



TURKEY

Preliminary Report on the Legal Status of Religious Minorities in the Shadow of the European Court of Human Rights

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Report on Issues Studied to do with the Legal Status of Religious Minorities Turkey

In Turkey, it is not possible for faith groups (including recognized non-Muslim minorities) to gain legal personality as such. No belief community, including recognized minorities, may acquire legal personality as such. Lacking legal personality of any kind, these minorities and belief groups can neither own property (with few exceptions, detailed below), nor seek judicial review of cases where they have lost possession of property as a result of not having legal personality. Also, believers who assemble in their place of worship run the risk of interference by public authorities for worship in premises that are not recognized by public authorities as places of worship.

Historically, all religious minority groups have suffered from biased decisions in the national courts, with differing degrees of intensity and prosecution throughout the Republic's history. Rights violations, repressive policies and discrimination against these groups were furthered after the military coup in 1960 and that gained momentum with the 1974 military operation in Cyprus.

EU accession-related reforms and subsequent legislative change starting with early 2000s have played a major role in the improvement of the issues related to the lack of legal status.

One of the most important legislative changes introduced by the AKP Government in relation to the harmonization packages for the European Union accession process in 2003 concerned establishing places of worship other than mosques. Another one is the 2006 introduction of a new Law on Foundations (Law No. 5737 - previously: Law No. 5555) that granted the following rights to non-Muslim foundations, among others: to acquire new property, to dispose of existing properties, to collect cash and in-kind donations and assistance from domestic and foreign institutions and organizations. The most significant and radical change is the return of some of the seized properties of the non-Muslim foundations under certain conditions (Provisional Article 7).¹ Also, through a parliamentary amendment in 2008, churches and synagogues were allowed to use electricity and water free of charge as places of worship, in a similar way to mosques.

¹ Improvements came with the fourth and sixth reform packages of January and July 2003 which enabled the Greek-Orthodox community to reacquire some 179 properties (falling short of the total the community claims).

Groups involved:

For the purposes of our discussion of legal status here, we can divide the minorities involved into 4 groups: **(Table 1)**

Non-Muslim minorities recognized as such by the state with the Treaty of Lausanne “Lausanne Minorities” “recognized minorities”²	Armenian (Apostolic, Catholic, Protestant)	Greek Orthodox (“Rum”)	Jewish	(Bulgarian)
Non-Muslim minorities not recognized by the state with the Treaty of Lausanne “De facto Minorities”³	Syriac (<i>Kadim</i> and Catholic) (“ <i>Süryani</i> ”)	Chaldean Catholic	Roman Catholic	(...)
Non-Muslim Belief Groups unrecognized by the state and established after the Lausanne Treaty	The (Turkish) Protestants	Jehovah's Witnesses	Seven Day Adventists	(...)
Non-Sunni Muslims	Alevis ⁴		Shiite Caferis Baha'is ⁵	(...)

² Exact population sizes of remaining recognized minorities are unavailable – the census only registered a citizen's mother tongue and religion between 1927 and 1965. According to the International Religious Freedom Report of 2008 released by the U.S. Department of State there are an approximate of 65,000 Armenian Apostolic Christians, 23,000 Jews, and up to 4,000 Greek Orthodox Christians. U.S. Department of State, International Religious Freedom Report 2008, <<http://www.state.gov/g/drl/rls/irf/2008/108476.htm>>, accessed 01 August 2015.

³ 15,000 Syrian Orthodox (Syriac) Christians; 5,000 Yezidis; 3,300 Jehovah's Witnesses; 3,000 Protestants; and a small, undetermined number of Bulgarian, Chaldean, Nestorian, Georgian, Roman Catholics, and Maronite Christians present in Turkey.

⁴ There are an approximate 10 to 20 million Alevis in Turkey.

⁵ Shiite Caferis App. 500,000 Shiite Caferis; 10,000 Baha'is

(1) “Lausanne Minorities” or “Recognized Minorities”:

The Lausanne Treaty of 1923 creates a special minority scheme for only the Armenian, Greek Orthodox and Jewish communities, allowing them to have social institutions, schools, teaching and educational institutions which use their own language and to conduct worship services.

Legal status issues: Based on the Treaty, the recognized minorities in Turkey may operate 'private' community schools, (preschool through high school) under the supervision of the Ministry of Education; and may maintain churches that already existed in the (restoration does not include the right to build new ones, nor to sell or purchase). Seizure of property is their biggest issue due to lack of legal status.

-The General Directorate for Foundations (GDF) regulates their activities and affiliated churches, monasteries, synagogues, and related religious property. The GDF also regulates non-Muslim charitable religious foundations, including schools, hospitals and orphanages. Minorities must apply to the General Directorate for Foundations for approval of renovation plans.

Main Claims:

Property rights, training religious staff, legal status for the highest religious authorities of the respective communities that will assure a central organization of and control over individual minority foundations.

(2) “De facto Minorities”:

Syriac Apostolic (*Kadim*), Chaldean Catholic, and Roman Catholic communities are not recognized by the Turkish state based on the Lausanne Treaty. These groups are *de facto* treated as recognized minorities in some instances (allowed to “use” their historic churches and gather for worship), but not in others (i.e., not allowed to bear non-Turkish names – an issue we have in cases in national courts, and not allowed to operate community schools).

Legal status issues: Similar to “recognized minorities,” this group's most central problem is also seizure of property.

Main Claims: expansion of the recognized minority category, besides claims stated above

(3) Non-Muslim Belief Groups

This category includes the (Turkish) Protestant Free Churches, Jehovah's Witnesses, and Seventh Day Adventists - groups that are unrecognized by the state and established after the Lausanne Treaty. These groups are not able to establish places of worship or other community institutions such as schools.

Legal status issues: One overarching issue due to the lack of legal personality for this category is the right to establish and maintain places of worship. According to Turkish law, groups of believers (with the exceptions outlined above) cannot own a place of worship.

(4): Non-Sunni groups: Alevi

Alevi are the largest non-Sunni group in Turkey. According to the Office of the Prime Minister there are 598 *cem houses* in Turkey.⁶ None of them has place of worship status. **Legal Issues:** The phrase “place of worship” in the Public Works Law, in practice, has been interpreted narrowly to encompass mosques, churches and synagogues by the bureaucracy. The *cem houses*, where significant group of Alevi community worship, have not been recognized as such by the authorities.

The Alevi may establish cultural associations where they assemble for worship.

- Litigation in the ECtHR:

Numerous domestic cases are on-going as a result of closure by public authorities of premises used for worship purposes, churches and meeting halls, without place of worship status.

Cases against Turkey in the ECtHR: (Table 2)

⁶ Response of the Office of the Prime Minister to a communication of Member of Parliament Doc. No. B.02.0.004./954, 16 July 2012.

	App. no	Year complaint was lodged	Year of judgment	ECHR article(s) claimed/ violated	Main issue involved in the case	Religion or religious group concerned	Applicant(s)
<i>Doğan and Others v. Turkey</i>	62649/10	2010	2016	9 and 14	Refusal to provide public services in religious matters; status of the places of worship	Alevis	CEM Vakfi
<i>Yehova'nin Şahitlerini Destekleme Derneği and Others v. Turkey</i>	6915/10, 8606/13	2010, 2013	-	9	Freedom of Association / Assembly Government Approvals, Places of Worship, State Interference	Jehovah's Witnesses	Association for the Support of the Jehovah's Witnesses
<i>Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v. Turkey</i>	32093/10	2010	2014	9	Government Approvals, Places of Worship, State Interference	Alevis	CEM Vakfi
<i>Fondation du Monastere Syriaque de Saint-Gabriel à Midyat v. Turkey</i>	61412/11	2011	-	14	Property Violation / Seizure of Property	Syriac /Christian	Syriac Church Foundation of Mardin
<i>Catholic Sisters of Charity (La Compagnie des Filles de la Charité de Saint-Vincent-de-Paul) v. Turkey</i>	19579/07	2007	2011	9	Discrimination, Effective Remedy / Access to Courts, Freedom to Manifest Belief, Property Violation / Seizure of Property	Roman Catholic	Roman Catholic Church Foundation
<i>Altinkaynak and Others v. Turkey</i>	12541/06	2006	2011	9, 14	Discrimination, Freedom of Association /	7th day Adventist Church	Erkin Altinkaynak/ Foundation of the

					Assembly, Freedom of Conscience, Limitations - Prescribed by Law, Registration		Seventh-day Adventists in Istanbul
Fener Rum Patrikliği (Ekümenik Patriklik) v. Türkiye	14340/05	2005	2010	44, 2	Property Restitution / Land Use	Greek Orthodox	Ecumenical Greek Patriarchate of Constantinopolis
Özbek and Others v. Turkey	35570/02	2002	2010	9	Acquisition of Legal Personality and Registration for religious groups; freedom of association	Turkish Protestants	Ihsan Yenal Ozbek, Çiğdem Özbek, ...
Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey	37639/0; 37655/0; 26736/04 42670/04	2003 and 2004	2009	P1-1; 14	Property Violation / Seizure of Property, the right to fair trial and the right to be free from discrimination	Greek Orthodox	Bozcaada Kimisis Teodoku Greek Orthodox Church Foundation
Samatya Surp Kevork Ermeni Kilisesi, Mektebi ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey	1480/03	2003	2008	P1-1; 14	violation of the right to property, the right to fair trial and the right to be free from discrimination	Armenian	Samatya Surp Kevork Ermeni Kilisesi, Mektebi ve Mezarlığı Vakfı

<i>Yedikule Surp Pırgıç Ermeni Hastanesi Vakfı v. Turkey</i>	36165/02	2002	2008	P1-1; 14	Property Violation / Seizure of Property, the right to fair trial and the right to be free from discrimination	Armenian	Yedikule Surp Pırgıç Armenian Hospital Foundation
<i>Yedikule Surp Pırgıç Ermeni Hastanesi Vakfı v. Turkey</i>	31441/02	2002	2007	P1-1; 6; 12	Property Violation / Seizure of Property, the right to fair trial and the right to be free from discrimination	Armenian	Yedikule Surp Pırgıç Armenian Hospital Foundation
<i>Tanyar and Küçükergin v. Turkey</i>	74242/01	2001	2006	6 ; 1	<i>Effective Remedy / Access to Courts, Freedom of Association / Assembly, Property Rights (Status of Places of Worship)</i>	<i>Turkish Protestants</i>	<i>the Association of Protestant Churches in Turkey</i>
<i>Yedikule Surp Pırgıç Ermeni Hastanesi Vakfı v. Turkey</i>	50147/99 and 51207/99	1999		P1-1; 6, 12	Property Violation / Seizure of Property, the right to fair trial and the right to be free from discrimination	Armenian	Yedikule Surp Pırgıç Armenian Hospital Foundation
<i>Institut de Prêtres Français v. Turkey</i>		1995		9; P1-1 (37-1;38-1-b; 39)	Property Restitution / Land Use, Deprivation of Liberty; Freedom of Religion	Roman Catholic	Roman Catholic Church Foundation

Foundations of the Greek and Armenian communities started to file complaints after 1999 when Turkey's EU candidacy was announced. Since 2007, decisions are being made in these cases. The first ruling was made in a case filed by the Fener Greek High School Foundation of the Greek Orthodox Community, and the ECtHR decided that Turkey violated Article 1 of Protocol No. 1 of the ECHR, which secures property rights. The ECtHR ordered Turkey to return the seized property to the foundation or to pay almost 900,000 Euros to the foundation's management within three months. The government executed the decision by paying the specified indemnity within the relevant legal period. The ruling is the first case won by non-Muslim foundations in Strasbourg and created a precedent for similar complaints pending before the ECtHR.

In the *CEM Vakfi v. Turkey* case, Cem Vakfi (The Republican Education and Cultural Center Foundation), an Alevi umbrella organization, applied to the ECtHR where it made the case that the Turkish government's policy of not paying the electric bills of a cemevi in an Istanbul neighborhood---while doing so for mosques, churches and synagogues---was discriminatory. They succeeded in winning a judgment against Turkey (2014); the AKP government however, has so far taken no action in response to this ruling.

Friendly Settlements: The complaint filed in 1999 by the Foundation for the Surp Pirgiç Armenian Hospital in Yedikule for the return of two buildings in Istanbul that were taken over by the Treasury, was concluded against Turkey. The AKP government's affirmative action simultaneous with legal reforms on the issue led the parties to decide to resolve the conflict amicably, and a friendly settlement declaration was signed in 2007. Although the ECtHR recommended the government pay indemnity to the foundation as a condition of friendly settlement, and the government proposed returning the immovables to the foundation instead of making this payment. Thus, for the first time, the Turkish state returned a seized immovable to a non-Muslim foundation. The decision established a precedent for the remaining non-Muslim *vakif* cases before the Court and other friendly settlements followed.