



# THE PECULIAR RELATIONSHIP BETWEEN HUMAN RIGHTS AND RELIGION

The case of Turkey

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## **ABSTRACT**

In the 21st century, human rights are a major characteristic of social evolution and are often considered as a sign of progressive societies. However, universality is a key-concern regarding their efficient implementation and thus their enforcement is important to be examined on a global scale. Cultural differences and conflicting political and economic interests lead to varied approaches on their legal or even moral validity. Of particular interest is the issue of religion and its relationship to human rights.

In the present paper, the relationship in question is examined using observations on the case of Turkey. The topic is analyzed through three main pillars: history, theology and legislation. Initially, a brief overview of Sunni Islam, its history and its basic principles is provided in order to understand the religious framework of Turkey. In addition, the country's broader human rights legal framework at both national and international level is briefly mentioned. Then, the political environment of the 20th and 21st centuries, as well as the position of religion in the developments that took place during this period is examined historically. Furthermore, human rights are analyzed from a theological point of view, using verses from the Qur'an as well as through modern interpretations of Turkish exegetes. Finally, the domestic Turkish legislation on religious issues as well as its implementation is examined.

Approaching religiosity through these pillars gives us a wider view regarding its stance towards human rights and leads us to the conclusion that their relationship is highly complicated. On the one hand, their similarity and their interdependence are obvious in many cases, resulting in the assumption that their relationship is complementary. But on the other hand, there are many incidents in which religion seems to be an obstacle to human rights, as it contradicts with values of freedom of religion and expression, thus witnessing their contradiction. Both scenarios should be taken into account in order to understand the phenomenon and to improve the implementation of human rights.

## TABLE OF ABBREVIATIONS

DPW	Death Penalty Worldwide
ECHR	European Court of Human Rights
FETO	Fethullahist terror organization
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IRFR	International Religious Freedom Report
NHC	Norwegian Helsinki Committee
OSCE	Organization for Security and Co-operation in Europe
SCF	Stockholm Center for Freedom
UNTC	United Nations Treaty Collection
USCIRF	United States Commission on International Religious Freedom
WEF	World Economic Forum
WPR	World Population Review

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## INTRODUCTION

When we think of human rights, ideas such as freedom, democracy and equality come to our minds. Although, human rights are perceived as a characteristic of the contemporary world, this ideological mindset is traced back many years ago. In texts such as the United States Declaration of Independence, the French Declaration of the Rights of Man and of the Citizen or even the Magna Charta of the 13th century, such liberal principles are evident, laying the foundations on which the modern world would be built on. In the mid-20th century, after the atrocities that took place during the World War II, human rights adopted a more legal form and a more universal approach, aiming to unite the world under a common moral system. However, universality is hard to be achieved as it is confronted by the various cultural and national interests that contradict with each other.

Religion is often understood as an essential cultural characteristic, which plays a major role in a society's perceptions. Indeed, religious consciousness is inextricably linked to human cultures as it was the field in which the first patterns of moral thinking emerged. Moral homogeneity was essential for human civilizations and thus became an important aspect of religion. Shared values and behaviors helped people communicate better and function more effectively. Although religion was originally aimed at unification, there were many times that it led to strife, thereby dividing societies and believers. As human consciousness grew and societies evolved, ethical principles became more complex, and consequently, religiosity was used differently to address individual's social concerns. Another factor that contributed to religious split was the evolution of politics. Human societies were shaped into class-based hierarchies that had different and conflicting interests. As a result, religion has been used many times with political expediency, aiming to lead people in certain directions.

In the modern world, religion continues to be a diverse cultural field, with various religious doctrines disagree or even antagonize each other. Consequently, the difficulty of enforcing human rights has often been attributed to religion and its impact on the moral systems. Indeed, the relationship between religion and human rights is very complicated as they both are two systems of ethical values that are so same and so different at the same time. The importance of researching the interaction between these two variables lies not only in the collection of data that will help us understand more deeply the social and ethical structures of the modern world, but also in the facilitation of conducting a more detailed analysis of human rights, in order to implement them more effectively.

In this paper, this relationship will be analyzed through the example of Turkey, a country where both the religious element and the legal framework of human rights play an important role. Turkey is a purely Muslim country, with many Islamic traditions and a deep Islamic background. The interesting thing about this country is that, although the religious element is still intense, its political course has been in a more secular direction for many years.

The result was that religion was at times undermined and at other times glorified, shaping its social environment in a mixed and very interesting way. In both cases, human rights seemed to face difficulties as both religious intolerance and religious partiality conflict with the principles of equality and freedom. So, the question that arises here is: can religion and human rights complement each other or are they two contradictory concepts?



# CHAPTER I

## RELIGION IN TURKEY

### *1.1 Religious Demography*

Turkey is a country of 769,632 square kilometers of land-area with approximately 83.8 billion inhabitants. (WPR 2019) In terms of religion, Turkey seems to be relatively homogenized as the 99.8% of the population identify themselves as Muslims while only 0.2% believes in other religions. (World Factbook 2019) However, although the majority of Muslims are Sunni (77.5%) it is estimated that 25-31% of the total population consists also of Alevis and 4% of members of the Shia Jafari community. (IRFR 2018) Regarding non-Muslim religions, it is estimated that in Turkey there are 90,000 Armenian Apostolic Orthodox Christians, 25,000 Roman Catholics, 16,000 Jews, 25,000 Syrian Orthodox Christians, 15,000 Russian Orthodox Christians, 10,000 Baha'is, fewer than 1,000 Yezidis, 5,000 Jehovah's Witnesses, 7,000 members of Protestant denominations, fewer than 3,000 Chaldean Christians and up to 2,000 Greek Orthodox Christians.

<sup>1</sup> (IRFR 2018)

### *1.2 Sunni Islam*

As mentioned above, the majority of Turkish citizens believe in Sunni Islam. It is important here to examine briefly the history and the ideological core of Sunnism in order to understand the religious environment in Turkey and to clarify the difference with the Shi'ism, the other popular branch of the Islamic religion, which also exists in the Turkish society.

Sunnism is one of the main branches of Islam. The name came from the Arabic word *sunnah* which means 'traditional', 'custom', and was therefore used to designate, or rather to highlight, those who live by the principles of Islam and the teachings of the Prophet Muhammad. (Steinbach & Ende, 2010) However, faith in Muhammad is the foundation of the Shi'ism as well. Their dispute did not arise from ideological disagreements over the teachings of the Prophet, at least initially, but rather from historical incidents that concerned Muhammad's succession.

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<sup>1</sup> It should be noted that, as there is no official data, this information has been based on unofficial sources such as estimates by the communities themselves.

After the death of Muhammad in 632 AD, Abu Bakr, who was the Prophet's father-in-law and faithful companion of his, took over the reins of the Muslim world. He held this position for two years, until his death in 634 AD. Both Bakr and his successor, Umar ibn al-Khattab, enjoyed the support of majority inside the community but there were still objections regarding the non-blood relationship with the Prophet. (Steinbach & Ende, 2010; Blanchard, 2006) The main rupture began in the years of the rule of the third successor, Uthman ibn Affan, a member of the Quraysh tribe, which was also Muhammad's tribe. However, the Muslim community had already been polarized as many insisted that Uthman's succession was a "*violation of divine order*" (Blanchard, 2006:2) and therefore preferred Ali ibn Abi Talib, the Prophet's cousin and son-in-law. Uprisings did not take long to happen and in 656 AD Uthman was assassinated. His death marked a period of even more extreme polarization and transformed this religious disagreement into a political one. When Ali ibn Abi Talib, was elected in Medina as the fourth successor, the community reacted. His main opponent was Muawiya ibn Abi Sufyan, governor of Syria, who belonged in the Umayyad clan and was seeking revenge for the murder of his relative, Uthman. Soon, a civil war broke out between the two men and the religious unity disintegrated permanently.

Ali was assassinated in 661 and the Umayyads took over until 750. However, uprisings continued between Ali's supporters, who were called *shi'at Ali* (*the party of Ali*) and the supporters of Muawiya, the so-called *Kharijites*, meaning "those who left". The former argued that the leadership of the Muslim world should remain in the hands Muhammad's family, as they were the only ones to receive the divine charisma. This is the basic doctrine of the Shi'i Islam. On the other hand, the latter did recognize neither the genealogical origin nor the divine charisma but the moral character of the leader and his devotion to Muhammad's teachings as the necessary characteristics and this constitutes the core of the Sunni Islam. (Steinbach & Ende, 2010)

Accordingly, the Sunnis recognize the first four caliphates (led by Abu Bakr, Umar, Uthman, and Ali) as legitimate successors of Muhammed, while the Shiites regard only Ali and his descendants. For Sunnis nothing is more important than the compliance with the Sunnah. Consensus is an important feature of the Sunnis, given their full name, *ahl as-sunnah wa-l-ijma* (*the people of the sunna and consensus*). The concept of consensus describes the flexibility of the origin of the caliph and the importance of the "*communal consensus*" over the "*exalted status given only to prophets in the Quran*". (Blanchard, 2006: 4)

This demarcation of Sunni and Shi'i Islam is still evident today and much religious discrimination occur based on their ideological differences. Both in Turkey and in other countries where Sunnism is the dominant religion, there are many incidents of marginalization towards Shi'i minorities, a phenomenon that will be examined more thoroughly in Chapter Five.

## CHAPTER II

# Human Rights in Turkey: A brief examination of the legal framework

### 2.1 Domestic Laws

Turkey's national legal system is largely based on the laws of the Constitution, the Penal Code and the Civil Code, which guarantee the rights of the citizens, define their obligations towards the state and designate the functions of state institutions. Human rights are a key concern in Turkish law, especially after the country's attempt to meet EU standards and to comply with the provisions of other international organizations such as the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE). Since 2001 many legislative and Constitutional reforms seem to have taken place to further democratize the country.

#### 2.1.1 Constitution

The current Constitution of Turkey was ratified in 1982 and has undergone many amendments since then. It is divided into seven parts, the first of which relates to General Principles, the second to Fundamental Rights and Duties, the third to Fundamental Organs of the Republic, the fourth to Financial and Economic Provisions, the fifth to Miscellaneous Provisions, the sixth to Provisional Articles and the seventh to Final Provisions. In the present paper we will focus mainly on the first and second parts, as they concern human rights.

From the very beginning of Part I, the country's democratic and secular character is made clear, with respect to human rights and justice, as it is stated that:

“The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.” (art.2)

Equality between citizens and genders is also a major human right and is guaranteed by the Constitution in Article 10 which states that:

“Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.[...] Men and women have equal rights”

The second part lists the Fundamental Rights and Duties and is therefore the most important point in the Constitution regarding human rights. Fundamental rights and freedoms are inviolable and inalienable to everyone (Article 12). However, it should be noted that these rights can be restricted by law (Article 13) especially when used as a threat to the country's national and territorial unity or to its democracy and secular character (Article 14). The right to life is guaranteed in Articles 17 and 38 where the death penalty is exempt from punishment while Article 19 refers to right to personal liberty and security.

Other forms of individual freedom are listed below, such as freedom of communication (Article 22), Freedom of residence and movement (Article 23), Freedom of religion and conscience (Article 24), Freedom of thought and opinion (Article 25), Freedom of expression and dissemination of thought (Article 26), Freedom of the Press (Article 28), Freedom of Association (Article 33), Right to hold meetings and demonstration marches (art. 34), Right and duty of education (Article 42), Freedom of work and contract (Article 48).

The ability to protect these rights is also defined:

“Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures” (art. 35)

“Everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities” (art. 40)

The above articles are of particular interest as they prove the influence of the European Convention on Human Rights in the shaping of the existing Turkish Constitution.

### **2.1.2 Penal Code**

The current Turkish Penal Code was adopted in September 2004 by Law no. 5237 and came into force a year later, in 2005. Here again, human rights are guaranteed by a series of articles where the individual is protected from discrimination and inequality. Firstly, it is stipulated that everyone is equal in the application of the Penal Code and no distinction should be made on the basis of “*race, language, religion, sect, nationality, color, gender, political (or other) ideas and thought, philosophical beliefs, ethnic and social background, birth, economic and other social positions.*” (Article 3)

Torture is condemned in accordance to Article 94 which states:

“A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years.”

Deprivation of a person's freedom of movement with or without the use of force is also considered a criminal offense and is punishable by imprisonment of one to seven years (Article 109). Illegal actions are also considered: the prohibition of an individual to exercise his/her political rights (Article 114), the prohibition on Belief, Thought and Conviction (Article 115), the deprivation of liberty at work (Article 117) and the participation in Trade Unions (Article 118) using violence, threats or any illegal means. Slavery is also condemned and defined as Offense Against Humanity (Article 77)

Finally, Article 122 provides that any discrimination “*on the ground of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect*” is sentenced to a penalty of imprisonment for a term of one year to three years.

### **2.1.3 Civil Code**

The Turkish Civil Code is largely based on the Swiss Civil Code and is one of the most important legal texts in modern Turkey, which was adopted in 1926 in the context of Atatürk 's new secular reforms. Although in this wave of modernization and westernization process of the state one would expect that human rights would be an important part, the original text conflicted with many of them, particularly on the issue of gender equality<sup>2</sup>, until its recent revision in 1999.

In the current Civil Code, human rights are clearly more protected. Article 8 guarantees citizens' equality regarding the exercise of their rights. Article 57 states the right to form associations, while Article 68 emphasizes equality between members:

“The association may neither make discrimination among their members in respect of language, race, color, sex, religion, sect, lineage, society and class nor may adopt any behavior deteriorating the balance between the members.”

Although homosexual marriages are not permitted, transgender rights are protected to some extent and gender change is permitted as set forth in Article 40. The legal process, however, seems to be complicated, as it requires that the applicant must first obtain a court permit and prove by medical notice that this action is necessary for his/her mental health.

The most important part of the new Turkish Civil Code is equality between genders. Now both women and men are equal in terms of representational authority, legal transactions and family domicile as it is provided by Articles 189, 193 and 194 respectively, while Article 124 also sets the minimum age for marriage at 18 for both genders. , which was not the case in the previous Civil Code (minimum age for men was 18 while for women 16)<sup>3</sup>. Equality is also guaranteed in matters of inheritance (Article 661), in family expenses (Article 186), in divorce (Articles 161-165), etc.

## **2.2 International Conventions and Treaties**

The international factor is an important part of the legal environment in Turkey regarding human rights. Since the beginning of the 20th century, in the context of promoting a secular character and a linking with the West, Turkey has signed many international Treaties and Conventions and has been a member of many international organizations. Examples are the Lausanne Treaty (1923), the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1954), the International Bill of Human Rights (2000) and others. Indeed, the importance of these Conventions/Treaties is highlighted constitutionally with Article 90 which states that:

“In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

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<sup>2</sup> For more details see Çakırca, S.İ. (2013). Turkish Civil Code and CEDAW: Never Shall the Twain Meet?

<sup>3</sup> Nevertheless, underage marriages (16-17 years old) can still be carried out in very specific circumstances and with the permission of their legal guardian and the decision of a judge of the Court of Peace (Articles 126 and 128).

### **2.2.1 Treaty of Lausanne**

The Treaty of Lausanne is one of the first and most important international treaties signed by the Republic of Turkey. Its importance lies not so much in its transnational character but in laying the first foundations for human rights in Turkey. Signed in 1923 between Turkey, Britain, France, Italy, Yugoslavia, Japan, Greece, Romania, Bulgaria, Portugal, and Belgium in the aftermath of two major wars, World War I and the Greek-Turkish War, this treaty defined the territories conquests but also the internal functions and external relations of the newly formed state. Important parts of this Treaty regarding human rights are Articles 38-44 which refer to equality and freedom and guarantee the rights of minority groups.

Article 38 refers to the right to life and liberty among Turkish citizens “*without distinction of birth, nationality, language, race or religion*” and it safeguards freedom of expression and practice of “*of any creed, religion or belief*” while it refers to Non-Muslim minorities stating that they “*will enjoy complete freedom of movement and emigration*”

Article 39 highlights equality among citizens as “*all the inhabitants of Turkey, without distinction of religion, shall be equal before the law.*” The protection of non-Muslim religious minorities is mentioned here once again, defining the equality of civil and political rights between them and the Muslim Turkish citizens: “*Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.*”

Muslim minorities also have the right to establish their own religious and educational institutions using their own language and expressing their own religious beliefs (Article 40) while in areas with a significant number of non-Muslim minorities will be provided the ability to teach in their own language in public schools. (Article 41)

It is also stipulated that the Turkish Government takes responsibility for protecting the religious sites and institutions of these minorities, while at the same time ensuring the creation of new ones (Article 42) Finally, it is stated that non-Muslim Turkish nationals should not be forced to take any action that comes against their religion (Article 43) while it is acknowledged that the above commitments are international and are therefore also guaranteed by the League of Nations.

An interesting point observed in this treaty is that it refers mostly to non-Muslim minorities and not to Muslim ones, as opposed to the earlier Treaty of Sevres (1920) in which minorities were simply referred to as racial or religious minorities, without stipulating whether are they Muslim or not. Consequently, besides the three officially recognized minorities (Greek and Armenian Christians and Jews), many religious and tribal groups such as Alevis, Roma, Kurds and others appear to be excluded from the above legal rights.

### **2.2.2 Universal Declaration of Human Rights**

As one of the 58 members of the United Nations, Turkey signed the Universal Declaration of Human Rights in 1949. This text is one of the most important documents of the modern world on which human rights were officially built, as we know them today. At that time, Turkey faced not

only a post-war environment but also the absence of Kemal Atatürk , who had died a decade earlier. Consequently, both domestic and foreign policy of the country were treated very carefully. The secular character had to be maintained even after Atatürk 's death and thus Turkey became a member of the United Nations in 1945. This Declaration is still a very important human rights' safeguard within the country, with frequent monitoring of their legal application.

Some of the most important rights guaranteed by this Declaration are freedom and equality between people and before the law “*without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*” (Articles 1, 2, 7), the right to life (Article 3), the prohibition of slavery and torture (Article 4,5), the right to freedom of thought, conscience and religion (Article 18), the right to freedom of opinion and expression (Article 19), freedom of peaceful assembly and association (Article 20), the right to work (Article 23) and the right to education (Article 26).

### ***2.2.3 European Convention for the Protection of Human Rights and Fundamental Freedoms***

After the end of World War II, Turkey which was on the side of the Allies during the war took even greater steps towards the West. A few years after joining the United Nations, Turkey became one of the founding members of the Council of Europe (1949) and in 1950 signed the European Convention for the Protection of Human Rights and Fundamental Freedoms. In 1954 the Convention was ratified, making it a part of its domestic law. With this convention, Turkey is bound by the provisions of the European Court of Human Rights, which was established in 1959, and since then many reforms have been made to comply with EU standards and the case-law of the Court.

This Convention significantly affected the 1982 Turkish Constitution, which is in force today, as well as it contributed in Turkey's modernization regarding human rights. However since 1959, Turkey has been the member-state with the most applications(3,386) in the European Court of Human Rights (ECHR), holding the 17.13% of the total applications.(ECHR Overview, 2018) Individual petitions were officially recognized in 1987, more than thirty years of the Convention's ratification but much earlier than many other member states.

Highlights of this Convention are the right to life (Article 2), the prohibition of slavery and torture (Articles 3-4), the right to liberty and security (Article 5), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11) and the prohibition of discrimination (Article 14).

### ***2.2.4 The Helsinki Final Act***

The Helsinki Final Act was signed in 1975, in a Cold War climate, and after two years of meetings of the Conference on Security and Co-operation in Europe (which after the end of the Cold War was renamed as Organization for Security and Co-operation in Europe, adopting a more permanent character) in an effort to achieve negotiations between “West” and “East”. Thirty-five countries,

including Turkey, signed this Act that was focusing mainly on three pillars, which the OSCE operates to date: the politico-military; the economic and environment; and the human.

Concerning human rights, it states that:

“The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere”

However, it should be noted that this pact is not a treaty but rather a “*declaration of intentions*” (Robertson,1977:34) which means that it does not require ratification by national parliaments and that its non-compliance does not have the same penalties as the non-compliance with a treaty, as the latter is a violation of international law. Nevertheless, it is an important document outlining Turkey's intentions for democratization and social development.

### ***2.2.5 International Covenant on Economic, Social and Cultural Rights & International Covenant on Civil and Political Rights***

These are two very important provisions that, along with the Universal Declaration of Human Rights, constitute the International Bill of Human Rights. Although the treaties came into force in 1976, in Turkey they were signed several years later, in 2000. Here too, human rights are guaranteed by a multitude of articles such as equal rights between men and women (Article 3, ICESCR), The right to establish trade unions and the right to strike (Article 8, ICESCR), the right of everyone to education(Article 13, ICESCR), respect and equal protection to all individuals “*without any distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” (Articles 2 & 26 ICCPR), right to freedom of thought, conscience and religion(Article 18, ICCPR) and the right of ethnic, religious or linguistic minorities to “*enjoy their own culture, to profess and practise their own religion, or to use their own language.*” (Article 27, ICCPR).

Although Turkey complies with the provisions of the Covenant, it is skeptical over the Article 13 of the International Covenant on Economic, Social and Cultural Rights which gives parents the freedom to choose the educational institution and curriculum in order to be compatible with their religious and moral convictions. This article conflicts with the constitutional provisions of Article 14 which points out the secular nature of the State and that :

“None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights”(Article 14)



Furthermore, Article 42 of the Constitution also states that:

“Education shall be conducted along the lines of the principles and reforms of Atatürk, based on contemporary scientific and educational principles, under the supervision and control of the State. Educational institutions contravening these principles shall not be established”

Therefore, it is stated that “*The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey.*” (UNTC “Status”) Similarly, Article 27 of the International Covenant on Civil and Political Rights allows minorities to exercise their cultural characteristics. Turkey also applies this Article in accordance with the Constitution (Article 14) and the Treaty of Lausanne. (UNTC “Status”)

## **CHAPTER III**

### **Religion and Human Rights from Historical Perspective: Islam in Turkish Politics**

Historically, the issue of religion in Turkey is of great interest not only for cultural reasons but also for political ones. The deep religious Ottoman Empire and the deep secular Turkish Republic outline the two conflicting principles that still haunt Turkey. The religious element has been and still is inextricably linked to the politics of the country and is one of the basic means used in the political propaganda.

#### **3.1 Secularizing Religion: Atatürk and the Turkish Republic**

Even though the main secularization project begun with Atatürk, several efforts regarding modernization were obvious during the last years of the empire that laid the foundations for the new secular Republic. During the 19th century the Ottoman empire experienced a tremendous transformation regarding its administrative system. The Tanizmat era (1839–1876) was characterized by many reforms that liberalized and further institutionalized the empire. (Yavuz 2005) In 1840, the first elections were held, establishing local parliaments in rural areas where people from the local population participated, half of whom were Muslims and half were non-Muslims. Similar example of non-Muslims' political representation was also evident in the elections of 1876, the year in which the empire became a constitutional monarchy and the first parliament was established. In the new parliament non-Muslims held a great number of seats as they represented about 40% of the population. (Zürcher & Van der Linden 2004; 48) At the same time, there were separate secular and Islamic courts and many sharia laws were forbidden.

By the late 19th century, the Ottoman Empire had begun to decline and lose territories in Europe and Crimea. This would also play an essential role in the transformation of Turkey. In an effort to respond to the new wave of developments shaped by the rest of Europe, the empire adopted new technologies and tried to modernize the military personnel while science was introduced with courses such as mathematics, physics, medicine, European languages and thus providing a wealth of knowledge but also bringing new ideas from the West. (Ulus 2010)

However, religious and political liberalization came to an end after the defeat of the empire in the Ottoman-Russian War, when by the Treaty of Berlin many territories had to be relinquished. As a

result, the Muslim population increased dramatically, changing the varied religious environment that previously existed. At this point, an attempt was made in order to re-homogenize the empire and religion became one of the basic means. But on the other hand, the new Western ideas had already penetrated in the social culture of the empire, leading to skepticism towards the “*divine power of the ruler*.” (Zürcher & Van der Linden, 2004: 48) Thus the high state interventionism as well as the extensive promotion of religion were confronting to the new needs of the Ottoman society. As a result, a revolution burst out in 1908 in order to oust Sultan Abdulhamit II and to restore the constitution and the parliament, which had been suspended since 1878. (Zürcher & Van der Linden, 2004) Although this development overthrew the sultan, it failed to overthrow the monarchy. For the next 10 years the Ottoman Empire would make one last attempt to survive, but its defeat in World War I crushed it completely.

As the empire was dissolving, three leading figures appeared, one of whom would become the symbol of the new Turkey. The generals Mustafa Kemal Atatürk, Kâzım Karabekir, and Ali Fuat Cebesoy, who were prominent in World War I, allied with local civilian leaders and founded the Association for the Defense of Rights (Müdafaa-i Hukuk Cemiyetleri). On the occasion of the cessation of war, Atatürk clashed with the sultan over the post-war conditions imposed by Entente Powers, believing that they should not accept these measures as they would completely undermine any trace of the empire’s greatness. Controversy culminated with the Sultan condemning Atatürk to death and Atatürk calling for a provisional government with himself being the prime minister. The result of these events was the creation of the Republican People's Party (*Cumhuriyet Halk Partisi CHP*), led by Atatürk, who was to rule without opponents until the middle of the century, while forming the first Republic in Turkey. (Ulus, 2010)

Under Atatürk's leadership, nationalism was separated from religion, with the former rapidly increasing and the latter weakening. For the new Republic, the intense religious element not only conflicted with the new ideals but jeopardized its secular character by constituting a memory of the old empire. Indeed, the effort in the new state to remove anything reminiscent of the empire is evident in a series of reforms that took place at that time. For example the change of script from Arabic to Latin alphabet, the replacement of imperial symbols (such as the sensual tulip) with new symbols commemorating the Hittites, to whom the new Turkish culture attributed its roots, the change of the capital from Istanbul to Ankara as well as the abolition of the Sultanate and the Caliphate, while religious brotherhoods were outlawed. (White, 2011) State interventionism was no longer used to spread religion but to restrict it. These reforms, however, took place mainly in urban areas leaving rural provinces in a different cultural status. Rural people remained highly religious and as result two different societies coexisted in the Turkish Republic. (Rabasa & Larrabee, 2008) Ethnic minorities, such as Kurds, were also opposed to the new nationalistic approach of the Kemalists, as they enjoyed the empire’s more tolerant behavior towards ethnicity and Islam and thus religion was linked to their rebellious point of view. (Rabasa & Larrabee, 2008)

Therefore, religion became the main characteristic of the Turkish social cleavages with keen supporters and passionate opponents. Although Atatürk's initial goal was to modernize the country and not specifically de-Islamize it, it didn’t take long for religion to take political dimensions and many legal restrictions were enforced. Religious attires were prohibited, many places of worship were closed, religious personnel was reduced and the Presidency of Religious Affairs, the so-called

Diyanet was established keeping all religious issues under the legislative power of the Grand National Assembly of Turkey.(Rabasa & Larrabee,2008) This situation lasted until the mid-20th century, when the death of Atatürk and the weakening of CHP created a new environment where religion could thrive again.

### 3.2 The Rise of Islam: From Menderes to Erbakan

As mentioned above, Atatürk's extensive secular policy had divided the country, creating two distinct social groups: the secular bourgeoisie and the religious peasant. Although at first these two social classes had no contact with each other, by 1950 new roads had been built, linking the villages with the towns. This, coupled with the poor agricultural conditions that emerged during that decade, led many farmers to move to the cities in order to find better opportunities.(White, 2011) As a result many traditional religious beliefs were transferred to the cities.

At the same time, the change of the Turkish political system into a multi-party system brought the issue of religion to the forefront once again. With the CHP losing its governmental monopoly, opposition conservative parties sought votes in the religious, mainly rural, population that was now an *"important political constituency"*(Rabasa & Larrabee,2008:38)

Even CHP members, in the wake of the 1946 election but most importantly in the wake of the communist rise in the East, had begun to highlight the importance of religion in the social fabric of the Turkish nation. Mahittin Baha Pars, deputy of CHP, had spoken of a *"misguided policy of laicism"* that excluded religion and created the risk that new ideas and religions would fill this void - possibly having communism in mind - while stating that: *"The Turks should return to the religion of Islam, and while it was certainly not necessary to tolerate any interference of selfish religious interests in their relations with the state, this was no reason to leave the people without religious instruction."* The same argument was supported by Hamdullah Suphi Tanrıöver, another deputy of CHP, who stated that *"in order to protect the Turkish nation from foreign ideologies, particular communism, religion should be encouraged."* (Pelt, 2008:95-96)

People' disagreement with the restrictive, secular policy of the Kemalists became evident in the 1950 election, where the CHP lost to the conservative Democratic Party (*Demokrat Parti, DP*) of Adnan Menderes. Religion was an important feature of Menderes' political agenda and thus many initiatives were taken in order to make Islam a part of the Turkish state again. From 1950 to 1960, it was estimated that 5,000 mosques were built, religious inscriptions could be found in public places, greater respect for religious leaders was observed and increased student attendance at the Faculty of Theology was noted. (Pelt, 2008) In 1955 during a speech, Menderes stated:

*"You are so powerful that you can bring back the Caliphate if you wish"* leading to frictions with the opposition media that accused him of unlawful conduct.<sup>4</sup> (Pelt, 2008)

As a result, the Turkish people split between those who supported the DP and those who supported the CHP. In order to tackle the internal disturbances and to secure its power in politics, the

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<sup>4</sup> According to Article 163 of the Criminal Code, *"Whoever manipulates religion for political, personal or commercial interest will be condemned to 1-5 years of hard labor"*. Interestingly, this article was amended this way by the Menderes government in 1953.

Democratic Party adopted an authoritarian and repressive political tactic, launching a powerful attack towards the opposition -mainly the Republican Party and its supporters. (Cleveland & Bunt, 2009)

But social unrest did not stop. On the contrary, the more Menderes's government repressed opposition, the more the people were outraged. Numerous protests broke out in Turkey with the government enforcing martial law. (Pelt,2008) These developments led to the intervention of the army and the 1960's coup d'état.

Although the army was primarily concerned with maintaining Atatürk's secular policy, they did not impose significant restrictions on religion. On the contrary, in the new Constitution of 1961, the freedom to form associations was extended to autonomous groups, including religious ones. (Rabasa & Larrabee,2008) This action resulted in the creation of a multitude of religious associations and the first Islamic political party did not take long to emerge. In 1970, the National Order Party (*Millî Nizam Partisi*, *MNP*) was created under the leadership of Necmettin Erbakan, a highly conservative and religious party. Although the party was short-lived, as it ended with the 1971 coup, it was re-established a year later under a different name (National Salvation Party/ *Millî Selâmet Partisi*, *MSP*) but with a similar political agenda, promoting the creation of a common Muslim market with a dinar currency and the formation of a Muslim Defense Alliance while favored women's headscarves and the return of the Arabic script. (Rabasa & Larrabee,2008) In the 1973 elections, the party managed to win third place. Surprisingly, during this year's elections, one of the biggest political paradoxes in Turkey occurred. The CHP, led by Bülent Ecevit, although it came first in votes, didn't manage to win a majority, leading to a hung parliament. Forced to form a coalition government, the CHP allied with the MSP.(Rabasa & Larrabee,2008) However, this alliance turned out to be catastrophic, and two years later the government resigned, bringing to power the Conservative party of Demirel, which had been forced to resign during the 1971 coup. Demirel again formed a coalition government with the MSP and the far-right Nationalist Movement Party (*Milliyetçi Hareket Partisi*, *MHP*).

In 1975, Turkey plunged into the same political turmoil and civil violence that plagued it in the 1960s, and religious disputes between the Alevis and Sunnis intensified dramatically. The decade was marked by two more tragic events: the massacre in Maraş, where thousands of Alevis were slaughtered by members of the fascist organization of the Gray Wolves in December 1978, and the massacre in Çorum where nationalist Sunnis attacked Alevis and supporters of CHP in July 1980. (Cleveland & Bunt, 2009)

Although this government also fell by military intervention in 1980, the religious element did not disappear, as religious courses were made compulsory into the education curriculum and Qur'anic classes were opened. According to Rabasa & Larrabee the army itself tried to reinforce the role of Islam to counter the communist and leftist ideas that had grown up in the 1970s. (2008:37)

In 1981, Turgut Ozal's liberal Motherland Party (*Anavatan Partisi*, *ANAP*) took over power, aiming to remove state intervention in the economy. This resulted in a new bourgeoisie that had strong roots in Islamic culture. This government maintained conciliatory stance towards Islam, with Muslim groups being able to open private schools and universities at their own expense and to have

access to the media, thus being able to reach a much wider political audience. (Rabasa & Larrabee,2008)

Following Ozal's death in 1993, Erbakan's new Welfare Party(*Refah Partisi, RP*), which was created in 1983 and gained more popularity in the 1990s, managed to win the elections. This government strongly promoted religion and contributed to the rise of Islam. The RP highlighted Muslim symbols by taking several actions such as building a large mosque on Taksim Square , closing public services earlier on Ramadan so officials could be home in time for the sunset, returning the headscarf and many more while Erbakan called on believers to live by sharia law and highlighted the role of jihad as a "*fair social order*" (Zürcher & Van der Linden, 2004:59) These moves once again led to the intervention of the army on February 28, 1997, one of the most important and secular moments in Turkish politics. The Welfare Party was abolished by both the Constitutional Court and the ECHR, followed by a period of high religious intolerance. During this period nine hundred military officers and many civil bureaucrats lost their jobs because of their Islamic way of life, headscarves were banned, hundreds of Quran courses and many Imam-Hatip schools were closed down and mosque constructions were restricted.(Kuru, 2009) These reforms marked the new era that followed in the 21st century.

### 3.3 The AKP and the “moderate” Islam

The military intervention of 28 February played a dramatic role in the evolution of the Islamic religion in Turkey. On the one hand, a highly secular policy was implemented, severely restricting the religious element, but on the other it radically transformed the Islamic movement. Following the ban of the Welfare Party, it became clear that pursuing a purely religious policy was impossible to succeed, as the military was such an important actor in the country's political life. Thus, the proponents of political Islam adopted a more diplomatic approach, ceasing to embrace secular ideas and introducing new modern concepts into their political agenda, such as democracy and human rights. (Dagi,2004) In addition, the strong marginalization of Islam, which was particularly applied during the 1997 military intervention, was also an essential factor that changed the Islamists' view towards the West and the European Union, which were now perceived as means to reduce the power of the army and to combat religious intolerance. (Dagi,2004; Rabasa & Larrabee,2008)

This new Islamic political perspective was represented by Erdoğan's Justice and Development Party (*Adalet ve Kalkınma Partisi, AKP*), a party that combined its Islamic roots with a secular way of governing, thus opening new horizons in the country's relations with the West. Indeed, in the 2002 elections, the AKP gathered 34% of the vote, gaining the majority after a 15-year run by coalition governments and political instability. In the early years of Erdoğan government, a number of modernization reforms took place, leading the European Commission to declare in 2004 that Turkey met the Copenhagen political criteria. (Kirişci, 2008) People's trust on Erdoğan was also reflected in the 2007 elections, where the party gathered 46.6% of the vote. (Rabasa & Larrabee,2008)

However, although initially the AKP strongly promoted Western values, it gradually began to change. The trust towards the EU begun to decline sharply (Figure 1) and the party turned to a more nationalistic approach, "*elevating Turkish and Ottoman traditions over Western values, and*

*piety over secularism*".(Kenyon,2019) National elements were exaggerated and with them, the signs of Islamization started to rise once again. Erdoğan 's cooperation with the Global Muslim Brotherhood, the growth of Islamic schools, the strengthening of the Diyanet institution and other actions that will be discussed in Chapter 5 are some of the means used by AKP *"to indulge its neo-Ottoman goals"* (Merley,2011:8)

In 2002, when the AKP was first elected, religion played a moderate role in the country's political life, at least according to citizens. More specifically, the role of Islam appeared to divide the Turkish population almost in the middle, with 45% supporting that it plays a big role while 43% saying that it plays a small role. However, in 2014, twelve years of AKP's political domination, these rates changed, with the majority (69%) now believing that religion plays a significant role in political life and only 26% supporting the opposite. ("Turks Divided"2014)

Support for Erdoğan and the national government is also a debatable issue, with 48% believing that Erdoğan has a positive impact on the country and 48% believing that has a negative impact. Interestingly, the respondents that view the Prime Minister and the government favorably are mostly religious people with 74% praying more than five times a day. ("Turks Divided"2014)

However, although the AKP appears to have attracted the religious electorate of the citizens and thus continues to promote religion as part of the national statehood, religiosity has diminished. According to Konda research, from 2008 to 2018, respondents that identify themselves as "pious" declined from 13% to 10%, those identified as "religious" dropped from 55% to 51%, the percentage of those who fast during Ramadan fell from 77% to 65% while the unbelievers and the atheists, who in 2008 barely registered, in 2018 were 2% and 3% respectively. ("What has changed" 2018)

According to analysts, this phenomenon is reasonable. Murat Somer, a professor at Istanbul's Koc University, points out that *"government control and state provision of religion usually alienate people from religiosity"* while political analyst Soner Cagaptay claims that *"Erdoğan replaced the power of authority with his own identity of this conservative, religion-loving politician, a lot of young Turks are reacting to it"* (Kenyon,2019)

Consequently, although it seems that faith is gradually declining in the Turkish state and Islam is losing the passionate dogmatism that formerly promoted by adopting a more "moderate" political

stance, religion is still an issue for Turkey, a country that tries to balance between the West and the East. The term 'moderate', however, is used cautiously here, as for Erdoğan : *“Islam cannot be either moderate or not moderate. Islam can only be one thing”* (Bekdil,2017)

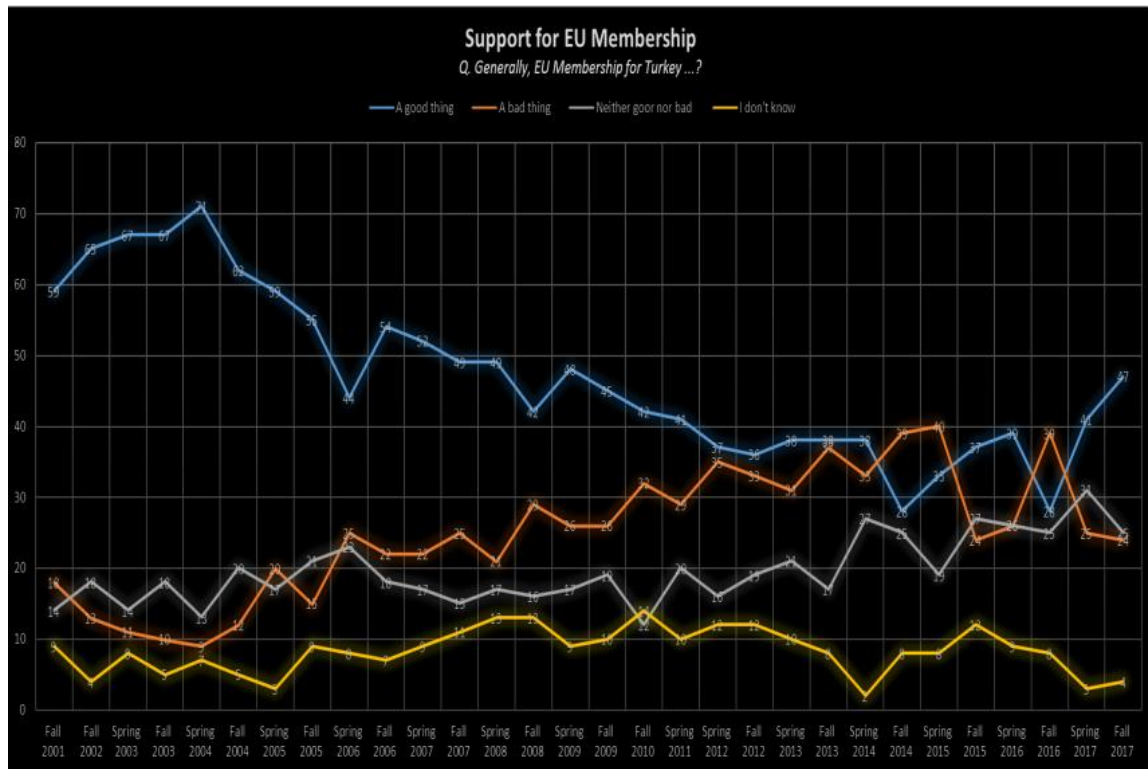


Figure 1 Support for EU membership in Turkey

Source: <http://www.tepsa.eu/feature-online-paper-no-26-turkish-public-opinion-and-the-eu-membership-between-support-and-mistrust/>



## CHAPTER IV

# Religion and Human Rights from theological perspective: The Qur'an and the issue of interpretation

### 4.1 Quran Doctrines and Human Rights

Attachment to some religious practices is often considered by some scholars and activists as being contrary to the implementation of human rights. In particular deeply religious state systems, mostly Muslim ones, seem to have a rather low performance regarding matters of gender equality and freedom. Gender inequality<sup>5</sup>, religious<sup>6</sup> and racial<sup>7</sup> discrimination and the absence of the right to life<sup>8</sup> are some problems observed in Muslim countries, leading to the attribution of this restrictive environment to the Islamic religion. But what is exactly meant by the term “religion”? What are its exact moral guidelines and which factors affect them? The Qur'an is the most sacred text of the Islamic religion and the teachings contained in it can be considered as the main pillar around which the religious values of Islam revolve. Nevertheless, the issue of translation and interpretation is at the heart of religious controversy within the Islamic community.

This chapter attempts to examine the relationship between religion and human rights through certain verses of the Qur'an, but also through the signification of their volatile interpretive approach. The following analysis is based on the translation of Saheeh International, one of the most popular translations worldwide. It is noted that this translation is not recognized by many members of the community, who argue that the language of the Qur'an should remain unalterable-Arabic.

#### 4.1.1 Gender Equality

Women's rights and gender equality are major issues in Islamic societies and one of the most common misconduct that Western culture accuses them of. The position of women seems to be degraded in many Muslim cultures; they are deprived of the freedoms enjoyed by men, they are excluded from high-level positions and enjoy diminished political and social rights. Shari'ah, the

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<sup>5</sup> Among the countries with the highest gender gap are Yemen, Pakistan, Iraq, Syria, Iran, Saudi Arabia, Lebanon, Jordan, Oman, Morocco, Egypt and Turkey. (WEF “Gender Gap” 2018)

<sup>6</sup> Countries with high religious intolerance include Iran, Pakistan, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, Pakistan, Saudi Arabia, Afghanistan and Turkey (USCIRF 2019)

<sup>7</sup> Countries with high percentage of witnessed racism include Lebanon(64.4%), Pakistan (48.8%), Algeria (41%), Egypt (39.7%), Morocco (35.6%), Yemen (31.2%) and Turkey (19.1%).(WPR “Most Racist” 2019)

<sup>8</sup> Muslim countries to which the death penalty still applies are (number of executions in 2019): Iran (over 192 including under 18), Iraq (over 285), Saudi Arabia (over 137) (DPW 2019)

Islamic law that is based on the Qur'an and the Sunnah, or in other words the words of God (Allah) and the words and deeds of the Prophet Mohammed, are often accused of belittling women. Abdullahi Ahmed An-Na'im says that "*Shari'a treats women as the wards of men*" (An-Na'im 1987, 15) while Heiner Bielefeldt points out that "*Although the shari'ah puts great emphasis on the equality of all faithful before God, it traditionally assumes unequal rights between both men and women*". (Bielefeldt 1995, 596) However, many scholars claim that women are not downplayed in the Qur'an, with Fazlur Rahman pointing out that, contrariwise, the Qur'an has improved the status of women. (Bielefeldt 1995, 596)

Women are referred in various verses of the Qur'an. In many of them, both genders seem to have similar privileges, as for example they both can keep what they earned:

"And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing." [4:32]

Elsewhere, equality between the two genders is highlighted; it is mentioned that both have "*mutual rights*" while it calls for "*reverence towards the wombs that bore you*" [4:1] In another verse it is stated that:

"The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. Those - Allah will have mercy upon them. [9:71]

On the other hand, gender discrimination seems to be introduced in legal and financial matters. Although women are entitled to keep their winning shares, it is men who actually hold the wealth of the family; therefore, women are under their protection and under their control; only virtuous women deserve this protection and those who were disobedient are punished:

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand. [4:34]

The punishment of immoral women is also found in the case of adultery –men seem to be excluded from this punishment:

«Those who commit immorality [i.e., unlawful sexual intercourse] intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.» [4:15]

In inheritance issues, a gender discrimination is also made:

«Allah instructs you concerning your children: for the male, what is equal to the share of two females.» [4:11]

According to some scholars, this difference may be due to the fact that they men are considered the sole guardians of the family and of the women they look after (mother, wife, sister, etc.), while women have no financial obligations. (Ibnouf 2015)

Polygamy is permitted but is a privilege for men. Finally, court testimony is another issue where it appears that women are not considered as reliable as a man:

«And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her.» [2:282]

With regard to punishment, both men and women who violate God's commandments and ignore religious morality face the same penalties. For example, having sexual intercourse before marriage is punishable for both:

The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment. [24:2]

However, although there is no distinction between men and women on this issue, there seems to be a distinction between classes of women. For example, if a slave married to a free man behaves immorally, they will receive half the punishment of a free woman [4:26].

Another distinction is made for the Prophet's wives, who are an example of morality and consequently face double punishment in the case of immoral conduct [33:31], while they have to behave with humility and obedience:

«And stay in your houses with dignity and do not show off yourselves like the showing off of the former days of ignorance and observe Prayer and pay the Zakat and obey Allah and His Messenger.»[33:34]

As we have seen, in the Qur'an equality between genders is not clearly marked. There are points in which men and women are recognized by God with common punishments and privileges. But there are also points where the position of the woman is more degraded. However, the era and society in which the Qur'an was written should not be overlooked. It was a time where women were mainly involved in housework and had limited social life and legal and political rights. Consequently, the Qur'an is a text-sample of the past and refers to a different society. Nonetheless, it is still used today as a cornerstone of many modern societies that use different parts of the Qur'an either literally or metaphorically to justify and maintain patriarchal and other divisive behaviors.

#### ***4.1.2 Freedom of Religion***

Religious freedom is a taboo for many religious societies around the world. Both in the past and in the present, societies that have strong religious foundations appear to focus on promoting a central religion, limiting any other form of religious belief and expression. Such practices of religious restraint are encountered from the Roman Empire and the European colonies to the Arab and Indian empires of the Middle Ages, and therefore religious intolerance is not only a characteristic of a particular religion or a particular culture but rather a tool used worldwide to homogenize people. Even today, part of the Muslim world is experiencing religious intolerance. But what does the Qur'an, their basic sacred text, states about religious freedom?

Interestingly, in the Qur'an, religious freedom and freedom of choice and conscience are encountered in many verses:

“There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing.” [2:256]

Individual will seems to play an important role in the Qur'an, and the main judge of one's will is not the rest of humans but God:

Those who believe (in the Qur'an) and those who follow the Jewish (scriptures), and the Sabians, Christians, Magians and Polytheists—God will judge between them on the Day of Judgement: for God is witness of all things.”[22:17]

Even Muhammed is referred to as a mere carrier of God's word, not as one who controls the faithful or compels the unbelievers. [88: 21-22] Elsewhere the issue of respect among believers regardless of religion is mentioned:

Say, "O disbelievers, I do not worship what you worship. Nor are you worshippers of what I worship. Nor will I be a worshipper of what you worship. Nor will you be worshippers of what I worship. For you is your religion, and for me is my religion." [109: 1-6]

The truth is from your Lord; so let him who please believe and let him who please disbelieve.”[18:29]

In many verses, faith in Allah seems to be a personal issue, with divine or any other intervention being inappropriate regarding one's religious choice. On the contrary, everyone is responsible for their actions:

“If you do good, you do good for yourselves; and if you do evil, you do it to yourselves.” [17:7]

There has come to you enlightenment from your Lord. So whoever will see does so for the benefit of his soul, and whoever is blind, does harm against it. And (say) I am not a guardian over you.”[6:104]

But on the other hand, in other verses, the punishment of infidels is highlighted. As mentioned above, Allah is considered the ultimate judge of people on the Day of Judgment. The apostates and disbelievers, for example, although they should not be forced as long as they live to convert to Islam, they will be punished by Allah who will "*punish them with the greatest punishment*" [88: 23-24]. Although freedom of religion is generally being promoted, in some verses other religions, in particular Jews and Christians, appear to be downgraded and even demonized:

And never will the Jews or the Christians approve of you until you follow their religion.[2:120]

Say, 'O Prophet,' "O Jews! If you claim to be Allah's chosen 'people' out of all humanity, then wish for death, if what you say is true.”[62:6]

And they say, "None will enter Paradise except one who is a Jew or a Christian." That is [merely] their wishful thinking, Say, "Produce your proof, if you should be truthful."/ The Jews say "The Christians have nothing [true] to stand on," and the Christians say, "The Jews have nothing to stand on," although they [both] recite the Scripture. Thus the polytheists speak the same as their words. But Allah will judge between them on the Day of Resurrection concerning that over which they used to differ. [2:111; 2:113]

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them. Indeed, Allah guides not the wrongdoing people. [5:51]

In addition, the punishment of death is also referred to in relation to those who fight Islam:

And kill them wherever you overtake them and expel them from wherever they have expelled you, and fitnah is worse than killing. And do not fight them at al-Masjid al- Haram until they fight you there. But if they fight you, then kill them. Such is the recompense of the disbelievers.[2:191]

An important point is that of the polytheists. As we have seen, although the Qur'an promotes a fair treatment towards those who believe in other religions, polytheists have a different approach. Polytheism was prevalent in many parts of pre-Islamic Arabia, including Mecca. In such an environment, monotheistic Islam began to evolve, and so the first "enemy" it encountered was polytheism. In one verse it is stated that "*a believing slave is better than a polytheist*" [2: 221] while neither men nor women are permitted to marry a polytheist.

Another verse, referring to the peace treaties signed between Muslims and polytheists during the Muhammedan era, states that:

"And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful. [9:5]

Finally, in many verses polytheists are characterized along with the criminals, sinners and immoral as *Mujrimun*, meaning guilty or *Zalimun*, meaning wrong-doers and they are considered to have committed the highest degree of sins for which Allah will punish them severely.<sup>9</sup>

In conclusion, religious freedom is promoted to some extent by the Qur'an. Moral and virtuous life is the only criterion that Allah sees. Faith in God must be done without coercion and individual will plays an important role. On the other hand, Islam was flourished in an environment where polytheism prevailed; Allah was a foreign God, different from those worshiped by the ancestors.(Ismail & Awang Mat, 2016) Thus, the Qur'an clearly illustrates Islam's attempt to fortify and establish itself, either by blaming and marginalizing its religious opponents or by glorifying its superiority. Indeed, this may have been the black spot of the Qur'an, which was later exploited by various exegetes, religious and political leaders in many Muslim societies, forming an authoritarian environment for religious minorities.

#### ***4.1.3 Racial Discriminations and Right to Life***

Another issue that needs to be examined is racial discriminations and the right to life. Racial discrimination, although observed in many Muslim countries, does not appear to be mentioned anywhere in the Qur'an. On the contrary, in many verses, equality between people is being made, regardless of their race, as they all are made by Allah:

"And He it is who has brought you all into being out of one living entity"[ 6:98]

"And among His wonders is this: He creates you out of dust, and then, behold! You become human beings ranging far and wide!" [30:20]

Elsewhere, it is clearly stated that there is no racial superiority and that all races are respectable:

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<sup>9</sup>see *Quran verses: 7:84, 26:200, 76:31, 55:43, 37:34, 37:63*

“And among His wonders is the creation of the heavens and the earth, and the diversity of your tongues and colors. For in this, behold, there are messages indeed for all who are possessed of innate knowledge!” (Quran 30:22).

“Do you not see that Allah sends down rain from the sky? With it We then bring out produce of various colors. And in the mountains are tracts white and red, of various shades of color, and black intense in hue. And so amongst men, and crawling creatures, and cattle – they are of various colors. Those truly fear Allah, among His Servants, who have knowledge. For Allah is Exalted in Might, Oft-Forgiving” (Quran 35:27-28).

“Oh men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of Allah is the one who is most deeply conscious of Him. Behold, Allah is All-Knowing, All-Aware” (Quran 49:13).

In terms of justice, the Qur'an highlights the importance of fair treatment without any discrimination on its implementation. [5:2-9, 4:135] The same applies to those who offer help to those who need it:

"And whoever saves a life it is as though he had saved the lives of all mankind" (5:32)

Therefore, the Qur'an principles do not seem to be applicable only to citizens of the same country, race or nation but instead they refer to all people regardless of their origin.

Although, in terms of racial discrimination, the Qur'an appears to be compatible with human rights, the same does not apply for the right to life.

On the one hand, life is important and providing help is an essential moral value as we have seen above. On the other hand, however, in most verses the right to life seems to be respected under conditions. For example, although killing is generally condemned as an act against humanity, it is permissible when it comes as a reprisal or in case of someone committing corruption:

"Because of that, We are decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely" [5:32]

In addition, one's life can be claimed under the law:

And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. [6:151]

The death penalty is also provided for those who turn against Allah and promote corruption:

Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment. [5:33]

As we have seen in section 4.1.2, there is also an incitement to kill polytheists.

However, according to many scholars, the Qur'an respects the right to life as it points out that no one has the power to take a human life beyond God, except in the above-mentioned conditions.

«And it is Allah who gives life and causes death, and Allah is Seeing of what you do» [3:156]

In conclusion, the Qur'an has a different approach towards these two human rights. Racial discriminations seem to be absent. Faith in God and virtuous life are the only parameters to be taken into account regardless of race, a very rational approach as it was a religion ready to expand and

therefore racial boundaries would prevent such a pursuit. On the other hand, although human life is recognized as an important issue in the Qur'an and has to be maintained, there are exceptions where life can be taken. However, here too, it is important to take into consideration the chronological period in which the Qur'an was revealed, a period where violence was part of the existing society. From this perspective, the Qur'an's contribution can be considered positive as it prohibited causeless murder. Nevertheless, as the Qur'an is worshiped to this day, it is still an important moral point in which human rights incompatibility can be clearly seen.

## 4.2 The volatility of the Qur'anic interpretations in Turkey

As examined above, the Qur'an is a complex text and therefore it is very difficult to accurately pinpoint a single moral guideline. The interpretive approach of the divine discourse is very important for the way that religious faith is structured and for the ethical values represented by it. The Qur'an is the most important and sacred text of the Islamic religion and is the word of God (Allah) as revealed to Prophet Muhammed by Archangel Gabriel from 610 until his death in 632 CE. However, after the Prophet's death, the problem of its interpretation began, making it difficult, even today, to give a formal and generally accepted interpretation.

Traditional interpretations of the Qur'an are divided into two periods. The first period includes exegetical resources coming from the Prophet himself, his companions (ashab) and their successors (Tabi'un). The so-called Tafsir were mainly collections of narrations and commentaries by Muhammed and his companions, with most important being the *Jami'al-Bayan*, of the historian Jarir al-Tabari. At this time the interpretation of the Qur'an was based heavily on Hadith traditions but also on folk myths from the Near Eastern World (Gökkır, 2006)

During the same period, other Qur'anic interpretive approaches focused on linguistic, legal and allegorical aspects. In the linguistic approach, the text was analyzed lexically or syntactically and the exact meaning of the words was searched. The legal approach highlighted legal cases settled by the Qur'an such as the conduct of jihad, inheritance, marriage, divorce, debts, and contracts. Finally, the allegorical approach focused on interpreting the Qur'an from a more abstract perspective, seeking a deeper message than the obvious. (Gökkır, 2006)

The colonization of the Islamic world of the East by the western powers and the 18th century's Enlightenment had a profound effect on the Qur'anic interpretive methodology. Subsequently, modern exegetes were deeply influenced by the new "rational" way of thinking and attempted to interpret the Qur'an from a more contemporary perspective in order to keep up with the needs and problems of the time and to approach a "*universal dimension*" (Ahmad, 2017:14)

In Turkey, the modernization of the Qur'an interpretation was also based on a number of causes that influenced both religious beliefs and social attitudes. The attempt to modernize the Ottoman Empire from the 19th century onwards and the creation of the Republic of Turkey have been major driving forces on religious perception. The new reforms liberalized the country, inserting many characteristics of the western civilization; consequently western ideas entered society either

through books and other media or by academics studying and traveling in the West. Many religious scholars attributed the decline of Islam to its inability to respond to the rapidly changing modern world and to address to the general population, and its redefinition was necessary in order to free the Qur'an and Islam of all kinds of prejudice. (Ahmad, 2017)

This development, coupled with the secular policy pursued by the Republic of Turkey after the fall of the empire, played an important role in altering the theological perspective of Islam. The phenomenon of globalization of the 19th and 20th centuries also influenced the transformation of the Quranic interpretations. The technological evolution, the expanding network of the market and increasing population mobility brought a new academic character to the Qur'an studies, now inspired by a multitude of methodological and cultural features from around the world. At the same time, evolution in medical sciences greatly influenced the perception of life and God's intervention on human nature, and consequently religious beliefs needed to be redefined in order to answer new questions. (Saeed, 2006)

During this period, the engagement with theological publications took a different course, testifying the major influence that socio-political conditions had on the interpretive approach and the religious perception. In the new Republic, religious expression and education came under the control of the state and consequently religious educational institutions, from which religious leaders and scholars graduated, were state institutions, with a strong secular element.

In 1924, the Theology Faculty in Dar ul-Funun University was founded; it was the first modernized educational institution clearly influenced by Western values. At this institution, the rote learning of the teachings of the Qur'an or the Islamic tradition was not the essence of the religious education, giving priority to their deeper understanding and thus courses such as philosophy, sociology and economics were key foundations of the curriculum; the teaching French was also offered. (Aydar, 2006)

As a result, the emergence of new religious theories and interpretative approaches to the Qur'an occurred. At the beginning of the Republic and until 1950, there were only few theological publications. One of the most important modern exegetes in Turkey was and still is Süleyman Ateş. In his work *Yüce Kur'anın Çağdaş Tefsiri (Contemporary commentary on the Exalted Qur'an)* he quotes from various Tafsir, such as from the famous al-Tabarī, below of which he gives his own interpretations of their true message. His commentary was critical in some cases, pointing out that some interpretations were far from the original meaning while he rejected prejudice and approached a more historical approach (Pink, 2010; Ahmad 2017)

However, from 1950 and the electoral victory of the Menderes' Democratic Party, the engagement with theological publications increased rapidly. During the Menderes rule many of the legal restrictions on religion that prevailed before were lifted and gave theological commentators the freedom to publish their works and expand their activities. Among them, Said Nursi, a Kurdish Sunni Muslim theologian who managed to publish *Risale-i Nur*, a 6,000-page commentary of the Quran on modern presses in the new alphabet, thus greatly expanding his audience. In fact, he sought the official publication of *Risale* by the state. Although this pursuit was not materialized, despite Menderes' positive stance, Nursi's work received support and was secured by the government. (Hasan, 2004) Nursi was a staunch opponent of atheism and hoped that after almost



four decades of Kemalist secular politics, Turkey would follow the principles of Islam. Therefore, Western philosophical principles were depicted as another realm of atheism and were recognized as a threat.<sup>10</sup> For this reason, Nursi zealously supported the Democratic Party, using a plethora of verses from the Quran to promote Menderes and attract voters. (Pelt, 2014)

Despite the military coups that aimed at renewing Atatürk's secular principles, the religious element remained and was even strengthened during the 1980 coup, recognized as a national feature against the growing communist ideologies in Eastern Europe. During this period, theological texts turned particularly to translations of works by Syrian and Egyptian members of the Muslim Brotherhood and Indian and Pakistani authors related to Jemaati-i-Islami. (Silverstein, 2005) Arab commentators tended to adopt a more conservative interpretative approach, especially regarding the position of women and the attitude towards non-Muslims, while God was interpreted as a "*fear-inducing*" punisher (Pink, 2010:74)

A major change in the theological exegesis, which is still evident today, can be seen after the coup of 1997. Kur'an Yolu Türkçe Meal ve Tefsir, published in 2003, was an initiative by the Turkish Department of Religious Affairs in 1998, which hired four theologians to write a new Qur'anic commentary. For this work the authors used, not only traditional and modern tafsir, but also academic (scholarly) publications and encyclopedic articles, being more focused on historical contextualization than on mere acceptance of a ḥadīth and using accurate citations of the originated text while highlighting egalitarianism. (Pink, 2010)

A more recent example is the effort of Erdoğan to "*fashion a new Islam*" (Pigott, 2008). In February of 2008, the revision and reinterpretation of the Hadith was announced by the Department of Religious Affairs. According to Professor Mehmet Gormez, an official of the Diyanet, some of these written sayings may never have been said by Muhammad himself. For example, the rule that women are not allowed to travel alone without their husband's permission was probably attributed to the danger women faced at the time - and not to the man's superiority over the woman - and seems to be a temporary ban rather than a timeless teaching. (Jones, 2010) Fadi Hakura characterizes this theological renewal as an attempt to "*serve the needs of the people in a modern secular democracy.*" (Jones, 2010: 19)

It is obvious that the prevailing political attitude is one of the main factors influencing and directing theological explanations and religious approaches. The point of view from which each verse will be seen, the way of interpretation, even the translation, determines its relationship with human rights and this is very important issue to be taken into consideration. Therefore, from a theological point of view, religion and human rights appear to be interdependent, with one affecting the other. On the one hand, the broader redefinition of moral values in the modern world has exerted significant pressure on religious beliefs and traditions regarding issues that were not previously considered reprehensible, such as gender inequality or racial and religious discriminations. On the

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<sup>10</sup>Interestingly, even though Nursi's views projected a hostile attitude against the Western values, in some cases they were compatible with human rights, as for example regarding freedom of religion. More specifically, he supported Christians and Jews in many of his sayings, calling Muslims to cooperate with them in order to combat atheism. (Hasan, 2004) Nevertheless, we should take into consideration that this form of religious freedom seemed to be selective, as it aimed to deprive atheists of their freedom.

other hand, religious interpretation plays an important role in preserving these new moral values, and in turn exerts pressure on human rights.

## CHAPTER V

### **Religion and Human Rights from Legal Perspective: Protections, restrictions and actual implementation of the Turkish Law**

As mentioned above, Turkey has taken significant steps towards human rights' ethical values, both in legislation and theology. The secular character adopted by the Turkish Republic and the effort to join the European Union and meet international standards set significant limits, highlighting the importance of human rights. However, the issue of religion is a complicated phenomenon in Turkey and although human rights are theoretically perceived, they seem to face several problems in practice, as religion still plays an essential role in the domestic law. Thus, domestic legislation and actual implementation is necessary to be examined in order to understand the correlation between religion and human rights accurately.

#### **5.1 Religious Freedom**

Religious freedom is one of the most important human rights. However, in a country like Turkey where religion was deeply rooted and linked to the Ottoman past and thus opposed to the secularization project which was and is vigorously promoted, religious freedom is a controversial issue. On the one hand, freedom of religious expression and belief seems to be protected by a multitude of laws. Specifically, in the Turkish constitution, freedom of religion is defined by Article 24, while it is mentioned that everyone is equal before the law regardless of religion (Article 10). In addition, a revision of Article 122 of the Turkish Penal Code in 2014 introduced sanctions for discriminatory practices on (a) sale, transfer or rental of a movable or immovable property offered to the public, (b) enjoyment of services, (c) employment (d) economic activity, that are based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect and offenders are at risk of imprisonment for a term of one to three years. In addition, sanctions are also imposed to *“any person who uses force against, or threatens, another person in order to compel him or her to change or declare, or to prevent him / her from declaring or disseminating, religious, political, social, or philosophical. beliefs, thoughts or convictions”* (Article 115, Penal Code), while the same article condemns any form of violence and threat that is exercised in communal religious worships or ceremonies.

On the other hand, although religious expression seems to be safeguarded, not all religious groups are favored, as unregistered religious groups cannot obtain legal recognition for places of worship and thus cannot obtain legal personality. In order for religious groups to be identified, members

have to establish foundations, a task very difficult and with many restrictions. According to the Civil Code “*No foundation can be established as long as it is against the certain qualities specified in the Constitution of the Republic, fundamental principles of the Constitution, law, morals, national unity and national interests or aims to support members of a certain race or a community*” (Article 101) This law often gives the excuse to exclude various religious groups, as we will see below, and therefore makes it difficult for non-Muslim or Muslim communities that are not officially recognized to have legal status, as they have to meet such restrictive criteria. This legal environment creates a remarkable paradox as the restriction on non-Muslims' freedom of association is conflicted to the Lausanne Treaty which states that “*the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature*” (Article 42) as well as with the Turkish Constitution that states that “*Everyone has the right to form associations*” (Article 33)

The constitution also stipulates that The Presidency of Religious Affairs is responsible for religious matters, thereby validating its position as a constitutional institution, as enshrined in the 1961 constitution and in Act 633 of 1965, which extended Diyanet's powers. According to the law, the duties of the Presidency of Religious Affairs are “*to execute the works concerning the beliefs, worship, and ethics of Islam, to enlighten the public about their religion, and to administer the sacred worshiping places.*” (Yakar & Yakar, 2017:14) As the basic representative of Islam, Diyanet “*is charged with conducting research on Islamic-related matters, administering and maintaining mosques in Turkey and appointing and supervising Turkish imams, of which there are over 85,000.*” (Hurd, 2014:424 ) and is therefore solely responsible for Muslim communities. Non-Muslim religious groups are subject to the responsibilities of the Director General of Foundations under Law No. 2762, violating their right to govern and control their own institutions according to Treaty of Lausanne.(Kurban & Hatemi, 2009)

Based on the above data the legal landscape in Turkey seems to be complicated regarding religious freedom. Perhaps the most essential law to be considered, as it greatly affects religious freedom in Turkey, is the law of state of emergency. As set out in Articles 15 and 119 of the Constitution, in the event of a state of emergency “*the exercise of fundamental rights and freedoms may be partially or completely suspended*”.

Indeed, since 2016 and the failed coup attempt against the Erdoğan government, there has been a significant number of incidents related to religious intolerance in the country. Islamist priest Fethullah Gülen was been regarded as the main culprit of the coup and significant prosecutions were brought against him, his supporters and any other suspicious collaborator. According to Interior Minister Süleyman Soylu, 77,081 arrests were made between July 2016 and April 2018 on charges of links to the Gülen movement. (SCF“Turkish gov’t” 2018)

At the same time U.S. citizen and Christian Pastor Andrew Brunson was charged for supporting terrorist groups and was sentenced to three years in prison. In his indictment, his main charge was that he divided the country by means of Christianization. (Puppink 2018) During his detention, neither he nor his lawyers could see the indictment, the testimonies or the evidence that linked him to FETO. (USCIRF 2018) Pastor was released after two years of imprisonment under the pressures of United States.

Also, prosecutions were brought against the Church of Jesus Christ of Latter-day Saints, where they were also accused of participating in anti-government actions. In April 2018, the Church announced that it would reassign volunteers serving in Turkey "*due to a prolonged period of heightened political tensions*". ("Volunteers in Turkey", 2018) In May, 16 members of the Alevi Pir Sultan Abdal Cultural Association were detained and they were found guilty of "*inciting hatred among the public*" (IRFR 2018)

The Alevi community is one of the religious groups that face many restrictions and often experience marginalization and discrimination in employment, particularly in senior public-sector positions. (Freedom in the World 2019) The main problem is that the Alevis are not recognized as a religious minority by Diyanet but are perceived as part of the Muslim community and therefore they do not enjoy the privileges of religious minorities nor the legal protection enjoyed by Sunni Muslims. For example, Act 677 of 1925, which turned against the teachings of the Sufi by closing down the Lodges of the Dervish - a Sufi fraternity (tariqah)- and converting them into mosques or masdjids, as well as banning their honor titles such as sheikh, dedelik, dervichlik, etc., is a law that is still in force. Cemevis, the places of worship of the Alevis, are not recognized as religious but as cultural places, with Recep Tayyip Erdoğan mentioning in a 2012 statement on the subject: "*There is a single house of worship in Islam — the mosque*". (Yeginsu, 2015) In 2014, in the case of *Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v. Turkey*, the Turkish government was accused of not granting the same privileges to cemevi, such as their exemption from the payment of electricity, as provided by Council of Ministers Decree 2002/4100 (Article 2) The court's ruling affirmed the accusation and found that the exception made on the pretext that Alevism is not a religion was unfounded and thereby there had been a violation of Article 14 (prohibition of discrimination) and Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.<sup>11</sup> However, despite the intervention of the ECHR and other judicial decisions subsequently, the matter was not resolved and the government didn't implement the reforms in favor of the Alevis. (USCRIF 2019) In 2017, the Ministry of National Education adopted a regulation that provided for the construction of a prayer room in each new school. However, this right was not given to the Alevis. Until 2018 it was estimated that there were 2,500 to 3,000 cemevis in the country that remained "*insufficient to meet demand*." (IRFR 2018)

Although by law it is foreseen that there should be places of worship of all religions in prisons, so far only Sunni Muslims' mesjids (small mosques) and Sunni preachers are provided. Authorities also refused Eren Erdem, a former Republican People's Party (CHP) Member of Parliament who had been jailed for terrorism charges, to see an Alevi clergy while in prison. (IRFR 2018)

The Protestants also face bureaucratic difficulties in their places of worship. Protestant churches must be listed as associations and are subject to zoning standards. For example, to build churches, Protestant groups must have in their possession 2,500 square meters of land, a regulation that does not apply to Sunni mosques. Following the arrest of Pastor Brunson, more than 20 foreign Protestant families and at least 100 pastors were forced to leave the country due to the governments' refusal to renew their visas.(USCRIF 2019)

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<sup>11</sup> For case and Court's Decision see: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-148275%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-148275%22]})

Orthodox religious minorities face difficulties in the administrative structures of their Patriarchates, due to the lack of religious educational institutions as we shall see below, but also due to bureaucratic restrictions. A striking example is the case of the Armenian Patriarchate, where, on the occasion of Patriarch Mesrob's health issues, it was asked to hold new elections. However, two different applications were made to the Governorate of Istanbul, one by the clergy calling for elections to elect a co patriarch and the other, made by nonclergy members of the community, to elect a new Patriarch in order to replace Mesrob. This may have been the pretext that the Constitutional Court rejected their request and refused to hold elections, pointing out that such interference in their intra-Community conflict would be “*a violation of their religious freedom*” (§130–131)<sup>12</sup> and as a result the community remained without representation. Interestingly a remarkable example of strong government interference in religious affairs is the requirement that only Turkish citizens may be members of the Greek Orthodox Church's Holy Synod, an action that indirectly imposes control on which individuals may participate in the Ecumenical Patriarchate.

On the other hand, from time to time some positive steps are taken on religious matters. For example, since 2008 Turkey is the only Muslim-majority country that participates, even as an observer, in the International Holocaust Remembrance Alliance, an intergovernmental organization promoting the preservation of the Holocaust while in 2017 Hanukkah was celebrated for the third time in the largest synagogue of Istanbul, Neve Salom (USCIRF 2018) Also in 2018 the Council of Foundations proceeded to give the religious properties back to their foundations, such as the Sacre Coeur Church to the Syriac Catholic Church and the Mar Yuhanna Church in Hatay to a Greek Orthodox foundation at no cost and in 2019 permitted the erection of the Syriac Orthodox Church. Historic religious places of worship were rebuilt, such as the Orthodox Sumela Monastery and the Orthodox Bulgarian St. Stephen Church, where in 2013 was granted back to its foundation. (USCIRF 2019)

Religious freedom in Turkey seems to be both protected and restricted by law. Its legal framework, however, does not seem sufficient to support the religious and cultural pluralism that exists in the country, leaving many religious communities without support. This absence of a well-established legal framework is evident in practice, with many of these laws being systematically violated even by the government.

## 5.2 Freedom of Expression

Freedom of expression is another major issue in Turkish national law and one of the most important aspects of human rights. According to the Constitution “*everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities.*” (Article 26) Article 25 of the Constitution also mentions freedom of opinion by stating that “*everyone has the freedom of thought and opinion.*” With regard to religion, the law provides protection to religious expression. For

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<sup>12</sup> For Court's Decision see <https://perma.cc/84AV-3QW3>

example, public hate speech "*based on social class, race, religion, sect or regional difference*," is a criminal offense, while blasphemy is condemned by the Penal Code and "*a person who publicly degrades the religious values of a section[...] is facing prison for a term of six months to one year*" (Article 216)

The dignity of the individual is protected by the Penal Code under Article 125 where religious preference and expression are an important part of this. In fact, in the event of offending a person because of "*declaring, altering or disseminating, his religious, political, social or philosophical beliefs, thoughts, or convictions, or practicing in accordance with the requirements and prohibitions of a religion he belongs to or where the subject matter is*" the penalty is increased at least one year. The expression of religious faith through acts of worship, rites and ceremonies can be practiced freely and no one should be accused of religious beliefs. (Article 24, Constitution)

However, freedom of expression seems to be limited by a number of parameters. The Constitution states that freedom of expression may be restricted "*for the purposes of national security, public order, public safety, the basic characteristics of the Republic and the indivisible integrity of the State.*" (Article 26) Furthermore, according to Article 301 of the Penal Code, "*a person who publicly degrades the Turkish Nation, the State of the Turkish Republic, the Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State [...] and who publicly degrades the military or security organizations*" is also prosecuted. Accordingly, it is forbidden for holders of religious titles such as an imam, orator, preacher, priest or rabbi to "*publicly upgrade or ridicule the government administration or activities or the laws of the State*" while performing their duties or to use their influence to "*convince a person to act, or speak, against lawfully acquired rights*" (Article 219, Penal Code). It is further stated that any use of religion or any sacred manner for the attainment of political ends is prohibited.

The infamous Internet Law 5651 of 2007 was adopted to monitor online activities in order to avoid content related to issues such as drug trafficking, child pornography, gambling and more. (Article 8) This law, although largely related to issues that pose a threat to society, seems to go beyond these limits and extend to national issues, such as the protection of the law. 5816 on *Crimes Against Atatürk* but also in cultural issues. As we shall see below, the law directly affects freedom of expression even in religious matters.

Given this brief review of the Turkish legal framework, it is clear that things are complicated here too. The relationship between nation and Islam has begun to strengthen in recent years, and this is reflected in freedom of expression. And as this relationship grows, the possibility of expressing or disagreeing with it seems to be diminishing.

There are few examples that confirm this hypothesis. In 2006, Hakan Tastan and Turan Topal, two Islamist apostates who had become Christian missionaries were brought to court with the accusation of offending Islam. This accusation was based on statements by only three witnesses who claimed that the two men called Islam "*primitive and fabricated*" and characterized Islamists as "*barbarians*". (Spar, 2010:58) The prosecutors, after a four-year trial, were found guilty for insulting both the nation and Islam, each serving a 7-month prison sentence, or the possibility of a 4,500 lira bail. ("Christians in Turkey", 2010)

In 2009, Turkish-French writer Nedim Gürsel appeared in court over his book *Daughters of Allah*. The charges were attributed to the fact that he used inappropriate language for the wives and the Prophet himself and that this exceeded the limits of freedom of expression, with Gürsel being charged for violating Article 216. However, the court found him innocent. (Spar, 2010) That same year, Erol Karaaslan, publisher and translator of Richard Dawkins' book *The God Delusion*, was prosecuted under the same Article violation as the book offended Islam. However, Karaaslan was acquitted too. (Spar, 2010) In 2018, Turkish actress Berna Lacin was interrogated because of a post on her Twitter account that was opposed to the death penalty, stating: "*If the death penalty was a solution, then Medina would not break records in the number of rape incidents*" ("Turkish actress investigated", 2018) The actress was also accused of "*insulted people's religious values*" by referring to Medina, which is considered a sacred place for the Islamic religion. (IRFR 2018) The case ended with the actor's acquittal despite a complaint by the prosecutor's office which insisted that Lacin should have been convicted stating that "*the crime was committed and the acquittal decision was in violation of the law*" ("Başsavcılıktan Berna Laçın", 2019)

Although the above cases had a good ending, there is no doubt that these people went on trial without significant evidence of misconduct. On the contrary this religious sensitivity that led them to court does not seem to apply to others, maybe worse, cases. For example, the Islamic and pro-government newspaper *Yeni Akit*, which has repeatedly spewed hatred against Christians, Jews, Alevis, and others, is still in operation. Articles like "*Jews Sucking the Blood of this Country*" (*Bu Vatanın Kanını Emen Yahudiler*, 4/10/19), "*Christian battalio founded in PKK! Armenians are also active*" (*PKK" Hristiyan taburu "kurdu! Ermeniler de devrede*, 5/11/19) and "*Alevis without Ali 'is a sedition'*" (*Ali'siz alevilik' bir fitnedir*, 11/10/18) could easily be considered as a violation of Article 216 of the Criminal Code. However, no action has been taken against the newspaper. (NHC,2019)

Speaking at the General Assembly of the Turkish Youth Foundation in 2018, President Erdoğan said: "*Don't kick your enemy who falls to the ground because you are not a Jew in Israel. Because, they would even kick babies*" ("Erdoğan: Yere düşen düşmanını", 2018) However, no action was taken in this public anti-Semitic statement, although it was a violation of the religious status and dignity of the Jews. (NHC,2019)

Nevertheless, the principles of Islam are highly guarded. For example, the private television channel TV8 was fined with more than one million Turkish lira (\$ 189,000) because it broadcasted a song, performed by a talent show contestant, which included lyrics referring to God as "Father", which offends the Muslim faith as such sermons to God belong to the Christian and Judaic traditions. (IRFR 2018)

Internet is another area where Turkey's restrictive tendencies on freedom of religious expression are observed. Many websites have been banned since 2007, such as the website of British biologist Richard Dawkins, which included references to theory of evolution and atheism and was banned following a lawsuit by religious leader Adnan Oktar<sup>13</sup>, pages from the French website Charlie

<sup>13</sup> It should be noted that the lawsuit was filed following Dawkins' criticism on Oktar's book *Atlas of Creation*. However, it still remains a suspicious incident that makes us wonder: if a Muslim writer made the exact same comments on a Christian, Jewish or Atheist book, would he have the same treatment?



Hebdo depicting Muhammed were prohibited, the Turkish Atheism Association's website was closed and more.

Intolerance regarding freedom of expression seems to apply mostly to issues concerning Islam. Other religions do not enjoy this privilege nor they are protected by laws. On the contrary, there are so many cases where clear legal violations are made against them without even being convicted. Freedom of expression in Turkey is perhaps one of the most violated human rights.

### 5.3 Religious Education

Education is yet another pillar of importance regarding the relationship between religion and human rights. Subject to the constitutional laws, education is accessible and free of charge to all, as provided in Article 42 "*no one shall be deprived of the right to education*". At the same time, Law 1737 on National Education states that "*educational institutions are open to everyone irrespective of language, race, gender, disability or religion.*" (Article 4)

Concerning religious education, the Constitution states that it should be "*conducted under state supervision and control*" while it is compulsory in the curriculum of primary and secondary schools. (Article 24) Law 1739 also defines the operation of Islamic schools of Imam-Hatip, which operate under the Ministry of National Education "*in order to educate the staff responsible for the performance of religious services such as Imamism, orator and teaching Quran courses.*" (Article 32) whereas compulsory attendance of religious courses is stated here too (Article 12)

On the other hand, minority groups appear to have problems with the law regarding their education. Although the Treaty of Lausanne explicitly states that non-Muslim minority groups must have the right to establish their own schools, to use their own language and to practice their own religion in them (Article 40), only three minority groups are recognized in the treaty: Armenian Apostolic Orthodox Christians, Jews, and Greek Orthodox Christians, and therefore many religious groups are exempt from this law.

At the same time, there are no laws protecting discriminatory behaviors in the field of education specifically. Discrimination is prohibited by the Penal Code and the Constitution, but in a broader sense, leaving many blank spots in their actual implementation as we saw above. The only law that could protect in some extent discrimination in education is the law no. 657 regarding civil servants. Teachers as civil servants are subject to the regulations of this law which states that "*civil servants [...] shall not discriminate on the basis of language, race, gender, political thought, philosophical belief, religion or sect.*" (Article 7)

In addition, although legally the possibility of exemption from religious courses is provided to religious minorities at the request of their legal representatives, this only applies to the three officially recognized minorities while at the same time a legal request is required in which the applicant must disclose his religious identity, something that comes in conflict with Article 24 of

the Constitution which states that " *no one shall be compelled [...]to reveal religious beliefs and convictions*"

Finally, Article 42 also makes it clear that the secular character of the state is maintained as it is noted that "*education shall be conducted along the lines of Atatürk's principles*" and "*no language other than Turkish will be taught as a mother tongue to Turkish citizens at any institution of education.*"

So, in terms of education, Turkey's legal system has a lot of gaps regarding religion. On the one hand, the articles protect to a certain extent the free access to education and safeguard the rights of only three religious minority groups, but on the other hand they do not provide any protection to other minority groups nor precisely define the religious education curriculum and as a result education rights are not respected, even those of the official recognized religious minorities.

Firstly, although non-Muslim minority schools operate in the country, they are noticeably reduced due to financial problems as they operate solely at their own expense, through donations, with the government paying only the salaries of the personnel that teach Turkish lessons. (IRFR 2018) On the contrary, state funding focuses on public, private and Muslim religious educational institutions and as a result minority schools are lagging behind and lose many students. Garo Paylan, Board Member of an Armenian School said:

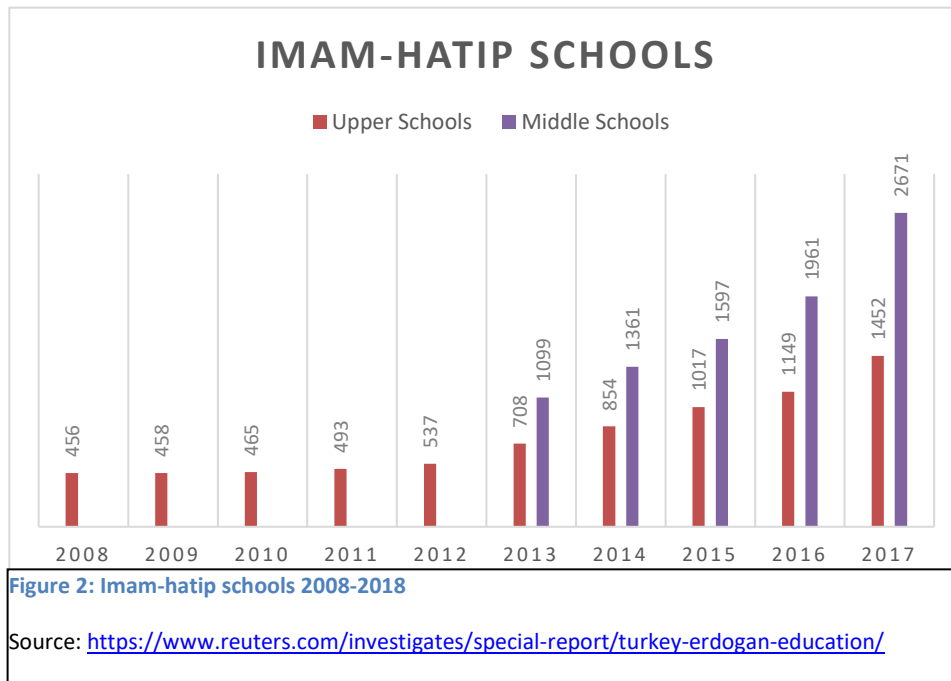
"[Armenian Schools] due to financial problems and other issues , they cannot follow developments in the field and compete with other private schools, therefore some Armenian families prefer private schools for their kids. Every year we lose around 150–200 students; if it continues this way, we will close down 6–7 schools in the next years." (Kaya, 2009:16)

Many public schools continue to be converted into Imam-hatip schools. From 2008 to 2017, the number of upper Imam-hatip schools tripled, and by 2013 middle imam-hatip schools were established. (Figure 2) Overall, it is estimated that 1.3 million students attend these schools and since 2016 over 1,065 private schools have closed, mainly due to their association with the Gulen movement, with many of them being converted into Imam-hatip schools. (IRFR 2018)

Although religious education is actively promoted for Sunni Islam, it is not the same for other religions. Due to the lack of monastic seminars, Greek and Armenian Orthodox Patriarchates find it difficult to educate clergy. The Theological School of Halki, which closed in 1971 due to the military law banning the operation of all private higher education institutions, including religious ones, remains closed to this day. (USCRIF 2019)

Although the curriculum, at least legally, seeks to preserve the secular character of the state, in recent years the religious element seems to be increasingly strengthened. "*We will raise a religious generation*" was President Erdoğan 's statement in 2016. ("Erdoğan hedefine", 2016) And indeed, the curriculum seems to be heading there. Reforms such as teaching jihad, removing Darwin's evolutionary theory from the biology lesson and building new schools with Islamic prayer rooms, witness the effort to Islamize the curriculum. (USCIRF 2018)

This is also evident in the treatment of other religions in education. For example in the course *Religious Culture and Moral Knowledge*, although theoretically it should teach religions from a general and universal perspective, the textbook faces many problems.



The Alevis are recognized as part of Sunni Islam, Christian and Judaic doctrines are hastily mentioned and consequently lead to misconceptions, and no reference is being made to the different religious values between Armenians, Greeks and Syrian Christians. (Meral, 2015) At the same time, religious intolerance towards other religions is being taught. An eighth grade book states:

“The efforts of people from some faiths have turned into a struggle of completely establishing their own religion while insulting the values of the country they are in. These people, who are almost propagating religions rather than promoting them, have turned to using and abusing financial and spiritual weaknesses of people. These behaviors are against religious tolerance and respect to beliefs. Individuals must be vigilant against such behaviors” (Meral, 2015:16)

This form of teaching runs counter to human rights, as provided in the European Convention and UN Declaration (Articles 2 and 26 respectively), and compulsory religious teaching is an issue that has created problems for believers of other religions and thus many times the ECHR has appealed. The cases of *Hasan and Eylem Zengin v Turkey* and *Mansur Yalçın and Others v. Turkey*, are indicative of the phenomenon ,as the children of Alevis could not be exempted of compulsory religious courses because Alevism is considered a branch of Sunnism rather than a separate religion. In both cases, the court found a violation of Article 2 of the European Convention.<sup>14</sup>

<sup>14</sup> Article 2: “the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”

Finally, although it is stated that no religious discrimination should be made, especially by teachers, there have been numerous cases of discriminatory behavior. For example, an Alevi student was bitten by his religious teacher because of his beliefs, while another teacher called the Alevis “*Satanists and faithless*”. (Kaya 2009:25)

The conflict between religion and secularism is perhaps clearer in the field of education than in any other field.

## 5.4 Headscarves

Another controversial issue in Turkey regarding religion is the headscarves issue. Since the establishment of the Turkish state under Atatürk, Islamic clothing has been banned, as one of the many religious characteristics that had to be removed from the new secular state. The first law that regulated the dress code dates back to 1925 (Law 671), which, although it did not ban headscarves on women, made it mandatory to wear Western-style hats, thus prohibiting men's turban while in 1934 religious uniforms were forbidden to places other than those of worship or during religious ceremonies. (Law 2596)

In 1981, a new set of reforms was passed by the Council of Ministers, which also mandated pupil dress, stating that “*everyone's head must remain uncovered*” (Law 8/3349, §6-13). Since then many provisions have been made regarding headscarves and especially regarding higher education institutions and although religious costumes were initially banned, in 1990 a new provision was introduced in the Higher Education Law that stated: “*choice of dress shall be free in institutions of higher education, provided that it does not contravene the laws in force.*” (Law 2547, §17) However, this freedom of dress did not apply to headscarves, as the Constitutional Court noted in its 1991 ruling.<sup>15</sup>

Until very recently, civil servants were subject to Law 17849 of 1982, which stipulated that women working in public institutions should have their heads uncovered and their hair combed (Article 5). The same applied to professions that require specific working-costume such as military, police, judges, prosecutors, etc.

Constitutionally there is no specific legislation defining the dress code except court decisions and statutes. However, Article 24 and Article 42 of the Constitution must be taken into account, which state that everyone is free to practice their religion and no one should be excluded from education and Article 112 of the Penal Code which makes it a criminal offense to obstruct one's education. Similarly, these rights are also protected by international treaties.

It was on this legal vacuum that the AKP was based and in recent years it has lifted most of the bans on headscarves. In 2008, under the democratic reform package promoted by the government, the first indirect attempt was made to lift the ban on headscarves in education, introducing constitutional amendments to Articles 10 and 42. In particular, to Article 42 it was added that “*training, education, research, and study are the only activities that shall be pursued at institutions*

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<sup>15</sup> Constitutional Court Decision no. 1991/8, 31.07.1991 (Government Gazette No.20946)

*of education. These activities shall not be obstructed in any way*” and in Article 10 the following phrase was added “*the state is to observe the equality principle in its provision of all public services.*”(Law 5735) On the other hand, however, headscarves were religious clothing and therefore according to Article 2 of the Constitution a lift to their ban would be unconstitutional. Thus, at the request of the opposition parties, the Constitutional Court annulled this decision.

However, in 2010 and following Erdoğan 's victory in the referendum, which paved the way for judicial modifications, new democratization packages were introduced by the AKP, and in 2013 it lifted the ban on headscarves for women working in government offices and public officials<sup>16</sup> while the Costume and Clothing Act of 1982 was republished without the point of Article 5 requiring the head to be uncovered, a regulation that many interpreted as a lift of the ban on working uniforms like judges, police, etc.

Before the ban was lifted, there were a few incidents where women were being deprived of their rights to education and work. Perhaps the best-known case is that of Leyla Şahin, a medical student studying at Istanbul University who was denied access to lectures and written examinations because she was wearing a headscarf. The incident took place in 1998, when Turkey was confronted with a military coup and actions against religion were strengthened. Şahin turned to the ECHR in 2004, alleging that her human rights had been violated, in particular Articles 8, 9, 10 and 14 of the European Convention. The court, however, found no violation of these articles as the prohibition was prescribed by law.<sup>17</sup>

Sara Akgül, who was a student at Istanbul's Boğaziçi University, although she had received a scholarship for the years 2000-2005, she was expelled from the university as she couldn't attend lectures nor take written exams because she was wearing headscarf. After lifting the ban, Akgül returned to college and graduated in 2012, and in 2014, after a lengthy legal battle, the Constitutional Court confirmed the violation of her education rights. (“Turkey's Constitutional”, 2018)

In 1999, Merve Kavakci, a Turkish-American lawmaker and computer engineer, applied as candidate with the Virtue Party and managed to win a seat. When she reached the parliament to take her oath, the assembly booed her and expelled her from the building for wearing headscarf while the prime minister, referring to other members of parliament, said, “*Put this woman in her place.*”(Akoglu,2015:289) Her Turkish citizenship was also revoked. Many working women have been removed from their jobs because of the ban. In 2006, it was estimated that at least 5,000 teachers lost their jobs for wearing a head scarf.(OSCE, 2006)

On the basis of these facts, it can be said that this long ban on headscarves violated the freedom of religious expression in Turkey. On the other hand, the recent lift of the ban has raised suspicion among many who see the government's effort to promote the Islamic values. In 2017 at a school in Urfa, the principal along with a teacher made girls attending the class wear headscarves and threatened them to fail their classes unless they covered their hair.(IRFR, 2018)

<sup>16</sup> Constitutional Court Decision No. 2013/5443, 08.10.2013 (Government Gazette No. 28789)

<sup>17</sup> For Case and Court's Decision see: <https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-70956%22}}>

After the leaking of photos depicting the students with headscarves holding placards that said "*I have veiled myself*," "*Luckily I have veiled myself*," "*Come on, you too veil yourself*," "*From now on, I'm veiled*," and "*Thank God I am veiled*" an investigation was conducted by the Ministry of Education. (Özkan, 2017)

These reforms have generated a multitude of reactions, with many agreeing to the lift of the ban and many disagreeing. However, according to research data, the majority of citizens seem to agree with the permission of wearing headscarves to university students, civil servants and spouses of statesmen (Toprak & Uslu, 2009).

*"The lifting of the ban on headscarves ends a disgraceful human rights abuse that took away futures of generations of women in Turkey,"* says U.K.-based Turkish academic and commentator Ziya Meral. (Smith, 2013)

*"The ability of headscarved students to enter the university is to remove the obstacles to the right of women to education."* Said Füsun Üstel, a professor at Galatasaray University in Istanbul. ("Türban serbestisi", 2010)

Although the ban continues to exist in the field of education and is now subject to university statutes or teachers' decisions, some progress has been made. In 2010 the headscarf was forbidden in 32 universities before October 5, but after October 5 this number dropped to 14. ("Türban serbestisi", 2010)

## 5.5 Marriage

Marriage is a particular area where the conflict between the religious and secular character of the state is also observed. According to Article 230 of the Penal Code, marriage can be performed only by an authorized civil servant and not by a religious authority. Religious marriages can only take place after civil marriage is done, and a prison sentence of two to six months may be imposed to those who don't comply with the law. In addition, Article 174 of the Constitution states that civil marriage must take place in the presence of the competent official.

However, in 2017 a new legislation was passed that allowed muftis, civil servants of the Directorate of Religious Affairs to perform civil marriages. (Law 5490) On the one hand the dual role of muftis in Turkish society justify such a decision, as they have both legal and religious authority. On the other hand, however, the law has been criticized by many, arguing that it may emphasize religiousness and thus weaken the secular character of the country.

Deputy Prime Minister Bekir Bozdağ stated that "*muftis are already civil servants. This regulation has nothing to do with any violation of secularism*" (Ergan, 2017) while Erdoğan used a stricter tone, saying that "*whether you want it or not, this legislation will pass in the parliament*" ("Law allowing muftis", 2017) The AKP supported its decision by pointing out that this is an attempt to reduce unregistered religious marriages that often take place in rural areas.

An issue that arise with this law is the fear of the increase of child marriages, a phenomenon that exists in Turkey at a large extent. Indeed, although Civil Law sets the marriage age at 18, it is

possible to perform underage marriage with parental or judicial consent. Most underage marriages, however, are unregistered and are carried out by religious leaders. By giving the ability to religious authorities to perform marriages, there are concerns that it will raise the number of underage marriages and make it even harder to monitor such activities.

The issue came to a head when in 2016 the government brought to parliament a bill that proposed the return of the *rape-marriage law*, a law that existed in the old Penal Code (Article 434) but it was abolished in 2005, in an attempt by Turkey to comply with EU standards. The law stated that if someone had sexually harassed an underage girl he could escape prosecution if he got married to her. (Agerholm, 2016) In 2018, an online glossary on Islamic terms, published by the Diyanet, reported that marriageable age begins in adolescence while below stated that the age of adolescence starts at 12 years old. (Butcher, 2018) In 2014, Turkey had one of the highest rates of underage officially registered marriages, involving girls aged 15-19, in Eastern Europe and Central Asia with the main reason being the effort to secure virginity before marriage, a very essential tradition in religious families. (UNFPA, 2014)

Many women's organizations expressed their discomfort with the new law. Selina Doğan, member of CHP, mentioned that *"from the way this draft law was prepared without the participation of sides who will be affected, such as muftis or women's groups, it is a sign of an enforcement of an idea"* (Shaheen, 2017)

Aydeniz Alisbah Tuskan, a lawyer and a representative of the Istanbul Bar Association's Women's Rights Centre talked about the unconstitutionality of the law: *"Marriage registrars within municipalities or the headmen in the villages are assigned to perform civil marriages. These people work under the Ministry of Interior. Muftis, who work under Directorate of Religious Affairs, are constitutionally not allowed to carry out marriages. They merely deal with religious issues and inquiries."* (Uras, 2017)

Marriage in Turkey seems to be a complicated issue, that is adjusted by a weak legal framework that hinders its procedure. Although religious marriages are prohibited, they are still carried out mostly in rural areas, witnessing the inability of the government to monitor the periphery. The new law that permits muftis to conduct marriages can be considered as an effort to bureaucratize the process and thus to control it, but taking into account the broader pro-Islamic political stance of the AKP, it is fairly reasonable why skepticism has been raised on the issue.

## CHAPTER VI

# Religion and Human Rights: Complementary or Contradictory

### 6.1 The Complementary Argument

The main argument supporting the hypothesis of the complementary relationship between religion and human rights is the effect of secularization on freedom of religion. The case of Turkey is a notable example, as we saw in Chapter 2, where Kemal Atatürk and his newly formed state sought a radical break with the Ottoman past, adopting a strict, pro-Western secular character. Opposed to the deeply religious past, Atatürk proceeded to an extreme marginalization of Islam, creating the following paradox: did the secular state violate the human right of religious freedom?

Indeed, since the founding of the new Turkish Republic, there has been a large number of reforms, many of which significantly restrict the religious rights of citizens in the name of democracy, nationalism and secularization. For example, public expression of religion was curtailed and religious symbols were removed from educational and other public institutions while religious clothing such as sheikhly turbans or priestly collars became illegal.

Ali Fuat Basgil was one of the first critics of this repressive policy, pointing out that religion is an important part of society and it is impossible to be oppressed by the government. For Basgil, the preservation of individual rights, such as religious freedom, and whatever it entails as for example the right to worship, to teach and to publish, is essential for the proper function of the society. (Çınar & Yıldırım, 2014)

The secular and repressive, towards religion, policy of Turkey in the early years, though aiming at reducing the power exercised by religion in the state, it have may achieved the opposite. Although secularism had an impact on Turkey's urban societies, rural societies remained deeply traditional and religious, and the more their freedom was suppressed the more they turned against the idea of secularization and westernization. As a result, the issue of religion became the main field of political conflict, aggravating conservative pro-Islamic speech and polarizing the state between Islamists and Kemalists, a political division that still exists today.

Another controversial example is the case of the Refah Party, which was closed by a decision of the Turkish Constitutional Court in 1998 and upheld by the European Court of Human Rights. The party was elected in 1995, winning a majority of 22% of the vote and forming a coalition government with the True Path Party, remaining in power for twelve months until its closure. The party, because of its religious and conservative rhetoric, ran counter to the secular nature of the state and posed a threat to democracy. This case has led many to wonder whether it was democratic



to overthrow and dismantle a party elected by the people. Was this, democratically motivated, interventionism itself a threat to democracy and human rights?

On the basis of these examples, it can be seen that the imposition of a secularized political agenda that focuses only on the strict adherence to the legal provisions, without taking into account important cultural features of society, such as religion, is neither democratic nor effective in preserving human rights. Indeed in many secular societies, where human rights are their basic principle, it is observed that the zeal they display in protecting them is in many cases the one who violates them. Examples include France and the ban on headscarf on Muslim women and the broader European tolerance in cases of anti-Muslim discrimination, especially after the terrorist attacks of 9/11.(Boyle, 2004) In Turkey's example, Arie M. Oostlander points out that its strong secular character not only does not suppress the religious "threat" but instead feeds on religious extremism.(Boyle, 2004:16)

From this perspective, religion and human rights have a complementary relationship, with one influencing the other significantly. According to Jean-Paul Marthoz and Joseph Saunders " *ignoring or despising traditional cultures and religious beliefs can cripple the best-intentioned attempts at promoting political reform and respect for fundamental human rights.*" (Marthoz &Saunders,2005:21) If human rights are perceived as mere legal rules, it becomes impossible to implement them in practice and even harder to make them effective. On the contrary, human rights have to be perceived as an ideology, a moral code and a way of life. This cannot be done separately from society itself or in conflict with its characteristics, such as religion. As John Witte rightly points out, "*many non-Western traditions [...] cannot conceive of nor accept a system of rights that excludes religion*".( Witte & van der Vyver,1996:xxxiii)

Consequently, a conflicting relationship between them can only lead to social and political cleavages and a dipole of "we" and "they", thereby undermining the universal character and aim of human rights. This aim can only be achieved on terms of multiracialism and multiculturalism, thus respect for existing values and traditions is required rather than contempt and an effort to replace them with a superior idea or 'religion'. And indeed, human rights tend to be identified by many as a new, global religion, both ideologically and institutionally that threatens their own culture. According to Bas de Gaay Fortman this may also be the problem in dealing with and enforcing human rights: "*It is precisely as such a new religion—which, implicitly, one would be free to either adopt or reject—that human rights loses its appeal as a truly global justice venture.*" (de Gaay Fortman,2011)

## 6.2 The Contradictory Argument

From another perspective, human rights and religion are two concepts that conflict with each other. On the one hand human rights promote individual freedom, regardless of one's beliefs, gender, race or sexual preference while on the other hand religion adopts a more “communal” perception of social behavior, where followers have to “*sacrifice their independence and individuality to the collective*” (Powell,2015:2)

The divine will and order is the predominant moral core in which religious societies are built and operate, and therefore anything that conflicts with it, is automatically perceived as impious and blasphemous. This theocratic authoritarianism as a way of life extends to other social and political levels, such as submission to religious and political leaders who invoke divine infallibility.

And indeed, in most religious doctrines, reference to punishment and contempt for the apostates and infidels is a common phenomenon (as we have seen in the case of the Qur'an in chapter 4) which in itself contradicts human rights with regard to equality before the law, removal of segregation and freedom of expression and conscience (Ruud Peters,2014) As a result, repressive behaviors applied in God's name are beyond dispute and new social, political and legal models - one of which is human rights - are not welcome. (Ok & Eren, 2013)

Moreover, in most religious-dominated societies, human rights, as defined by the international norms of Western-based civilization, either conflict with their religious principles or do not play an important role as their moral context is determined by God and thus international law is unnecessary and less important. Mostzeyir Ok and Selim Eren point out that “*most religions often claim that they have exercised and observed these [human] rights in the name of God. Therefore, they argue, there is no need for another source of normative power besides the will of God.*” (Ok & Eren, 2013:146)

Even in countries where religious law, such as sharia, is not part of their legal law, it has been observed that religious dogmatism poses problems with the application of human rights. Turkey is an interesting example because, despite its intense secular element for almost a century, religion still stands in the way of certain individual freedoms.

As we have seen above, the re-promotion of Sunni Islam by the government in recent years has created social divisions regarding religious identity. Religious minorities - both officially recognized and unofficial - find it difficult to exercise their religious rights due to legal and bureaucratic obstacles. Freedom of expression was curtailed by the reinforcement of blasphemous law, while forced religious education is biased and teaches religious intolerance. All of the above are strong indications that the rise of political Islam is only an obstacle to the implementation of human rights.

## CONCLUSION:

In the above chapters we have examined the relationship between religion and human rights in Turkey through various perspectives. Although the country has introduced a multitude of human rights legal provisions through both domestic laws and international treaties, it appears to face difficulties regarding their implementation. Turkey is the country with the most applications filed before the ECHR. Most violations committed also pertain somehow to religious matters. Indeed, the religious element played and continues to play an important role in the country.

Historically, religion has been an important part of domestic politics both in the Ottoman Empire and in the later Turkish Republic. This resulted not only in cultural and social cleavages but also in political division. Religion has always been a key political means of the opposition which either promoted or criticized it. However, in both cases the results were negative. In cases of religious restraint, religious extremism increased, while in cases of religious promotion, other religions were marginalized.

Theologically, religious moral values are difficult to be defined clearly and absolutely. As far as the Qur'an is concerned, we saw that it is a complex text in which many points fall into contradiction with each other, making it easy to interpret - or misinterpret – their meaning in various ways, depending on the exegetes or the needs of the time. Consequently, interpretation plays a decisive role on how a religion will be perceived by a society. In the case of Turkey, it has been observed that the interpretative approaches of the exegetes were more modernized in many cases than in other Muslim countries. However, it is noticeable that theology was and still is directly influenced by political circumstances, thus creating an unstable and volatile religious environment. At times when the secular element was gaining ground, religious exegeses - at least those promoted by the state - were closer to human rights; at times when the government sought a more conservative direction, theological interpretations seemed to be in greater conflict with human rights.

Legally, although human rights are enshrined as in other Western countries, they appear to face many restrictions on their implementation. On the subject of religion, the modern legal framework theoretically safeguards freedom, expression and education, yet as we have seen, these can be restricted under certain conditions such as when they threaten the secular and national character of the state. However, the important point here is that the laws are biased in favor of Islam. Since 2002 and the AKP election, Islam, albeit at a more moderate level, has re-entered the country's politics and this is evident in a multitude of actions taken by the government that clearly violate Turkish law, without any sanctions being imposed.

In conclusion, we can discern the peculiar relationship between religion and human rights. On the one hand, their relationship seems to be complementary. At times of oppression, either on religion or on human rights, instability is observed. Furthermore, both are made up of ethical rules that in

many cases are quite similar to each other, as we have seen in the case of the Qur'an. Therefore, it would be useful to pursue a balance between them, with one rather complementing the other than downgrading it; otherwise divisions will be created, blocking any attempt for progress and peace.

On the other hand, religion prevents in practice the application of human rights on many issues, thus leading to the conclusion that their relationship may be contradictory. Although religious rules have some common traits with human rights, they still include several diametrically opposed features. As explained above, the interpretive approach is highly important as these rules may be invoked and used with very different motives. In such instances, as is the case in other deeply religious states, respect for human rights is reduced.

Therefore, it is very difficult to answer with absolute certainty which of the two relationships is right and more efficient. Whatever the case is, it is firmly submitted that political leadership and religious authorities should try to bridge all disputes dividing human societies in order to promote peace and progress.

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