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TURKEY: "Denigrating religious values" - A way to silence critics of religion?

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The prosecutions of - among others - a cartoonist, a contributor to a website, and the publisher of a diary have raised concerns about how the complementary human rights of freedom of expression and freedom of religion or belief can be exercised in Turkey, including the religious freedom right not to believe. All the prosecutions relate to questioning or criticism of all religions, or Islam specifically, from an atheist perspective. Article 216 (3) of the Criminal Code ("Denigrating the religious values of a group") is the legal basis of the prosecutions. The manner in which Article 216 (3) is applied is of great importance in enabling Turkey to implement its international human rights obligations, Forum 18 News Service notes. Restrictions must not be applied "recklessly", as human rights lawyer Orhan Kemal Cengiz puts it. For this silences critics of religions or beliefs, and the right to make such criticism is an integral part of the right to freedom of religion or belief.

The prosecution of - among others - a cartoonist, a contributor to a website, and the publisher of a diary have raised concerns about how the complementary human rights of freedom of expression and freedom of religion or belief can be exercised in Turkey, including the religious freedom right not to believe. The common element is that all these cases relate to the prosecution of questioning or criticism of all religions, or Islam specifically, from an atheist perspective. Also, in all these cases Article 216 (3) of the Turkish Criminal Code ("Denigrating the religious values of a group") has been used as the legal basis of prosecution. A close look at this provision and its application is therefore necessary to understand the developing intersection of freedom of expression and freedom of thought, conscience, religion or belief in Turkey.

These cases are taking place in the context of public debate on drafting a new Constitution. This has opened up discussion in Turkey of a wide range of issues to do with freedom of religion or belief (see F18News 30 November 2011 http://www.forum18.org/Archive.php?article_id=1641).

The fundamental human right to freedom of religion or belief "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief", as General Comment 22 on Article 18 ("Freedom of thought, conscience and religion") of the International Covenant on Civil and Political Rights (ICCPR) puts it. Article 19 ("Freedom of opinion and expression") of the ICCPR complements freedom of religion or belief with the statement: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [sic] choice". As General Comment 34 on this Article puts it: "All forms of opinion are protected, including opinions of a (..) moral or religious nature".

Under the ICCPR, permitted freedom of expression restrictions "shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals". Article 20 of the ICCPR requires that states must by law prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". However, General Comment 34 notes that it is incompatible with Article 19 "to criminalize the holding of an opinion".

The Turkish Criminal Code's Article 216 (3) states: "Any person who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of the public peace". The interpretation and application of this Article should be brought into line in every case with Turkey's international obligations.

Court cases based on "denigrating religious values"

Cartoonist Bahadır Baruter is facing a maximum possible imprisonment of one year, following the publication of a cartoon he drew in Penguen magazine on 10 February 2011. The cartoon showed the slogan "There is no God, religion is a lie" written on the wall of a mosque. The Presidency of Religious Affairs Foundation's Officers' Union and a number of citizens complained about Baruter. The Istanbul Public Prosecutor's Office then brought a prosecution against him under Criminal Code Article 216 (3), and demanded the maximum sentence. The second hearing is scheduled to take place on 29 March 2012. Baruter's prosecution has been both strongly defended and attacked in some parts of the Turkish media.

A website user called A.M.S. contributed to the Eksi Sözlük (Sour Dictionary) collaborative website a comment entitled "Absurdity of Religion" on 10 August 2010. He too was prosecuted under Article 216 (3), this time by Istanbul's Prosecutor for Media Cases, Nurten Altinok. Prosecutor Altinok argued that A.M.S. went beyond legally permissible freedom of thought and criticism, and denigrated the Islamic religion and the belief that God created the universe. For this violation of Article 216 (3), Altinok asks that A.M.S. be jailed for between six months and one year. Article 218 states that if this crime is committed through the media the sentence will be increased by a half.

Today's Zaman newspaper reported on 27 December 2012 that A.M.S. said in his statement to the Police Information Unit that he did not intend to commit any crime and that he did not target a certain person or anyone in general. On these grounds he does not think he has broken Article 216 (3). The case continues.

An older case deals with the Illallah Diary published by Metis Publications in 2010. The Diary's foreword stated that the right to believe was protected by organised religion, state budgets, police and military forces. It then comments: "We, who have prepared this Diary, respect the right to believe. But we have to say that we have a bit more respect for the right not to believe." The case against Metis was opened on 26 November 2010 on grounds of "denigrating religious values" under – once again – Criminal Code Article 216 (3).

The Director of Metis, Semih Sökmen, and the Editors who prepared the Diary for publication - Müge Sökmen, Özge Çelik, Tuncay Birkan, Özde Duygu Gürkan, Graphic Designer Emine Bora, and Proofreader Eylem Can - are all being prosecuted in this case. In the third hearing, which took place on 30 November 2011, Semih Sökmen said that he bore responsibility for the Diary. However he added that in the Diary there was not one sentence that was written by the accused, as the quotations used in the Diary were statements made by prominent persons of world literature and philosophy. These included George Bernard Shaw, Umberto Eco, Fyodor Dostoyevsky, James Joyce, Albert Einstein, and Galileo Galilei. Sökmen stated that this case "should never have been opened", and that other than criticising religion and religious ideology they had no intention of denigrating the religious values of people. The case continues.

The Turkish translation of the book *The God Delusion*, by Richard Dawkins, has also been the subject of prosecution, when its publisher Kuzey Publications was accused under Article 216. In April 2008 a court ruled that the action of Kuzey's owner Erol Karaaslan did not include the components necessary to commit the claimed crime. He was therefore acquitted.

Article 216 (3)

Article 216 of the Criminal Code punishes "Offences against public peace". Paragraph 1 punishes incitement to hatred and hostility against a group in society based on "class, race, religion, denomination or geographical region". Paragraph 2 punishes acts that "openly denigrate a segment of society based on social class, race, religion, denomination, gender, or geographic region". These are legislative provisions related to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which obligates states parties to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin (..)" as well as Article 20 of the ICCPR.

Turkey ratified the ICERD on 16 September 2002, a little over one year before it ratified the ICCPR.

Criminal Code Article 216 (3) states: "Any person who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of the public peace".

There have been situations where Article 216 has been rightly applied to combat racism. An example was the prosecution under Article 216 (2) of Niyazi Capa and other members of the Osmangazi Cultural Associations Federation, who displayed posters at the entrance of their association which read "Jews and Armenians cannot enter" and "Dogs are free to enter" in January 2009. They were convicted in June 2009 and given sentences of five months in prison, commuted to 3,000 Turkish Lira (at that time 12,380 Norwegian Kroner, 1,400 Euros, or 1,960 US Dollars) fines. However, Forum 18 is not aware of a similar instance involving Article 216 (3).

Some parts of Article 216 have caused concern ever since it came into force in 2005. As the Organisation for Security and Co-operation in Europe (OSCE)'s then Representative on Freedom of the Media noted in 2005, in "Review of the Draft Turkish Penal Code: Freedom of Media Concerns", "in view of Articles 215 ["Praising an offence or an offender"] and 216, even ethical discussions of euthanasia or abortion issues in the press could constitute a crime" (see <http://www.osce.org/fom/14672>).

"Legal benefit"

According to Nurten Altinok – the prosecutor in the Eksi Sözlük website case - the "legal benefit" that is protected in Article 216 is not "God, religion, prophet, holy books, denominations" but "the religious feelings that are held for these concepts". She says, "surely a person can explain his/her view on these concepts, criticise them. But the issue that must be observed in this process is not

to hurt other's feelings."

Prosecutor Altinok partly based her argumentation on the European Court of Human Rights (ECtHR) *Otto Preminger v. Austria* judgment (Application No. 13470/87 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695774&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>). The ECtHR had not found a violation on the part of Austria for the seizure of a film, which according to the Austrian state was an attack on the Christian religion especially Roman Catholicism. The ECtHR held that the Austrian authorities did not exceed their margin of appreciation in their interference in the right to freedom of expression. The ECtHR maintained that "a uniform conception of the significance of religion in society" could not be found in Europe, so national authorities enjoy a certain margin of appreciation.

Human rights lawyer Orhan Kemal Cengiz commented to Forum 18 on 3 February that in general the Turkish judiciary has applied Article 216 "recklessly". He noted that the provisions punishing incitement against groups have been used against minorities – even though the purpose of these provisions was to protect minorities. "Article 216 (3) should be used cautiously", Cengiz commented.

Article 216 can in line with Turkey's international obligations be used to protect public order, where there is an actually existing significant threat to public peace such as a riot. Its purpose should not be to protect religions or beliefs as such from criticism or attack. For a conviction to be secured under Article 216, the judiciary should require a direct and provable threat to public order or public peace as a result of the alleged offence to be established beyond reasonable doubt.

The hurt feelings of those who complain should not be thought of as sufficient grounds for prosecutors to bring a case under Article 216. After all, feelings are difficult for a court to assess, and are in practice impossible to use as a basis for a conviction in line with Turkey's international obligations. The margin of appreciation granted to national authorities in such cases by the ECtHR, as cited in the *Otto Preminger* case, must not lead to the imposition of wide-ranging restrictions in domestic law.

Who is behind complaints leading to Article 216 (3) prosecutions?

These prosecutions were initiated following complaints made by persons. Ceyhun Gökdogan, a lawyer who is actively involved in making such complaints, told *Yeni Akit* newspaper on 31 January 2011, that he and his colleagues (whom he did not identify) closely follow "publications against the holy".

Among those he named were Dawkins' book *The God Delusion*, Nedim Gürsel's book *Daughters of God*, Burak Özdemir's book *God's Birthday*, and the *Ilallah Diary* published by Metis. Gökdogan claimed that "attacks against religion" on various websites were also prosecuted as a result of their efforts, such as *anarsist.org*, *Eksi Sözlük*, *ateizm.org*, Richard Dawkins' website and many pages on Facebook. (Dawkins' website was closed to access from Turkey in 2008 and opened to access from Turkey again in July 2011 by a court decision.) Gökdogan also claimed that "hundreds" of illegal websites were closed and articles that included "defamation" were removed from websites.

The media attention given to these cases, Gökdogan argued, created an awareness among the public that they can do something about these publications through the law. It is, he said, now understood that in Turkey "insult and mocking of religion" will not go unpunished.

Article 216 (3) does not appear to have been used in relation to the denigration of philosophical convictions, or of religions other than Islam. This may be because those who may be offended by the denigration of these beliefs do not complain to the authorities.

The experience of atheist websites

A well known atheist web forum in Turkey is *ateizm.org* – however this website is unavailable in Turkey by court order, as is *ateizm1.org*. Only *ateizm2.org* is accessible within Turkey. The forum's manager, Aydın Türk, has outlined the type of approach those who wish to take actions against websites can follow. He told *Cumhuriyet Daily* newspaper on 26 December 2010 that such websites do not want to face court cases that may close them. Türk said that Adnan Oktar (an author also known by the name Harun Yahya) and his team (who were unspecified) "usually go to prosecutors saying that there is a personal insult on a certain site against them, and get a temporary order to close the website".

Türk stated that "because the owners of these sites are usually amateurs, or do not want their name to appear in the media, and do not want to spend money to hire a lawyer, these websites remain closed". This is why the atheist forum has been forced to use more than one website. Before the atheist forum's second website, *ateizm1.org*, was closed, they received an official request from Adnan Oktar's lawyer to remove alleged insults from the website.

A website dedicated to Turan Dursun, a well-known Turkish atheist murdered for his beliefs in 1990, and entitled "The Voice of Freedom from Religion" is hosted abroad to avoid "problems", according to the website's frequently asked questions section. The site's previous host in Turkey had closed the site in 2002 without giving any reason.

In contrast, numerous websites in Turkey discuss responses to atheist claims, and these do not seem to face any legal problems.

Access to atheist websites – and even websites about the biological theory of evolution – from schools is not allowed by the Education Ministry. On 11 December 2011, Milliyet Daily Columnist Can Dünder reported and criticised a webfilter introduced by the Ministry which blocks access by schools to websites which are either atheist in perspective or provide information on evolutionary theory. However, the Ministry allows access to websites which criticise the content of the websites it blocks.

On 18 January 2012, Turkish media reported that the Education Ministry's internet service provider Turkish Telekom had stated that the Ministry itself chose to block "personal websites and blogs". It remains unclear what category atheist websites are in. The Ministry has not yet responded to Forum 18's question of 2 February, asking what criteria are used for blocking websites.

Cold climate for atheists

Atheist views often face strong public criticism in Turkey. In this context, Prime Minister Recep Tayyip Erdogan's statement on 31 January 2012 that he wanted to raise a religious generation, as opposed to an atheist one, did not contribute to a tolerant climate for atheists.

The comments by A.M.S. on the Eksi Sözlük website were the basis of a campaign by a number of people, including Taraf Daily columnist Mehmet Baransu. He declared on his Twitter account: "What a pity if these people are not going to stand up against the filth of Eksi Sözlük. No one should call themselves Muslim. No one can mock my religion. I don't care about being a democrat if someone is cursing my God and prophet (..) If this country will not stand up against this disgrace, think about how you will face our Lord and prophet." Other Turkish columnists however, have stated that whatever one thinks of A.M.S.' views on Islam, the comments made were legal and should not be legally prosecuted.

More concretely, no-one who is not registered by the state as a Jew or Christian – including atheists and agnostics, Muslims including Alevis (despite an ECtHR judgment), Baha'is, and all others - can exempt themselves or their children from compulsory Religious Culture and Knowledge of Ethics (RCKE) school classes. Atheist parents have fought court cases without practical effect on this issue (see F18News 5 January 2011 http://www.forum18.org/Archive.php?article_id=1526).

Being an atheist in Turkey may not be too difficult if one is unnoticed and does not mind being thought of as a Muslim. Yet revealing oneself as an atheist and advocating atheist beliefs - even in the virtual world where one can be somewhat anonymous - seems to be very difficult. The monitoring of atheist websites so as to take legal action against them reveals the relatively weak position of the owners of these sites. They face financial costs and public exposure if they engage in a legal battle, making such cases an unequal competition of interests. People who are not prepared to face such prosecutions may impose self-censorship.

The application of Article 216 (3)

In this unequal competition of interests the law and the judiciary have a crucial role to play, and this is why their application of Criminal Code Article 216 (3) is so important. Prosecutors and judges must bear in mind that scrutiny of the application of restrictions on freedom of expression cannot be based on the protection of feelings.

Restrictions must be interpreted narrowly, prescribed by law, based on the protection of the rights and freedoms of others, made only in response to a direct and provable threat to public order, and necessary in a democratic society. This approach is one of the bases of the human rights agreements – such as the ICCPR and the ICERD – that Turkey has solemnly undertaken to implement.

The margin of appreciation granted to national authorities by the ECtHR in cases where the place of religion in a society comes into play must not be viewed as a carte blanche to apply restrictions "recklessly", as human rights lawyer Orhan Kemal Cengiz puts it. For this silences critics of religions or beliefs, and the right to make such criticism is an integral part of the right to freedom of religion or belief. Given the way restrictions have been broadly applied, efforts of non-state actors to eliminate the atheist voice in the Turkish virtual or publishing world has created a fierce legal struggle around the complementary human freedoms of expression, thought, conscience, religion or belief. (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>.

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