts. 18 and 26)

21. Please provide information on the reasons for failure to recognize conscientious objection to military service. Please provide any information on steps being undertaken to bring legislation and practice relating to conscientious objection to military service in line with the Covenant.

1. The right to conscientious objection is not recognized in the Turkish legislation. However, Turkey fails to implement its international human rights obligations by not adopting national legislation to ensure effective protection of this right. In this context it is important to remember that the right to conscientious objection is protected under Article 18 of the ICCPR. The ICCPR in its authoritative General Comment on Article 18 states that:

2. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.

3. In the same vein, in the case of Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea similar to Turkey, the state party had put forward the issues of national security, equality between military and alternative service, and lack of a national consensus on the matter as grounds for not providing alternative civilian service. However, these were not seen as sufficient reasons for not recognizing the right to conscientious objection. The HRC held that

4. The Committee also notes, in relation to relevant State practice, that an increasing number of those States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service, and considers that the State party has failed to show what special disadvantage would be involved for it if the rights of the authors' under article 18 would be fully respected. As to the issue of social cohesion and equitability, the Committee considers that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society. It likewise observes that it is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good
5. In addition, Turkey is party to the European Convention on Human Rights (ECHR) and that Article 9 of the ECHR protects the right to conscientious objection to military service and in several key cases Turkey has been found to have violated Article 9. The ECtHR's Bayatyan v. Armenia judgment in July 2011 (Application no. 23459/03), held for the first time that conscientious objection to military service is protected under Article 9. In Ercep v. Turkey (Application 43965/0417.01.2012) and Jehovah's Witness conscientious objector Feti Demirtas v. Turkey (Application No. 5260/07) the ECtHR again held that the Turkish government violated Article 9 of the ECHR, stating that "the absence of an alternative to military service in Turkey is in breach of the right to conscientious objection".

6. The Turkish Government has been resisting the recognition of the right to conscientious objection. At the same time, the Council of Europe has long urged Turkey to make the necessary legislative changes to both prevent new violations and stop existing violations against conscientious objectors in Turkey.

7. However, two recent Turkish military court decisions concerning conscientious objection claims have shown a partial recognition of the right to conscientious objection to military service as a human right. The military court decisions came despite no specific Turkish legislation either recognising this right or regulating its implementation. Two recent military court decisions changed Turkey's legal practice in relation to conscientious objection. One concerns a Jehovah's Witness conscientious objector, Baris Görmez (Isparta Military Court- 12 March 2012), the other a Muslim conscientious objector, Muhammed Serdar Delice (Malatya Military Court- 7 March 2012). In both cases military courts to some degree relied on the changed jurisprudence of the ECtHR on conscientious objection following the Bayatyan v. Armenia case. However, in both cases a key factor was the declared religions of the conscientious objectors.

8. The Military Court interpreted the ECtHR's approach to the right to conscientious objection as one based on the theological position of a religious group, and excluded the beliefs of the individual. It ruled out an individual rejecting military service according to his own views. Instead, the Military Court relied on the rejection of military service by an intellectual, religious or political group, as such. It referred to the example of Jehovah's Witnesses, stating: "persons who are members of the Jehovah's Witnesses reject military service, because they are part of this group or institution which fundamentally rejects military service". While JW Görmez's right to

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Conscientious objection was recognized, Delice’s, who is a Muslim, claim was rejected holding that there is no conscientious objection to military service.\(^6\)

**Recommendation:**

The State party should:

a. Without delay recognize the right to conscientious objection to military service and make alternative civilian service available in line with international standards.

b. The principle of non-discrimination must be strictly observed when processing conscientious objection claims by public authorities including the judiciary.

c. Conscientious objection claims should be evaluated by a non-military commission.

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**23. Please explain any obstacles to the recognition of the legal personality of non-Muslim communities as organized structures of religious groups. Please set out the steps being taken to protect and restore the property rights of non-Muslim religious communities, including the Arameans, Catholics and others.**

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1. No steps have been taken to create a suitable and adequate “legal personality/entity” status for religious groups. Foundations and associations do not provide a legal personality solution for belief groups, where they would acquire legal personality as such. There is also no legal entity status that would be suitable for representative institutions of belief communities, for example for the Chief Rabbinate or the Armenian or Greek Patriarchates.

2. The Venice Commission stated in its Opinion of the Legal Status of Religious Communities in Turkey that “The basic problem in Turkish law as regards religious communities is that they cannot register and obtain legal personality as such. There is no clear arrangement in the legal system for this, and no religious community has so far obtained legal personality. Instead they have to operate indirectly through foundations or associations.”\(^7\)

3. “For religious communities, the foundation system seems primarily to provide them with an indirect arrangement for property ownership and the financing of related

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\(^6\) For more information on these two cases see Mine Yıldırım, *Selective progress on conscientious objection*, 1.05.2012, Forum 18 News Service, in http://forum18.org/Archive.php?article_id=1696.

activities (schools, hospitals, and etcetera). However, there are many obstacles with having to register property rights indirectly, in the name of an external foundation and under the supervision of a directorate, as compared to owning it directly.\footnote{European Commission for Democracy through Law, \textit{Opinion on the Legal Status of Religious Communities in Turkey}, Opinion no. 535 / 2009, 15 March 2010, Para. 37.}

4. As regards foundations Article 101 (4) of the Turkish Civil Code prohibits the formation of a foundation “contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community”. “Community” is interpreted to mean religious community. This provision has been used as an obstacle to prevent the establishment of at least two religious foundations. The cases of Kurtuluş Churches Foundation (Kurtuluş Kiliseleri Vakfı-KKV),\footnote{Ankara 31st Asliye Hukuk Court, E.819/2000, K.370/2001, 12.06.2000. The decision of the first instance court was upheld by the High Court of Appeals, 18th Circuit, E.9599/2001, K.10706/2001, 04.01.2002.} and the Seventh Day Adventists Foundation (Yedinci Gün Adventistleri Vakfı-YGAV,\footnote{Interview with a representative of the 7th Day Adventist community in Turkey, November 2011.} illustrate the ambiguity in law and practice and their restriction on the associative abilities of belief communities perfectly. In both cases it was the General Directorate of Foundations that objected to the establishment of the foundations arguing it was contrary to Article 101 (4) of the Civil Code. The High Courts rejected the establishment of these foundations arguing that these foundations had the aim of benefiting only their own communities by establishing churches, charity institutions etc. The case of the YGAV is being considered by the ECtHR.

5. Only non-Muslim \textit{community foundations} are allowed to have the purpose of benefiting their own community. Community foundations are institutions established by the decrees of Ottoman sultans and constitute an exception in the Turkish legal system. They are protected by the Lausanne Treaty which enshrines Turkey’s non-Muslim minority protection scheme. \textit{However, no new community foundation may be established.}

6. In addition, Turkey’s narrow interpretation of right holders does not make it possible to non-Muslims other than Jews, Greek Orthodox, Armenian Apostolic to benefit from minority rights found in the Lausanne. Hence, the Bahai, Protestant, Syriac, JW communities cannot benefit from the Lausanne protection scheme. In this context, it is useful to remember the HRC’s GC 23 on Article 27 of the ICCPR where the Committee refers to minorities that “exist” in a state part and recalls that “the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria” (para. 5.2.).
7. Frequently the state argues that granting legal personality to belief groups would be incompatible with the principle of secularism. It must be noted that the principle of secularism and right to equality are not obstacles before formulating an adequate form of legal entity status for belief communities. There are numerous examples of states where principles of neutrality are observed and legal an adequate form of legal entity status is provided. The principle of secularity as it is applied in Turkey needs to be harmonized with Turkey’s international human rights obligations.

8. While belief groups utilize the foundation and association options generally these are not the most suitable legal entity options bearing in mind their nature and the acts they engage in the exercise of the right to freedom of religion or belief in its collective dimension. Foundation and association options also are burdensome administratively and financially and are subject to strict supervision.

9. The adoption of the Legislative Decree of 27.08.2011 on the restitution of property to non-Muslim community foundations is welcomed as another important step for seeking the restitution of property to non-Muslim community foundations. It is important to note that the Legislative Decree does not address the property of seized community foundations (mazbut vakif). These foundations have been seized by the Directorate General of Foundations, including their property.11

Recommendation:

The State party should:

a. Seek to create and appropriate form of legal entity status for belief communities that will facilitate “access to legal personality; at a minimum, access to the basic rights associated with legal personality – for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued – should be available without excessive difficulty.”12

b. The belief groups, as such, should be able to acquire the legal entity status, and not have to work indirectly and under strict oversight through an association or foundation.

c. Bearing in mind that the right to freedom of religion or belief is “everyone’s right”, such legal entity status should also be available to non-citizens; for

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example, the Roman Catholic Church in Turkey which does not have legal personality and as a result is continuously losing property.

d. Extend the minority protection scheme to all non-Muslims in Turkey in order to comply with the GC 23 (5.2) of the HRC.

e. Adopt necessary legislation to allow the establishment of new community foundations.

f. Continue to address the issues of loss of property experienced by non-Muslim community foundations, including the restitution of seized community foundations.