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# REPORT

## IN NEED OF A PRINCIPLED APPROACH Monitoring Report on the Right to Freedom of Religion or Belief in Turkey, July 2013-June 2014

Abridged English Version



NORWEGIAN HELSINKI COMMITTEE

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

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

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

The Right to Freedom of Religion or Belief in Turkey – Monitoring Report July 2013–June 2014 is written by Mine Yıldırım. She is the Head of the Freedom of Belief Initiative Project. She has published nationally and internationally on the topic of the right to freedom of religion or belief and is currently a doctoral candidate at Åbo Akademi University Human Rights Institute in Finland.

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# 1. Preface

The Norwegian Helsinki Committee (NHC) Freedom of Belief Initiative outlines in this report, covering the period from July 2013 to June 2014, that Turkey needs to take comprehensive steps in order to bring legislation and practice in line with international human rights law.

This is the English version of a longer and more comprehensive report in the Turkish language. Each chapter summarises the main findings and presents recommendations on steps needed in order to bring legislation and/or practice in line with international human rights standards on freedom of religion or belief.

The NHC launched the Freedom of Belief Initiative in March 2013. The initiative built on an already existing initiative in Turkey, The Freedom of Belief Initiative (IÖG), led by Mine Yıldırım, a Turkish expert in the field. The three years project, 2013-2016, aims at laying the foundation for a permanent Turkish human rights organization specializing on freedom of religion or belief (FoRB).

The aim of the project is to improve respect and protection of freedom of religion or belief in Turkey. Monitoring, documentation, reporting, policy recommendations and advocacy are key activities of the project.

**The website** [www.inancozgulugugirisimi.org](http://www.inancozgulugugirisimi.org) (freedom of belief initiative, IÖG) is the main communication outlet of the project. The website functions as a comprehensive resource for freedom of religion or belief issues in Turkey. It includes up-to-date news, comments on legislative developments influencing the protection of freedom of religion or belief, relevant European Court of Human Rights judgments, reports, opinions and policy recommendations produced by the IÖG as well as relevant reports published by national and international organizations and faith groups in Turkey.

The Norwegian Ministry of Foreign Affairs provides the core funding of the initiative, which is headed by Mine Yıldırım, working from Istanbul. Her e-mail address is: [yildirim@nhc.no](mailto:yildirim@nhc.no); and her mobile number is: + 90 05333382961.

Gunnar M. Ekeløve-Slydal, NHC Deputy Secretary General, has an oversight role. His e-mail address is: [ekelove-slydal@nhc.no](mailto:ekelove-slydal@nhc.no); and his mobile number is: +47 95210307.

The NHC is a Norway based, internationally oriented non-governmental organization working to ensure that human rights are respected in practice. Its main work methods are monitoring, reporting, teaching and democracy support. Its headquarters are in Oslo,

Norway. See [www.nhc.no](http://www.nhc.no) for more information. The NHC runs freedom of religion or belief projects or activities in a range of countries, including Turkey, Kazakhstan, Kyrgyzstan, Azerbaijan, and Norway.

## 2. Freedom of Religion or Belief in International and Turkish Law

**International human rights** law protects the right to freedom of thought, conscience, religion, and belief. Several binding international and regional human rights conventions as well as non-binding political instruments guarantee this right.

The most important international norms on this right, are to be found in Article 18 of the Universal Declaration of Human Rights (UDHR),<sup>1</sup> Article 18 of the International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> and Article 9 of the European Convention on Human Rights (ECHR)<sup>3</sup>. These provisions guarantee the right to freedom of religion or belief for everyone, and specify its main components.

According to Article 9 of the ECHR,

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>4</sup>

**Turkish law** also provides some protection of freedom of religion and conscience. The Turkish Constitution Article 24 contains the supreme national legal norm regarding the right. It states that:

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

No one shall be compelled to worship or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of one's religious beliefs and convictions.

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

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

3 The ECHR entered into force in Turkey on 18 May 1954. Turkey made a reservation to Article 2 of the First Protocol of the ECHR in light of the Law on Unity of Education (3 March 1924).

4 The text of the Convention is available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be upon the request of individuals, and in the case of minors, of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by the religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.<sup>5</sup>

Article 10 of the Constitution guarantees that everyone is equal before the law without distinction of any kind, such as language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such consideration, and that all citizens shall be treated equally by the state organs and administrative bodies in all their proceedings.

According to Article 90 of the Constitution, international treaties, to which Turkey is a party, are superior to national law. If there is 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.”

There does not exist a specific law protecting the right to freedom of religion or belief. However, various laws and regulations include provisions affecting such freedoms.

Based on the findings presented in this monitoring report, the conclusion must be that the protection in Turkish law and practice of the right to freedom of thought, conscience, religion, or belief is limited. It does not live up to the requirements of international law. In breach of Article 90 of the Constitution, political bodies and courts do not always give priority to Turkey’s obligations under international human rights law.

In the following, the main findings based on some of the key requirements of international law are presented.

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5 The Constitution of the Turkish Republic, 1982, available in English at: [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf)

### 3. The Right to Have a Religion or Belief

The assurance of an appropriate environment to protect the right to freedom of thought, religion, or belief for all is of great importance. In this respect, rule of law, effective access to justice, and societal attitudes to different groups remain important factors.

Hate speech and hate crimes, especially against minorities, continued during the reporting period. In addition, some delays and problems were encountered in the administration of justice concerning past cases involving hate crimes based on religion, for example the cases concerning the killing of Hrant Dink on 19 January 2007 and the killing of three Christians in Malatya on 18 April 2007.

Correspondence exchanged during the course of a student's registration in an Armenian school in August 2013 revealed the fact that minorities had been tagged by a race-code system in state records since 1923.<sup>6</sup> Under this system, Greek, Armenian, and Jewish individuals were recorded according to different race codes.

The report recommends that:

**Authorities must effectively investigate and prosecute religion-based hate crimes committed in the past. They must leave no doubt that justice is served in such cases, and that they are able and willing to protect the right to freedom of thought, religion, or belief for all from attacks by third parties.**

**The mechanisms by which minority rights are protected should be adjusted in accordance with contemporary human rights standards, including by ending the practice of race codes.**

#### ***The Right to Believe and the Right to Change Belief***

Even though religious conversion is not unlawful, the situation of converts remains fragile due to social pressure and the risk of discrimination.

The report recommends that:

**Authorities must promote respect for the freedom of religion or belief of persons who hold beliefs that differ from mainstream beliefs, who change their religion, or who do not profess any religion or belief.**

**State officials and media representatives should refrain from expressions that may harm the exercise of the right to freedom of religion or belief for all belief groups,**

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6 Agos, "90 Yıldır 'Soy Kodu' ile Fişlemişler" ['Race Codes' for more than 90 Years], 1 August 2013.

**including those not professing any beliefs or those belonging to minority religions or beliefs.**

### ***Coercion to Declare One's Religion or Belief***

The religion section on national identity cards compels individuals to declare their beliefs in many aspects of their lives. Regarding the identity cards, the European Court of Human Rights (ECtHR), in its decision in the *Sinan Işık v. Turkey* case, held that “the deletion of the religion box on identity cards would be an appropriate form of reparation to put an end to the breaches in question.”<sup>7</sup> Nevertheless, the practice of including the section for religion on identity cards is still in effect.

The report recommends that:

**The religion section on identity cards and civil records should be removed.**

**To be exempted from Religious Culture and Knowledge of Ethics classes (RCKE), a statement by the individual claiming an exemption should be sufficient. No one should be compelled to provide proof of his or her religion in this process.**

### ***Coercion to Act in a Manner Contrary to One's Religion***

The ECtHR has issued six decisions and the UN Human Rights Committee one decision holding that Turkey has breached its human rights obligations by not recognizing the right to conscientious objection. These decisions require Turkey to take certain steps. Some of the required measures include recognizing conscientious objection as a legal right, offering conscientious objectors an alternative service option, establishing an impartial mechanism to determine conscientious objection status, and putting an end to the current cycle of prosecution and punishment of conscientious objectors.

The report recommends that:

**The right to conscientious objection should be recognized in accordance with international human rights standards.**

**Legislation providing an alternative civilian service option, which does not include punitive elements, should be adopted.**

**An impartial mechanism to process conscientious objection applications should be introduced.**

**The ECtHR decisions and the decision of the UN Human Rights Committee against Turkey concerning conscientious objection in Turkey should be enforced.**

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7 ECHR, *Sinan Işık vs. Turkey*, Application No. 21924/05, 2 February 2010, para. 60.

## 4. The Right to Manifest Religion or Belief in Worship

Numerous attacks targeting places of worship continued during the reporting period and perpetrators have not been found. The perpetrators of attacks that were included in our September 2013 report also have not been found.<sup>8</sup> This impunity encourages perpetrators and increases the vulnerability of religious or belief groups.

The report recommends that:

**Authorities should provide protection to places of worship in such a way that the services of private security companies are not required. The state should provide financial assistance if the services of private companies are required.**

**Attacks targeting places of worship should be effectively investigated and prosecuted.**

### ***The Right to Establish Places of Worship***

Despite legal safeguards, restrictions concerning the right to establish a place of worship continue. In particular, *cemevis* (Alevi places of worship), newly opened churches, and the places where Jehovah's Witnesses worship have not been able to obtain the official place of worship status. Municipal administrations continue to allocate spaces only for mosques and *masjids* (prayer rooms) in their city plans.

The report recommends that:

**In the process of determining place of worship status, the Turkish Council of Ministers must comply with the obligation of states to observe the principle of impartiality in its policies involving religion. The decisions on place of worship status should not be of a political nature.**

**The state should abide by the obligation to observe impartiality in its designation of places of worship, not making such decisions based upon the religious belief in question.**

**In the preparation of city plans, municipalities should take into consideration requests not only for mosques or for masjids. They should consider places of worship requests of all religious groups. In the course of allocating land for places of worship, they should take into account the religious pluralism within society.**

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8 Report available at: [http://www.nhc.no/filestore/Publikasjoner/Rapporter/2013/Report\\_3\\_13\\_eng\\_web.pdf](http://www.nhc.no/filestore/Publikasjoner/Rapporter/2013/Report_3_13_eng_web.pdf)

**When making decisions on the usage of places of worship, public institutions that supervise such places should ensure that respective communities participate in the decision-making process.**

**The necessary legal regulations should be passed so that community foundations (cemaat vakfi), included in the official record of the Directorate General of Foundations are returned to the communities to which they belong. Until such laws are passed, places of worship governed by the Directorate General of Foundations should be designated for use by the communities who originally owned them.**

### ***Holidays, Days of Rest, and Days of Special Religious Importance***

Religious holidays officially recognized as national holidays include the Ramadan Holiday (*Eid al-Fitr*) and the Feast of the Sacrifice (*Eid al-Adha*), which are important days for Muslims. However, Awure Day (important for Alevis), the Hidrellez Festival, the Gadir Hum Festival (of special importance to Arab Alawis), Christmas (celebrated by Christians), and Rosh Hashanah (of special importance to Jews) are religious festivals during which believers attend to activities related to their religions or beliefs. For believers, these festivals are important manifestations of their religion or belief.

The report recommends that:

**Steps should be taken to ensure that believers are able to fulfil requirements to observe days of special importance, including reasonable accommodation in school and workplace schedules.**

## 5. The Right to Manifest Religion or Belief in Teaching

Spreading a religion or belief other than that of the majority of the population continue to be perceived with suspicion.

A sign advertising the location of the representative of the Diyarbakir Protestant Church Association in Mardin was taken down, broken, and put into trash five times by unknown perpetrators.<sup>9</sup> Three cameras were installed in front of the Association to prevent this situation from happening again.

In Mardin in August and September 2013, the same church hung posters to promote the movie “İsa Mesih’in Yaşamı” (“The Life of Jesus Christ”); these were also torn down.<sup>10</sup>

Missionary activities continue to be perceived as a threat to national security in textbooks for the “Principles of Atatürk and the History of the Turkish Revolution” course in the eighth-grade curriculum. Missionary activities, defined as spreading a belief in different countries, is presented as a threat that will divide Turkey. Textbooks stress that citizens should be vigilant against missionaries.

The report recommends that:

**Attempts to obstruct activities aimed at spreading a belief should be effectively investigated, whether or not the perpetrators are public officials or private persons. There should not be impunity for such obstruction.**

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

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

**The contents in the “Principles of Atatürk and the History of the Turkish Revolution” course book for the eighth-grade curriculum should be revised and brought in line with human rights standards.**

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<sup>9</sup> Correspondence with the representative of the Diyarbakir Protestant Church, August 2014.

<sup>10</sup> Ibid.

## **The Right to Establish Schools that Provide Religious Education**

State continues to hold a monopoly both on opening institutions that offer religious education and on determining the nature of the mandatory and optional courses concerning religious education in schools.

Attempts to open private educational institutions to train religious officials have been obstructed in the past.

Halki Theological Seminary, which is still closed, has been a symbol of the restrictions on the right to open educational institutions to train religious officials. Statements to the effect that permission for opening the Seminary is conditional upon opening a mosque in Athens, do not comply with Turkey's international obligations on the right to freedom of religion or belief.

The request of the Armenian Apostolic Church to open an educational institution to train religious officials under the General Directorate of Higher Education has not been answered for seven years.

The report recommends that:

**Amendments should be made to the Constitution and other relevant laws and regulations in order to ensure respect for the right to manifest one's religion or belief in teaching.**

**The right to train religious officials for all religious communities should be recognized; all belief groups should be empowered to open educational institutions to educate their own religious officials.**

## 6. The Right to Manifest Religion or Belief in Practice

An 8 October 2013 amendment to the Regulation setting forth the dress code for civil servants abolished the ban on wearing headscarves by civil servants in public institutions.<sup>11</sup> However, the ban remains in force for members of the police force, judges, public prosecutors, and the personnel of the Turkish Armed Forces. When several women parliamentarians attended the Turkish Grand National Assembly wearing headscarves for the first time, the ban on wearing headscarves in the Assembly was lifted in practice.<sup>12</sup>

Making the legal situation unclear, restrictions on the wearing of garments representing a religious status or profession, regardless of the religion or belief, continue under Law No. 2596 on the Prohibition of Certain Garments.<sup>13</sup>

Under international human rights law, the right of private individuals and public officials to wear religious symbols and garments can only be restricted by law and only if necessary in a democratic society. Human rights conventions set a high threshold for imposing such restrictions.

The report recommends that:

**Authorities should accommodate without discrimination the wearing in public institutions of headscarf, a sign of the cross, kippa, beard, namaz, or other religious symbols.**

**Nobody should be forced by law or in practice to wear a religious symbol or garment.**

### The Right to Learn and Use Languages Traditionally Used in Religious Rituals

In a positive development, following an appeal by the Virgin Mary Syriac Chaldean Church, the 13<sup>th</sup> Ankara Administrative Court suspended the execution of the Ministry of Education's decision to refuse permission to open a school to teach Syriac.<sup>14</sup> The court based its decision on grounds that this community is a minority group protected under the Lausanne Treaty and hence has the right to establish a school where its language

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11 Kamu Kurum ve Kuruluşlarında Çalışan Personelin Kılık ve Kıyafetine Dair Yönetmelikte Değişiklik Yapılmasına İlişkin Yönetmelik [The Regulation on Amendment of the Regulation on the Dress of the Personnel of Public Institutions and Organizations], Resmi Gazete [Official Gazette] No. 28789, 8 October 2013.

12 Sabah Daily, "Başörtülü Vekiller Meclis'te" (Headscarfed Members of Parliament at the Parliament), 31 October 2013.

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

14 Ankara 13th Administrative Court, 3 August 2013.

can be taught. In addition a legislative change has been adopted in September 2013 to allow teaching in foreign languages. Officials had expected that a kindergarten would be established to teach Syriac during the 2013-2014 school year.

In a negative development, the Ministry of Education has not replied to an October 2013 application by the Syriac Chaldean Church to establish a primary school in Mardin.<sup>15</sup>

The report recommends that:

**Public authorities should consider the “non-Muslim minorities” clause of the Lausanne Treaty to include all non-Muslim groups and individuals.**

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

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

**Religious or belief groups should be allowed to teach the language they use in their worship.**

## The Right to Appoint Religious Officials

The 1925 Law No 677, *on the Closure of Dervish Lodges and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles*, bans the use of the titles “şeyh, derviş, mürid, dede, sayyid, çelebi, baba, emir, naib, halife, falcı, büyücü, üfürükçü, and nüshacı” as well as practices and clothing related to such positions.<sup>16</sup>

Although Law No. 677 bans numerous titles, few people have been penalized based on their use. Judicial practice has evolved over time to the effect that the use of those titles is forbidden only when a person tries to take advantage of someone or something using his or her title and/or position.

The report notes that:

**Removing Article 1 of Law No. 677, which bans particular religious titles, and which currently is not applied, would be a step in line with Turkey’s international human rights obligations.**

However, even though there is no domestic legislation that regulates the use of other religious titles, administrative warnings have been given in cases involving the use of

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<sup>15</sup> Telephone interview with the representative of the Syriac community, August 2014.

<sup>16</sup> *Tekke ve Zaviyelerin Kapatılması ve Türbedarlıklarla Bazı Unvanların Men ve İlğasına Dair Kanun No 677* [Law on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles], 13 December 1925, Article 1. The titles are given in Turkish.

certain titles. There is no legal provision that prohibits the Patriarch of the Greek Orthodox Church from using the title “ecumenical” or requiring the Armenian Apostolic Patriarch to use the title “Patriarch of Turkish Armenians”.

The interference of public officials in the usage of the adjective “ecumenical” for the Patriarch of the Greek Orthodox Church and asking the Chief Rabbi to change his title to “Chief Rabbi of Turkish Jews” instead of “Turkish Chief Rabbi” are examples of undue interference in the right to freedom of religion or belief.

The report recommends that:

**Religious or belief groups should be free in their internal affairs to choose the titles of their religious officials.**

**Legal and administrative obstacles in this regard should be lifted.**

The Directorate of Religious Affairs appoints religious officials who work in mosques.

As far as some other belief communities are concerned, public servants interfere with the appointment of the high-ranking religious leaders of some non-Muslim groups, such as the Greek Orthodox church, the Armenian Apostolic church, and the Jewish community.

A number of cases of refusal to renew visas of voluntary religious workers have been reported. As a result religious communities, not being able to train their leaders depend on foreign teachers and leaders, continue to experience lack of human resources to teach their congregations.

The report recommends that:

**Religious or belief groups should be free to choose and appoint their officials. Under human rights law, this freedom can be restricted “only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others”.**

**A transparent, accessible, predictable, and clear procedure should be established in accordance with international law concerning foreign religious workers who are appointed to work for religious institutions in Turkey; regardless of whether this institution belongs to Turkish citizens or not.**

## **The Right to Have a Funeral and Operate Cemeteries in Accordance with one's Belief**

Certain religious groups' requests concerning allocation of plots for cemeteries and burial procedures are not met, due to lack of recognition of these groups' rights by current regulations. For instance, atheists are buried in Muslim cemeteries, since no separate place has been allocated for them.

The report recommends that:

**Individuals should have the right to decide what to do with their bodies after death, including to be buried in cemeteries designated for their religion or belief. This right should only be restricted based on objective reasons and if necessary in a democratic society.**

**Municipalities should act in a facilitative, rather than restrictive, manner toward requests by members of different belief groups or by non-believers.**

## 7. INTERSECTION POINT: The Right to Education and Freedom of Religion or Belief

Article 9 of the European Convention of Human Rights (ECHR) is applicable to both children and adults. In addition, Article 2 of the First Protocol of the ECHR supports the right to freedom of religion or belief in relation to the right to education:

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

The Turkish education system is in need of fundamental reform in order to comply with the standards of the right to freedom of religion or belief. The compulsory *Religious Culture and Knowledge of Ethics* course has been subject of scrutiny by the ECtHR and has been found to constitute “a violation of the Convention on account of the inadequacy of the Turkish educational system, which, with regard to religious instruction, does not meet the requirements of objectivity and pluralism and provides no appropriate method for ensuring respect for parents’ convictions”.<sup>17</sup>

Only Jewish and Christian students have the right to be exempted from the compulsory Religious Culture and Knowledge of Ethics courses, which include religious instruction components. Other students who do not wish to take this course, including atheists, Alevites, and Bahais, do not have a right to exemption.

Secondly, some parents have reported that optional courses introduced in the 2012-13 school year, such as the Life of the Prophet Muhammad, Basic Religious Knowledge (Islam), and the Koran, are compulsory in some schools.

Finally, when students finished middle school, some were placed in “imam hatip” high schools, in which religious education is compulsory although they have not explicitly selected these schools.

The report recommends that:

**Turkey’s interpretive declaration to Article 2 of the First Protocol of the ECHR should be withdrawn.**

**Either Religious Culture and Knowledge of Ethics courses should be transformed into objective and pluralistic courses on religions or a non-discriminatory exemption mechanism should be established in line with human rights standards.**

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17 ECtHR, Hasan and Eylem Zengin v. Turkey, App. No. 1448/04, 9 October 2007.

**Optional courses should remain optional in reality. Exemption requests by all belief groups, whether atheists or deists, should be granted.**

**The system of transition from primary to secondary education should be re-evaluated in line with freedom of religion and belief. Only students explicitly choosing to attend “imam hatip” high schools should be placed in these schools; others should not.**

## 8. INTERSECTION POINT: Freedom of Religion or Belief and the Protection of Property

The process of examining applications for the return of the immovable property to non-Muslim community foundations, initiated with the passage of the temporary Article 11 of the Foundations Law, has come to an end. The high number of refusals indicates the need for a new legislative measure, which would enable the return of immovable properties to community foundations that can prove ownership, regardless of whether ownership is indicated or not in the 1936 Declaration.<sup>18</sup>

The decision of the General Assembly of the General Directorate of Foundations in October 2013 paved the way for the return of five acres of land of the immovable property of the Mor Gabriel Monastery Foundation, which was seized as a result of a judicial decision.<sup>19</sup> As a result, 12 documents of ownership have been registered under the name of the Foundation.<sup>20</sup>

However, this positive decision does not mean that all land problems of the Mor Gabriel Monastery Foundation have been resolved. The General Directorate of Foundations has rejected the applications of the foundation for 18 parcels of land.<sup>21</sup>

In addition to the decisions by the General Directorate of Foundations, there is also an ongoing judicial process at the Court of Appeals. Furthermore, an application made by the Mor Gabriel Monastery Foundation to the ECtHR is under preliminary examination.<sup>22</sup>

The report recommends that:

**All land belonging to the Mor Gabriel Monastery Foundation should be returned.**

### The Status of Immovable Properties Supervised by State Institutions that were possessed by Belief Groups in the Past

Some examples of such properties are *tekkes* and *dergahs* historically used by Alevi communities, and the churches and synagogues, which were seized by state institutions after Christian and Jewish populations had been forced to abandon Anatolia over the past century.

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18 In 1936 all foundations were served notifications requesting them to provide the General Directorate of Foundations with a list of their non-movables. The list was necessary to regularize the land registry of the Turkish Republic. The community foundations, like other foundations, provided lists of their properties. Since the 1960s, the ensuing list of properties have been used by various public institutions as the founding deeds of community foundations, jeopardizing many rights. The community foundations did not have any founding deeds, having been founded by Ottoman Sultan Decrees.

19 Radikal, "Mor Gabriel Manastırı'na İzin Çıktı" [Permission Granted to the Mor Gabriel Monastery], 7.10.2013.

20 Interview with the representative of the Mor Gabriel Monastery Foundation, August 2014.

21 Ibid.

22 Ibid.

Some of these previous places of worship have come under the possession of the Directorate of Religious Affairs, the General Directorate of Foundations, the Treasury, the Ministry of Culture and Tourism, legal entities of some villages or individuals. Some of them are located in military zones.

The report recommends that:

**A consultation process on the use and ownership of such places of worship should be started. This process should include the diverse religious or belief groups in society and respect the right to freedom of religion or belief, the right to property and cultural heritage.**

## 9. SPECIAL FOCUS: The Right of Religious or Belief Communities to Acquire Legal Personality

No religious or belief group in Turkey has legal personality, as such. The idea of belief groups having legal entity status as belief groups is conceived by many as a notion which does not comply with the principle of secularism; one of the fundamental principles of the Constitution of the Turkish Republic. The associative rights of belief groups have always been perceived with suspicion. This situation has led belief groups to adapt to the current conditions in order to survive; establishing foundations and other types of entities in order to conduct their affairs.

Not having legal entity status leads to a number of problems:

- Belief groups and their representative institutions such as Patriarchates or Chief Rabbinate cannot conduct legal proceedings. It is not possible for them to open bank accounts, open lawsuits, buy property or make contracts.
- Belief groups cannot officially employ their own religious officials and provide social security for them.
- Belief groups' attempts to plan for the future, to make investments and coordinate activities related to their common lives and existence becomes impossible, since, they cannot form a legal representative institution or supreme board.
- Although religious representative institutions are essentially included in the state protocol and/or are able to directly contact the Prime Minister and the President, their position is ambiguous because of not having a legal entity status.
- Belief groups, which cannot directly acquire a legal entity status, tried to acquire this status to a certain extent by establishing foundations or associations and maintained some of their activities through these institutions. However, there are important restrictions related to these models that do not provide a direct legal entity status for them.

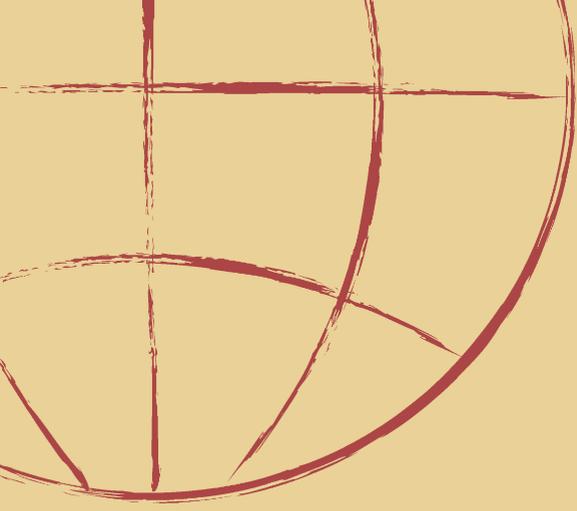
## **30 May 2014 Conference on Legal Entity Status of Belief Groups: Findings and Recommendations**

The NHC Freedom of Belief Initiative organized a Conference in co-operation with the Istanbul Bilgi University Centre for Human Rights Research and Practice on “The Legal Personality of Belief Communities in Turkey: Seeking a Path” on 30 May 2014.

Taking into account Turkey’s human rights obligations, international guiding principles as well as suggestions expressed at the Conference, the following findings and recommendations are presented:

- The need and demand to acquire legal entity status is valid for all belief groups including Muslims and non-Muslims.
- Not having a direct legal entity status as a belief group results in not being able to benefit from the rights inherent in the collective aspect of the right to freedom of religion or belief. This results in belief groups being deprived of legal protection.
- Not being able to acquire legal entity status has become a matter of survival for some belief groups.
- International human rights law imposes a positive obligation for states to take necessary measures so that belief groups can acquire an adequate legal entity status that is suitable for their activities.
- The acquisition of legal entity status would provide transparency for religious or belief groups.
- In line with the binding provisions of international law and relevant guiding principles, belief groups’ right to acquire legal entity status should be recognized by national law.
- A new type of legal entity, which would directly enable belief groups to acquire legal entity status, should be seen as an addition to the legal entity status of foundations and associations included in the current body of law.
- A separate law should regulate this legal entity, which could be named “faith institution”.
- The Law should be prepared through an inclusive process, which would reflect the diversity of religious or belief groups in Turkey.
- The new legal entity status should be suitable to the nature of belief groups and enable and facilitate belief groups to carry out their customary activities.

- Belief groups should not be forced to unite under one head or one institution.
- The model should be flexible so as to enable belief groups to abide by the rules of their own administration, including election and organization.
- The process of acquiring legal entity status should not be discriminative and should not include any statement by the state concerning the legitimacy of the belief.
- The proposed faith institution should be recognized as a legal entity, and the level of supervision of the state should be reasonable. Respect and protection of the right to be free in the internal affairs of religious or belief communities should be ensured.



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