

27 June 2011

TURKEY: Can a new Constitution solve religious freedom problems?

By Mine Yildirim, Åbo Akademi Uni. and

Following the AKP's general election victory, political attention in Turkey has turned to the long-awaited new Constitution, Forum 18 News Service notes. It appears that a consensus may exist among Turkey's liberals, leading civil society organisations, religious minorities, legal academics, and the main opposition party, the CHP, that the new Constitution should uphold the right to freedom of religion or belief. Many would not object to this as an ideal, but attention to the detail of the proposals is essential. The AKP's past record would suggest that any predictions of its response should be cautious. Indeed, it is unclear what the AKP itself would propose. It is vital that the new Constitution enshrines full guarantees of freedom of religion or belief for all, fully in line with Turkey's international human rights obligations. But on its own - without good laws, regulations and state actions - a Constitution can only have a limited impact in generating practical change in the daily lives of people belonging to minority religious and belief communities.

With the convincing general election victory of Turkey's Justice and Development Party (AKP) on 12 June, the long-awaited new Constitution is at the centre of political discussion. The current 1982 Constitution is widely acknowledged to be a remnant of the 1980 military intervention which is not suitable for Turkey's progressing democracy. But what will a new Constitution mean for the country's various religious and belief communities, as well as agnostics and atheists? Will it solve Turkey's long-standing problems concerning the right to freedom of religion or belief? The AKP's decisions on the drafting method and content will be key factors in whether the Constitution is compatible with the international standards on freedom of religion or belief, which Turkey has committed itself to implement.

Some of the problems of protecting freedom of religion or belief do not require a constitutional change, yet remain unresolved (see eg. Forum 18's Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379). So it would be unrealistic to expect a new Constitution to solve all of Turkey's religious freedom problems. But reform of both the Constitution and legislation is still essential (see F18News 7 February 2011 http://www.forum18.org/Archive.php?article_id=1537).

The AKP has now won a third consecutive term as government, increasing its support to 49.90 per cent of those who voted, and providing much room for manoeuvre to Prime Minister Recep Tayyip Erdogan. The AKP could use this support to take bold steps to bring Turkey's legislation and practice into line with international human rights standards, including on freedom of religion or belief. However, relying on the substantial support it already enjoys, the AKP might instead resist making the necessary changes, both in the Constitution and in the state's actions.

Diversity in the Grand National Assembly

A positive aspect of the new parliament, the unicameral Grand National Assembly, is that it better reflects the diversity of Turkish society than previous parliaments. The number of female deputies is the highest so far, at 15 per cent, there are four disabled deputies, and the number of independent deputies is also the highest so far at 36 (should the election of the six currently imprisoned candidates stand). The independent deputies are supported by the pro-Kurdish BDP (Peace and Democracy Party), as the BDP has never polled the 10 per cent electoral threshold to be represented in the Grand National Assembly. Among the independents are Kurds, Socialists, and a Syriac Christian (the only Christian deputy).

Whether the independent deputies as well as deputies of various ethnic backgrounds and various Islamic traditions realise their potential depends on how well they can work together, and the power dynamics of the Grand National Assembly.

Drafting a new Constitution

If Turkey is to adopt a Constitution that safeguards, among other things, fundamental human rights and the rule of law, a pluralistic democratic approach which respects Turkey's diversity is essential. Prime Minister Erdogan acknowledged in his victory speech that the public through their votes opted for a consensus-based approach. The AKP did not gain enough seats to adopt a Constitution by itself, so Erdogan promised to involve opposition parties in the process. Given the lack of successful consensus building among

politicians of all parties in the past, Erdogan's promise is being viewed with some caution.

Turkey is not experienced in writing constitutions in this way. The 1961 Constitution was written mainly by academics, and the 1982 Constitution was written after a military coup. So drafting a democratic Constitution that respects international human rights standards will be a challenging task for politicians.

As far as the right to freedom of religion or belief is concerned, a very important question in drafting the Constitution will be how far those of different religions or beliefs will be able to influence the outcome. Christians have publicly pointed out that they face serious challenges in the protection of the right to freedom of religion or belief Turkey. Other smaller groups such as Jehovah's Witnesses, Baha'is and atheists are because of their size unlikely to have any influence. The Alevis, who with perhaps one third of the population are the largest religious minority, may be the most influential of those demanding change. Civil society organisations have also demanded full religious freedom for all and a government which adopts a neutral position in relation to all religious communities. But the most influential group of all is the AKP government.

Various Sunni Muslim denominations or movements - such as the Nakshibandi, Nurcu, Suleymanci or Gulenist - may be able to influence the accommodation of diverse customs within the Sunni tradition. However, whether this accommodation will open the way for non-Sunni groups remains to be seen.

Proposals for a Constitution

Civil society organisations and platforms have been active in creating forums for the participation of various organised groups in society in order to represent views of various groups for the new Constitution. These have included belief communities, women's organisations, human rights organisations, and ethnic minorities.

The Turkish Industry and Business Association (TÜSIAD) has proposed a draft Constitution which includes a call for freedom of religion or belief to be protected in line with Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The proposal also calls for a neutral state, and stressed that the Diyanet is in its current form not compatible with the obligations of states to protect freedom of religion in a non-discriminatory manner. (The Diyanet is an agency under the Prime Minister, which has a monopoly over the provision of Islamic public services.) (see F18News 4 May 2011 http://www.forum18.org/Archive.php?article_id=1567).

The Constitution Commission of the Turkish Economic and Social Studies Foundation (TESEV) proposed on 10 April 2011 an impartial state that does not identify with any ideology, ethnicity or culture (http://www.tesev.org.tr/UD_OBJIS/Turkiyenin%20Yeni%20Anayasasina%20Dogru.pdf). The Commission's Report proposes the creation of a public entity status for belief communities that wish to organise themselves outside the Diyanet structure. The right to legal status is a fundamental point which would do much to resolve Turkey's problems in implementing freedom of religion or belief (see F18News 7 February 2011 http://www.forum18.org/Archive.php?article_id=1537).

TESEV also demands recognition of the right to conscientious objection as a constitutional right. This demand contrasts with the current situation in which this part of religious freedom is not recognised at all (see F18News 17 March 2010 http://www.forum18.org/Archive.php?article_id=1423).

Just before the elections, on 20 May the main opposition party, the Republican People's Party (CHP), published its Constitutional proposal. The CHP is the party through which the Republic's founder, Mustafa Kemal Atatürk, led Turkey as a one-party state. It won 25.90 per cent of the votes on 12 June. The CHP proposal focuses on citizenship rather than Turkishness. (Nationalistic concepts of Turkishness can be dangerous for Turkey's vulnerable groups - see F18News 21 October 2008 http://www.forum18.org/Archive.php?article_id=1206).

For freedom of religion or belief, the CHP speaks of protecting the rights of citizens (but not foreigners) belonging to different religions and denominations, changing the status of places of worship, and re-organising the Diyanet to take account of the pluralism of faith communities in Turkey. All these issues certainly must be addressed (see on the lack of legal status of religious communities F18News 7 February 2011 http://www.forum18.org/Archive.php?article_id=1537; on serious problems in acquiring and maintaining places of worship F18News 2 March 2011 http://www.forum18.org/Archive.php?article_id=1549; and on the Diyanet F18News 4 May 2011 http://www.forum18.org/Archive.php?article_id=1567).

However it should be noted that the CHP has also called for the retention of the first three articles of the current Constitution. These three Articles are unchangeable and underline Turkey's republican state structure as well as national features, such as the official language and capital city. Article 2 defines the Turkish Republic as a "democratic, secular and social state governed by the rule of law" committed to "the nationalism of Atatürk".

On 24 March, State Minister Cemil Çiçek - in response to TÜSIAD's proposal to consider that the first three Articles may be changed - expressed the AKP's commitment to maintaining the first three articles calling them "the common denominator for the 74 million [the population of Turkey]".

As both the governing AKP and the main opposition CHP express strong commitment to maintaining these Articles in the new Constitution, it would be realistic to expect that it will be so. Those who view the current understanding of secularism and nationalism as factors undercutting the protection of freedom of religion or belief must demand an interpretation of these principles in harmony with human rights law, in particular the right to freedom of religion or belief (see eg. F18News 7 February 2011 http://www.forum18.org/Archive.php?article_id=1537).

TÜSIAD, TESEV and the CHP all call for the compulsory Religious Culture and Knowledge of Ethics (RCKE) school classes to be abolished. This is certainly a necessary step (see F18News 5 January 2011 http://www.forum18.org/Archive.php?article_id=1526). But it remains to be seen how the AKP will receive these and other proposals, and how far politicians generally will be able to work together to draft a Constitution which respects fundamental freedoms. For example, it is unclear how far the CHP will be willing to move away from its previous defence of the status quo.

These three proposals also address issues such as the recording of religion on identity cards (see F18News 8 October 2010 http://www.forum18.org/Archive.php?article_id=1496). The proposals also focus on the need for a "neutral state" not favouring one faith or belief over another. So these proposals possibly outline something of a workable framework for the protection of freedom of religion or belief in the new Constitution.

None of the proposals envision a Turkey without the Diyanet. TESEV and the CHP call for the representation of different religions within it. However, many of Turkey's small and diverse religious communities may not want representation and may prefer its abolition. TÜSIAD stated that the Diyanet in its current form is not compatible with protecting freedom of religion or belief. However, the government responded that this was a very radical demand. The Diyanet issue is a complex one, and under all the proposals it seems likely that any changes will be slow (see F18News 4 May 2011 http://www.forum18.org/Archive.php?article_id=1567).

What does the AKP want?

The AKP itself has not revealed its detailed thinking on what kind of new Constitution it would like to propose. A draft Constitution was prepared for the AKP in August 2007 by law professor Ergun Özbudun (see http://www.siviltoplumakademisi.org.tr/index.php?option=com_content&view=article&id=387:ergun-ozbudun&catid=52:anayasa-taslaklari&Itemid=130). It is unclear how far this draft reflects current AKP thinking. On freedom of religion or belief, the Özbudun draft uses language similar to Article 9 of the ECHR but the language is not identical. For RCKE classes it proposes two alternatives: to retain them as compulsory, with exemption possible at the request of parents or legal guardians; or not to mention RCKE classes in the Constitution. Professor Özbudun's draft also preserves the present position of the Diyanet.

What is necessary?

To bring the constitutional protection of freedom of religion or belief into line with Turkey's international human rights obligations, two tracks should be followed.

Firstly, constitutional provisions must contain the comprehensive guarantees found in the articles protecting freedom of religion or belief of: the International Covenant on Civil and Political Rights (ICCPR) (Article 18) <http://www2.ohchr.org/english/law/ccpr.htm>; the European Convention on Human Rights and Fundamental Freedoms (ECHR) (Article 9) <http://conventions.coe.int/treaty/en/treaties/html/005.htm>; the Convention on the Rights of the Child (Article 14) <http://www2.ohchr.org/english/law/crc.htm>; as well as Article 2 ("Right to education") of the ECHR's Protocol 1 <http://conventions.coe.int/treaty/en/treaties/html/009.htm>.

An adequate legal framework for respecting the right to conscientious objection to military service must also be within the Constitution (see F18News 17 March 2010 http://www.forum18.org/Archive.php?article_id=1423). A significant step forward would be that such constitutional guarantees would also include a requirement that the right to freedom of religion or belief and other fundamental human rights be facilitated in a separate law or laws.

Secondly, the state's role and actions must come into line with its obligations under international human rights standards. This is not only a question of the actions of officials, but also of the role of state institutions. For example, in the European Court of Human Rights (ECtHR) case of Leyla Sahin v. Turkey (Application no. 44774/98), the Strasbourg Court considered "that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed" (see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=789023&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

The ECtHR has often stressed the state's duties of neutrality and impartiality, which by implication strongly questions the function and role of the Diyanet, which reports to the Prime Minister's Office, as well as the current Constitution giving the state a monopoly on religious education.

Whatever form a new Constitution takes, it will need to be complemented with adequate legislation and regulations, as well as training of public officials. It is especially important that the state and its officials positively act to implement freedom of religion or belief. Important steps forward would include the strengthening the rule of law, the Public Inspection Authority or Ombudsperson, and the Committee on the Elimination of Discrimination.

Challenges

It appears that consensus exists among Turkey's liberals, leading civil society organisations, religious minorities, legal academics, and the CHP that the new Constitution should uphold the right to freedom of religion or belief, and ensure that the state assumes a neutral role. Many would not object to this as an ideal, but it is unclear what parts of the various proposals the AKP may accept. But the AKP's past record would suggest that any predictions of its response should be cautious.

The AKP has so far been reluctant to fully implement Turkey's international obligations on freedom of religion or belief. Some legislative changes have been made such as in the Foundations Law, and the Law on Associations as a requirement of harmonization of Turkish law with EU standards. Yet these changes have made only a limited impact. Well intentioned gestures have been made, such as permission for worship once-a-year in historically significant churches of the Greek Orthodox and Armenian Apostolic churches. But at the same time the Syriac Orthodox Mor Gabriel Monastery remains under serious threat from the government's actions, and the Diyanet's mandate has recently been strengthened.

Many other freedom of religion or belief issues also remain, including but not limited to: the impossibility of training clergy, resistance to the removal of the religion section in identity cards and in the Public Registry, the lack of a legal framework for conscientious objection, problems over maintaining and acquiring places of worship, resistance to abolishing compulsory RCKE classes which teach Sunni Islam, and the lack of an adequate legal personality that is suitable to the nature of religious communities (see Forum 18's Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379).

This record of partial steps forward, without any substantial change, encourages caution in expecting the AKP to genuinely implement freedom of religion or belief in a new Constitution.

In addition, the significance of the nationalistic Sunni Muslim understanding of Turkish identity should not be underestimated as an obstacle. This understanding seeks the fostering of this identity and undercutting the cultivation of what might be seen as rival identities. Any step that would weaken this monolithic understanding of Turkish identity is likely to meet resistance from elements in both society and the government.

The importance of daily life

It is vital that the long-awaited new Constitution enshrines full guarantees of freedom of religion or belief for all, fully in line with Turkey's international human rights obligations. A new Constitution has great potential to further the protection of freedom of religion or belief – especially if drafted to address the Turkish reality of a religiously pluralistic society.

But a new Constitution on its own will not produce effective protection of freedom of religion or belief for all. A good Constitution in line with Turkey's international human rights obligations can help change attitudes and mentality only in the long run. Yet on its own - without good laws, regulations and state actions - a Constitution can have only a limited impact in generating practical change in the daily lives of people belonging to minority religious and belief communities. (END)

For more background, see Forum 18's Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379.

More analyses and commentaries on freedom of thought, conscience and belief in Turkey can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=68>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Turkey is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Turkey>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY