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A Religious Administration to Secure Secularism:

The Presidency of Religious Affairs of the Republic of Turkey

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Abstract:
This article is primarily concerned with an agency, the Presidency of Religious Affairs of the Republic of Turkey, which was instituted to regulate Islamic services, but in actuality was used as a means of 'securing' secularism in Turkey for over a period of 80 years. This apparent paradox in terms was the muse which led me reflect on the representation of the construction (and deconstruction) of 'modernity' and of 'state and religion' in Turkey. In order to develop my argument I focus on the legal and bureaucratic structure of the Presidency of Religious Affairs.

Within the context of the worldwide resurgence of religion, Turkey constitutes a sociologically illuminating and theoretically challenging case. To vest sovereignty fully and unconditionally in the nation of the new born state of Turkey founded in 1923, indicated a new political choice of a modernization project that was based on secularism and the nation-state. The statements of President Mustafa Kemal Atatürk indicated that the principle of secularism, along with republicanism, was the foundation of the new regime and the nation-state. Atatürk's policy on secularism was to remove religion from the public realm and reduce it to a matter of the faith and practice of the individual, so that the principle of freedom of religion was to protect "individualised religion" only.

After the foundation of the Turkish Republic the state elite, through a series of legal regulations, tried to secure secularism. One of the most important legal tools in this context was the Act dated 3rd March 1340 (1924) no. 429 on the Abolishment of The Ministries of Seriyye (Religious Affairs) and Evkaf (Pious Foundations). The new legislation preferred to place the management of religious affairs in the hands of an administrative bureau, not to a ministry in the cabinet. This was a key part of the overall policy of the founding political decision-making elite of Turkey who wanted to establish a strictly secular state and to transform society into a modern one. They did not want to have a unit within the cabinet dealing with religious affairs. Instead, by assigning religious affairs to an administrative unit, the ruling elite both took religion under their control and at the same time managed to break the potentially sacred significance of the Presidency of Religious Affairs.

Atatürk's policy on secularism was to remove religion from social affairs and ‘social tasks and to confine it to the conscience of people’, and make it a set of beliefs that do not go beyond the personal lives of people. Thus the aim was to reduce religion to a matter of faith and prayer, and the

principle of freedom of religion and conscience was to protect only ‘individualized religion’ and prayers. Religion was to remain in the personal domain and only to require state intervention to the extent that it concerns and objectifies the social order. The Turkish Republic was designed to be a strictly temporal state. Mustafa Kemal stated this clearly: ‘We get our inspirations not from the heavens or invisible things but directly from life.’([i]) The purpose of the new leadership in this period was to secularize and modernize not only the state and the ‘political’, but also to transform society into a modern body. In my view, this is the biggest difference between Republican and Ottoman westernization, and secularism is the pillar for the Republican founding elite which designed the ‘Presidency of Religious Affairs’ as an administrative tool to ‘regulate’ Islam.

A brief history of the Presidency's legal foundations

With the Act dated 3rd March 1340 (1924) no. 429 on the Abolishment of The Ministries of Şeriyye and Evkaf, the administration of religious affairs was assigned to a 'presidency' within the central administration. That the first political decision-making cadres who wanted to establish a secular state and even a secular social structure did not prefer to assign religious affairs to a unit within the Cabinet was consistent with their policy. By assigning religious affairs in the context of services related to prayer to an organization within the technical administration, these cadres brought the place of religion in social life under control on the one hand, and ensured that its function would be temporal by keeping it in the secular structure on the other.

The first article of Act no. 429, the statement that, ‘In the Republic of Turkey, the Grand National Assembly of Turkey and the Cabinet which is formed by the Grand National Assembly of Turkey are responsible for the legislation and execution of provisions concerning the affairs of people; and the Presidency of Religious Affairs will be formed as a part of the Republic for the implementation of all provisions concerning faith and prayer of the religion of Islam, and the administration of religious organizations’, is the reflection of Kemalist secularism. With this regulation, religious affairs concerning faith and prayer were made the concern of the Presidency of Religious Affairs, and all other areas of interest were considered to be under the legislative power of the Grand National Assembly of Turkey, thus *sharia* as a legal system was abolished.

As per this enactment, the Presidency of Religious Affairs was under the Prime Ministry. The President of Religious Affairs was appointed by the President upon the proposal of the Prime Minister. In this Act, the organizational structure of the Presidency and positions under it were not specified except by the provision that ‘the place where muftis would refer to is the Presidency of Religious Affairs.’ Legal regulations concerning the administrative structure of the Religious Affairs organization in this period can be found in the ‘Budget of the Presidency of Religious Affairs’, which was a part of the annual Budget Act.

The administrative structure of the central and provincial organizations of the Presidency of Religious Affairs was first stated in the 1927 Budget Act. In the ‘Permanent Positions Table’ attached to the Act dated 30th June 1929 no. 1452 on the unification and equation of the salaries of civil servants, which was published in the Official Gazette and went into effect on 30th June 1929, the permanent positions of the Presidency of Religious Affairs were first stated, and as per the

Article 2 of the said law, this table was considered as the organizational law for the Presidency of Religious Affairs until a new law would be made, that is until 1935. With this regulation, the claims made during the previous meetings of the Assembly, namely, that there was a lack of legal basis, were rendered invalid. Since the management and personnel (*hademe*) of all mosques and prayer rooms were transferred to the Presidency-General for Foundations by June 1931 with the 1931 fiscal year budget law of the Presidency-General for Foundations, adopted on 8th June 1931 and published in the Official Gazette on 13th June 1931, the personnel of the Presidency of Religious Institutions and Presidency of Supplies which had been under the central organization of the Presidency of Religious Affairs were transferred with their posts to the Presidency-General for Foundations. Thus the powers of the Presidency of Religious Affairs were considerably reduced. Furthermore, article 7 of the Act stated that mosques and prayer rooms would be classified according to 'real needs', and duties that could be combined would be specified in order to determine new positions, so that the personnel were also reduced. Despite all these changes, the legal regulation was passed in the Assembly without any objection. The annulment of article 5 of the Act no. 429, which was inconsistent with the said law, was clearly stated by the Grand National Assembly decision on 4 January 1932.

Act No. 2800 on The Organization and Duties of Religious Affairs that was passed on 14th June 1935, and published in the Official Gazette on 22nd June 1935, is the first organizational enactment of the Presidency of Religious Affairs. But, more importantly, Act no. 5634 came into effect on the 29th April 1950 after the passing of a draft bill (dated 7th March 1950) on 23rd March 1950, towards the end of the Republican People's Party government. Thus the Günaltay Cabinet changed considerably the organization of religious affairs. This law is a reflection of a religiously different climate of the late 1940s that affected the 7th Republican People's Party Assembly in 1947. This change in climate can be observed also in speeches made by various deputies during the debates on this law, in which they stated that they were glad about the positive changes in religious organization and in the status of relevant individuals.([ii]) The difference in attitude observed in these proceedings compared to previous, related laws is especially interesting. Previous debates were generally just votes on the proposed regulations. Furthermore, the statement 'necessity and need reflected by continuous applications and dictated requests in party congresses' in the preamble of the Act no. 5634 was another indication of the same change in climate. By this legislation, the name 'Reislik' was changed to the name 'Başkanlık' which reflected a change in the use of the Turkish language (Reis is the Ottoman equivalent of 'president', whereas 'başkan' is modern Turkish) and created several new units within the organization. Moreover, the management of mosques and prayer rooms and mosque personnel which had been transferred to the Presidency General for Foundations by the 1931 Budget Act was given back to the Presidency of Religious Affairs.

The organizational and personnel structure of the Presidency of Religious Affairs, introduced in 1950 by Act no. 5634, was preserved until 1965. The draft bill related to the organization proposed to the Grand Assembly of Turkey after the adoption of the 1961 Constitution was accepted and enacted after lengthy debates on 22 June 1965. The Act no. 633 on the Organization and Duties of the Presidency of Religious Affairs, which was published in the Official Gazette on 2 July 1965 and came into effect on 15 August 1965, was in my view a sign of a different mentality compared to

that of the founding elite. In this regulation the duties of the Presidency of Religious Affairs were stated as ‘to carry out affairs related to the beliefs, prayers and moral foundations of Islam, to enlighten society about religion and to manage places of prayer.’ To create an administrative body to offer services to meet the general, daily needs of practicing Islam may be justifiable as ‘public service’ where about 95% of the population belongs to Islam; however to assign to this organization a function such as ‘to carry out affairs related to moral foundations’ whose content is legally ambiguous, indicates that the state preferred to use the organization as an ideological tool in a manner different from the original intent of the founding elite. Such a wording in an issue as delicate as the regulation of religion in a secular state reveals that the state's choice of propagating and protecting a particular religion is completely incompatible with the notion of a secular state. Although one may assume that the legislators of the 1960s aimed to correct the Kemalist mistake of not adequately recognising the role of Islam in the formation of the Turkish individuals’ identity, the legal inappropriateness of such a regulation is obvious.

After the 1965 enactment, most legal regulations regarding religious affairs took the form of governmental decrees. Since both in the Constitutions of 1961 and 1982 it is stated that the organization shall be regulated by laws, this practice is obviously against the law. More importantly, both the fact that a great majority of legal regulations related to the organization was annulled by the Constitutional Court, as explained below, and that the regulations about its duties, in my view, are compatible neither with secularism as a constitutional principle nor with any functions of a modern state, severely damage its legal status.

In 1975, the Grand National Assembly of Turkey enacted a new law that altered the existing system regarding religious affairs to a large extent. New legislation titled Act no. 1893 was sent to the President for ratification on 6 May 1975, but President Korutürk, who was then in office, sent the legislation back to the Grand National Assembly of Turkey to be reviewed again, in accordance with Article 93 of the Constitution of the Turkish Republic. During the revision of law No. 1893 in the Assembly, some fundamental changes were made on articles other than the ones that had led the President to return the law. In accordance with constitutional procedures in regards to legislative activities that did not require the President’s approval for a second round, the Assembly enacted the regulations as an Act dated 26th April 1976 No. 1982, and sent it to the Presidency on 30th April 1976 to be published. However this enactment was considered by the Presidency to be a new law because of the changes beyond the scope of the stated reasons for the rejection of Act No. 1893, and it was therefore sent back to the Grand National Assembly of Turkey on 7th May 1967 to be reviewed again. Upon rejection of this demand, the President filed a case against Act No. 1882, and the Constitutional Court decided that the enactment was "incompatible with the Constitution in form" on 30th April 1979. This Constitutional Court decision was published in the Official Gazette on 11th May 1980, with the requirement that it should be revised one year later. However, neither on this date, nor later, was any legal regulation enacted except that, as explained above, the legal domain was regulated by cabinet decrees and other administrative regulations.

Since there is still no change regarding legislation, a question to be asked is whether the provisions of Act No. 633 are in effect once again. This problem is solved by two decisions of the Council of State. A Third Chamber of the Council of State decision provides that a previous Act

does not come into effect automatically, because the duty and authority of enacting and amending laws belong exclusively to the Grand National Assembly of Turkey and the decisions of the Constitutional Court are not retroactive.([iii]) The General Board of the Council of State ratified this decision by decision E.1971/22, K.1971/36 and dated 24th May 1971.([iv]) Thus, it cannot be claimed that after the annulment of Act No. 1982 came into effect, Act No. 633 would come into effect. In short, the Presidency of Religious Affairs can be defined as a legal oddity, which continues to exist as a very powerful administrative unit despite its lack of a technically legal basis.

The concept of public service in administrative law and religious activities

The absence of a clergy in Islam - unlike Christianity with its church system - is one of the most important facts legitimizing the state's acceptance of religion as a public service.([v]) According to the classical version of administrative law, in cases where there exists a continuing and unsatisfied social need and there is a high probability that the non-satisfaction of this need will generate social discomfort, the state may assume the duty of organizing the fulfilment of the said need as a public service.([vi]) However, according to Süheyp Derbil, a constitutional law professor, a secular state cannot provide such a public service since public services are financed through the taxes and duties paid by all citizens: 'Taxes are paid by Muslims, Christians and non-believers. If a non-believer who thinks that all religions are lies and wizardry fuelled by ignorance and groundless fears, and who supports that we should work hard to free mankind from the influence of religions is forced to pay taxes to finance religious ceremonies and pay wages to religious personnel, it is not only the secular character of the state that will be damaged, but also religious freedoms themselves'.([vii]) This issue has been subject to heated debates among the group who prepared the Istanbul draft for the 1961 Constitution. According to Lutfi Duran, an administrative law professor, who opposes Article 12/3 of the draft which states that 'In line with the provisions of the Constitution, the state organizes and provides public services for meeting the religious needs and providing religious training to the majority of the people, and if it deems necessary to members of minority religions and sects', the secular state 'can only be involved in the non-religious needs of the public and may dispose of the taxes it has collected from them exclusively for this purpose. Affairs related to the hereafter cannot be part of public services.'([viii])

However if we consider that public services can be defined as an activity managed by public legal entities or by private entities supervised by the state for the purpose of meeting a shared and general need which has acquired a certain importance for the people, the state's involvement in religious affairs may be seen as something that does not conflict with secularist principles.

As Sıddık Sami Onar states, "To provide the personal, material and financial means for the fulfilment of the need for prayer, which is considered to be a collective need, and to set up the organization necessary therefore, cannot be said to contradict the principle of secularism."([ix])

However the crucial point here is the provision of services from a 'technical' point of view. An assessment of the duties of the Presidency of Religious Affairs in this context reveals that duties such as 'the management of places of prayer' and 'providing correct publications of the Koran' are indeed public services fulfilling a collective need. However, the state obviously makes use of the

Presidency of Religious Affairs as an administrative tool to propagate official ideology regarding Islam while fulfilling duties like “enlightening society about religion” and “religious education”. An interesting point here is the differing policies of administrations over time from being strictly positivistic to somewhat religious. On the other hand, the monopoly over the management of pilgrimage activities is a for-profit activity, as past practice clearly shows.

The principle of equality, construed and applied as ‘equality in blessings and burden’ by the Constitutional Court, requires that all persons eligible for a public service should be able to benefit from such service in a free and equitable manner. The first problem that arises when the subject of a public service is religion is that the state is focused on a single religion rather than on services which cover the whole population. However as concerns our present subject matter, this problem is relatively easy to solve, because Islam is the religion of the majority of the people and services related to other religions are provided by the respective communities according to the provisions of the Lausanne Treaty. However, a problem emerges in services to be offered to different Muslim groups having different beliefs. This is where the Presidency of Religious Affairs is criticized most frequently and severely with respect to equality.

It has been observed that the religious belief promoted by the State is closer to the Sunnite tradition and that the Presidency of Religious Affairs and its officers or spokespersons have sometimes tended to display hostility towards Alevi and Shiite citizens. A draft law prepared in 1963 for defining the organization and duties of the Presidency of Religious Affairs proposed the establishment of a “Presidency of Religious Sects.” This proposal, however, was criticized on the grounds that it could “pave the way for official separation” and was never implemented.

The Presidency of Religious Affairs claims that Alevis and Sunnites are not subject to discrimination because, except for certain local customs and beliefs, there are no differences between these two sects as to basic religious issues; and this actually indicates a denial of any separate ‘Alevi’ religious identity. The fact that Sunnites constitute the majority does not justify the state’s disregard for other sects, since there is no majority or minority religion or sect in a secular state. The state should be impartial against all religions and sects. The Presidency of Religious Affairs’ pretending to be unaware of the religious belief of the Alevi population, and its building of mosques in Alevi villages, is obviously a pressure exerted by the state to implant the Sunnite belief in this section of society.

Religious personnel as civil servants, and secularism

In an article entitled “The Civil Bureaucracy” published in 1964 as part of a collection of articles discussing the process of political modernization in Turkey and comparing this process to a similar process in Japan, the author states that the obvious result of the establishment of the Presidency of Religious Affairs was to suppress the institution of religion and to dissolve its function and personnel inside civil bureaucracy.([x])

This statement is acceptable within the framework of the fact that the legislators of 1924, reflecting the ideology of the first years of the Republic, created the Presidency of Religious Affairs in line with their efforts to institute a new political and social structure. However the changes in the

political conjuncture which emerged due to certain factors during the process have also changed the structure of the Presidency and the way it was conceived by those in power. This phenomenon is also evident in the relevant legal texts.

The existing legal structure provides a dual nature to the Presidency of Religious Affairs. On one hand, one gets the impression that religious life is being controlled by the secular state. This is assumed in so far as the Presidency is directed by managers loyal to the secular state. However, the extensive network of the Presidency of Religious Affairs all over the country, which no other administrative body enjoys, is a great opportunity for all governments, regardless of their political positions; thus the Presidency of Religious Affairs as an administrative organism may indirectly obtain power over the government.

The reason for the founders of the Turkish Republic to include a body like the Presidency of Religious Affairs in the administrative structure of the country should be sought in the system of rules and balances instituted for the purpose of preserving the political structure which they were trying to build in line with their ideology, which might be termed "secularism," although this word was not explicitly mentioned in the Constitution and only became apparent through the policies they followed subsequently. Paradoxically, in this context, the state employs the Presidency of Religious Affairs against religion and its influence on the socio-political level.

Conclusion

If we consider that the new order was being established in a country where the population predominantly consists of the members of a single religion - Islam, which has an independent political nature, unlike Christianity where certain power struggles have already been experienced and resolved - it becomes evident that the legal structure created by the founders was in keeping with their intentions. The political picture which emerged after certain developments, such as the exclusion of the phrase "official religion" from the Constitution - which had evidently been postponed until 1928 in view of the political situation - and the addition of the word "secular" to the text in 1937, confirms that the "will of the people" replaced divine laws as the source of legitimacy. The resulting conception of secularism is not characterized by the "separation of church and state," as the Kemalist discourse puts it, but by the fact that the political legitimacy of the state, and thus the legal system, is based on rules and institutions outside the realm of religion. In my view, from the very first days of the Republic, secularism in Turkey has meant safeguarding the state against social forces, as the 1982 Constitution has once again strongly proven. The official conception of secularism in Turkey complements this statist tradition. This tradition is characterized by a denial of the existence of autonomous political and cultural realms within society, regarding these as threats against the existence of the state and advocating that legitimate social practices are limited to practices supervised by the state. The official ideology inevitably approaches religion in line with this statist tradition. In other words, although it might seem contradictory, the impossibility of separating the state and the church in Islam resulted in a situation where religion was regulated by being subordinated to bureaucracy.

I think that, in today's Turkey, which undoubtedly is faced with conditions very different from

those of 1924, we should leave the task of re-questioning religion to the parties involved and deal with religious affairs within the framework of two basic constitutional principles: the first one is freedom of conscience, one of the basic freedoms and duties, while the second is secularism, one of the traits of the Republic. A genuine democratic society can only be created by fully incorporating these principles into social life.

Literature and Notes:

i. Atatürk, *Söylev ve Demeçler (Speeches and Statements) 1919-1938*, v. 1, İstanbul 1945, 389.

ii. For speeches by the Seyhan deputy Sinan Tekelioğlu and the Erzurum deputy Vehbi Kocagüney see *TBMM Zabıt Ceridesi (GNA proceedings)* VII, 25 (1950), 838.

iii. State Council Third Department, E. 1970/444, K. 1971/10, T. 9 January 1971. *Danıştay Dergisi (State Council Journal)*, 4 (1972) 69-70.

iv. For this decision *see Danıştay Dergisi (State Council Journal)*, 4 (1972) 71-75.

v. According to a former Director of Religious Affairs, Dr. Lütfi Doğan, "In Islam, unlike Christianity, there exists no organization for assuming this duty in the name of Allah. This is because a Muslim is only responsible for his/her own beliefs, prayers and religious activities. Allah is the only judge. Allah is not represented by anyone. Those who study religious sciences are not clergymen or mediators; they are only trainers who serve and help believers for being good Muslims. For this purpose, the Directorate of Religious Affairs was established in 1924 with the objective of protecting the beliefs and conscience of Muslims and helping them in their prayers". See "Laiklik ve Yeniden Yapılanma", *Milliyet*, 4 March 1989.

vi. S. S. Onar*, İdare Hukukunun Umumi Esasları, (Basic Principles of Administrative Law)*, Vol. 2, 3rd edition, Istanbul 1966, 722-3.

vii. Süheyp Derbil, *İdare Hukuku* (*Administrative Law)*, Vol. 2, Ankara, 1949, 466.

viii. T.Z.Tunaya, *İslamcılık Cereyanı (Islamism)*, İstanbul 1962, 248-49.

ix. S. S. Onar, *ibid*, 722. According to Prof. Onar, a sociological approach to the concept of public service requires that, if a need emerges in a certain field, and if such need is continuous and its non-satisfaction could damage public order, a public service has to be provided in that particular field. See *ibid*, 37.

x. R. L. Chambers, *The Civil Bureaucracy, Political Modernization in Japan and Turkey*, Princeton-New Jersey, 1964, 107.

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