

13 December 2005

TURKEY: Religious communities need fundamental reform of Constitution

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Long-running attempts to improve the Law on Foundations are not the way to introduce true individual and collective religious freedom in Turkey, argues Otmar Oehring of the German Catholic charity Missio. Only some religious minorities are allowed such foundations, while foundations that do exist are subject to intrusive government interference. In this personal commentary for Forum 18, Dr Oehring maintains that Turkey needs instead to tackle the fundamental problem of the lack of religious freedom. This can best be done, he contends, by both changing the Constitution and bringing in an accompanying law to concretely introduce the full individual and collective religious freedom rights spelled out in the European Convention on Human Rights.

Turkey's Law on Foundations plays a central role in the country's religious freedom situation, as it directly affects religious communities' ownership of property. Proposed amendments to the Law – which includes provisions governing "community foundations" for non-Muslim religious/ethnic communities – are facing a tortuous process. It is not even clear if the Ankara parliament will ever approve them. First discussed in late 2002 under the government led by Abdullah Gul in response to pressure from the European Union to bring Turkey's legal provisions into line with European practices on human rights, discussion has continued under the government of Recep Tayyip Erdogan.

As it became increasingly clear that it would be impossible to streamline the existing Law on Foundations, a draft of a new Law was finally prepared including provisions governing "community foundations" for non-Muslim religious communities. But once again these provisions do not satisfy the concerned groups as the amendments they proposed have not been included. Meanwhile the draft was sent to the relevant commission of parliament in May 2005, which was due to decide on the draft before summer this year. This however has not happened up to now.

The changes being proposed would be important for those non-Muslim communities which have "community foundations", such as the Armenian Catholic, Armenian Apostolic, Armenian Protestant, Bulgarian Orthodox, Chaldean Catholic, Georgian Catholic, Greek Catholic, Greek Melkite Orthodox, Jewish, Syriac Catholic, Syriac Orthodox and Syriac Protestant. In theory any improvement to the Foundations Law would allow them to keep the property they currently hold (often rather precariously) and recover property taken from them over the past seventy years.

Although in the past there were several hundred such foundations for non-Muslim communities owning thousands of properties, the government's Directorate-General for Foundations now says 160 are recognised by the state (compared to the 208 recognised by the state in 1948). The fate of the remainder and the property they administered remains unclear.

The existing Foundations Law is limited as it covers only some non-Muslim minority communities. The Roman Catholic Church, Protestant Churches (whether historical Churches or free Evangelical congregations), Jehovah's Witnesses, Baha'is and other non-Muslim groups have no such foundations – and are unlikely to be allowed to have any.

Two examples illustrate the complexity of the current situation. The Syriac Catholic Church does not have a community foundation (cemaat vakif) in Istanbul but a foundation in accordance with civil law. This had never before been seen in Turkey, because at the time it was founded, a foundation with a religious purpose could not be set up (see F18News 12 October 2005 http://www.forum18.org/Archive.php?article_id=670). So Syriac Catholics in Turkey now have one foundation in Istanbul founded under the Civil Code, and a number of community foundations in the south-east of Turkey.

In December 2000 the Altintepe Protestant Church in Istanbul gained foundation status, which was confirmed by the Supreme Court. However this is not to the liking of the Directorate-General for Foundations, which cannot overturn a Supreme Court decision to grant foundation status, but which has since blocked foundation applications from at least two other Protestant churches.

Yet more fundamentally than the individual cases of some communities, I believe that trying to change the Foundation Law – even by trying to include at least all non-Muslim religious communities within its scope – is not the way to go to introduce full religious freedom into Turkey. The whole legal framework governing religion has to be changed.

Most crucially, the country's Constitution needs to be changed. At present, its Article 24 covering religion is so narrowly drawn that it protects only the right to worship. It includes no guarantees about the freedom to change one's faith or to join together with others in religious communities. No guarantee is given of religious communities' rights to organise themselves freely as they choose, to own property directly, to have legal recognition or to train their own personnel.

The Constitution must include a paragraph in line with Article 9 of the European Convention on Human Rights (ECHR), which guarantees full religious freedom. As the article notes, this right includes freedom for individuals to change 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". As well as a constitutional change guaranteeing full individual and collective religious freedom rights, a law is needed explaining this in practice.

The European Commission, in its recent Proposal for the Accession Partnership 2005, specified the following measures for Turkey to take:

"Freedom of religion

- Adopt a law comprehensively addressing all the difficulties faced by non-Muslim religious minorities and communities in line with the relevant European standards.

Suspend all sales or confiscation of properties which belong or belonged to non-Muslim religious community foundations by the competent authorities pending the adoption of the above law.

- Adopt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities in line with the European Convention on Human Rights and taking into account the relevant recommendations of the Council of Europe's Commission against Racism and Intolerance.

- Establish conditions for the functioning of these communities, in line with the practice of Member States. This includes legal and judicial protection of the communities, their members and their assets, teaching, appointing and training of clergy, and the enjoyment of property rights in line with Protocol No 1 to the European Convention on Human Rights." (See http://europa.eu.int/comm/enlargement/report_2005/pdf/package_ii/com_559_final_en_tr_partnership.pdf)

If the Constitution was changed and a law was passed that together guaranteed full individual and collective religious freedom rights, it would be very simple to grant religious communities and their entities legal status (something which does not exist at present). There would then no longer be a need for the peculiar arrangements of the Foundations Law.

The government has been reluctant to resolve existing problems caused by the regulations governing community foundations, as it fears it might have to return all the properties seized from Christian and Jewish community foundations since the 1930s. A wave of seizures occurred after 1936, when an inventory of property was drawn up, and again after a controversial 1974 Court of Appeal ruling that all property acquired by community foundations since 1936 was illegally owned. Many of these confiscated properties are now being used by the state for other purposes, but many more have been sold by the state. Some of these seized properties were places of worship, but most were community-owned schools, hospitals or land whose income supported the communities.

The government cannot kill off the proposed amendments to the Foundations Law, as it would risk killing off any chance of moving forward on EU accession. But the main problem remains that the state is unwilling to have to return all these properties and fears that, if properties in the hands of third-parties could not realistically be returned, it would have to offer perhaps substantial compensation. It fears any amended Foundations Law might force it to do so.

Although Turkish-based and international lawyers working with Turkey's non-Muslim religious communities are looking at the proposed amendments and pointing out legal problems with the current draft, they also argue strongly that this is dealing with the wrong issue. They complain that the proposed changes are still predicated on the myth that such foundations only existed because of the 1923 Treaty of Lausanne and that only those communities which had foundations then can have them now.

Because religious communities in themselves cannot get legal status (in theory the Law on Associations does allow it, though courts are unlikely to accept this in practice), they cannot own any property. Someone who does not exist cannot own property. As long as religious communities like the Alevi Muslims, Roman Catholics, Protestants, Baha'is and Jehovah's Witnesses have no legal status they cannot organise themselves administratively (they cannot even run bank accounts), and this even impacts on them spiritually. Moreover, the state can interfere at any time.

A further problem with the question of recognition of churches or religious groups as Associations – which some Protestant churches have encountered – is the attitude of the officials dealing with the application. If they are favourable, the application may be granted. If officials – and indeed judges – are hostile, recognition may not be granted.

Many lawyers working with non-Muslim communities make a compelling case that any religious community should have rights – not only to own property but to run themselves as they choose in line with Article 9 of the ECHR.

The lawyers believe that it is time to abandon all discussion of regulations that regulate these rights and reject any suggestion that the answer is to allow other religious communities to create the same type of foundations under restrictive state controls. The argument that including the wording of Article 9 of the ECHR in the Turkish Constitution would be an excellent starting-point for solving the existing problems of religious communities – both Christian and non-Christian – is compelling.

The fundamental problem is that the existing type of foundation – which remains under the intrusive control of the Directorate-General for Foundations, which even has to approve any basic building repairs – represent in the eyes of the Turkish government ethnic-religious communities, not religious communities without strong ethnic ties. In law the foundations have nothing to do with specifically religious communities, even though they administer their places of worship and other property.

Yet a religious community is not organised as a foundation with an elected board under the control of the state. Unlike such foundations, many Christian Churches for example are led by spiritual leaders whose authority derives from their position, not from being elected. The foundation law's model is not the right one for religious communities that should have the right to determine their own governing structures themselves.

Besides, the state has frequently interfered in the election of board members, removing those it does not like – or even on occasion the whole board, saying it was not the board it expected to be elected. Armenian Apostolic and Greek Orthodox foundations have particularly suffered from this.

Another oddity is the distinction made between "community foundations" belonging to non-Muslim minorities, and those for the Muslim community, which are termed merely "foundations". Even though they too are controlled by the Directorate-General for Foundations, they are controlled differently. Moreover, Muslim communities are not free to establish new foundations either.

Amid continuing Turkish foot-dragging on any changes to the legal framework for religious communities, the mood of outsiders has changed. At first, many in the European Union and its institutions believed that improving the Foundations Law was the closest Turkey would get to ending restrictions on Turkey's religious communities. Even Europeans from countries with full religious freedom did not believe it would be possible to persuade Turkey as well to introduce full religious freedom for all, including for religious minorities. But this has changed. I believe the European Commission is convinced of the importance of real change. It is no longer looking at the symptoms but at the core problem.

Views differ as to whether it is better to start with a revised Foundations Law and then, once that is achieved, move to a more fundamental review of the core religious freedom issue, or whether it is better to start work now on a totally new law guaranteeing religious freedom and recognising religious communities in law.

Either way this will be difficult, given the lack of readiness in Turkey to address the unacceptable restrictions on religious communities. People feel they have already conceded too much on the road to Europe, as do the powerful military and the bureaucracy which clings to their somewhat absurd interpretation of the secularist ideas of Kemal Ataturk. Even some in the governing Justice and Development Party (AKP) would resist any changes. Real Islamists too would not understand that introducing religious freedom should also benefit Muslims. Only part of the AKP and liberal intellectual circles advocate any liberalisation.

There are indications that some parts of the AKP leadership might understand fully what religious freedom means and do indeed want controls on religious communities to be lifted, but do not dare to express their views for fear of provoking the still powerful military. Whether they understand religious freedom in the same way as the European Convention in Human Rights is another question. Some suggest that there is a hidden agenda of creating an Islamic State.

Turkey's religious minorities remain dissatisfied by the proposed changes to the Foundations Law. The proposed changes – if they are ever adopted – will not introduce true de jure and de facto religious freedom. I believe that tackling the core issue of religious freedom has to begin with changing the Constitution to guarantee full individual and collective religious freedom rights, and passing a law to put this fully into practice.(END)

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http://www.forum18.org/Archive.php?article_id=670

For a personal commentary on religious freedom under Islam, see http://www.forum18.org/Archive.php?article_id=227

For a personal commentary assessing western European "headscarf laws," see http://www.forum18.org/Archive.php?article_id=469

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<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=mideast&Rootmap=turkey>

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