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Religion, Politics and the Politics of Religion in Turkey

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Liberales Institut

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I. Historical foundations of Religion and Politics in Turkey

Analysing the relations between religion and state in Turkey, just like other structures of Turkey's Republican era, cannot be possible without making comparisons with the Ottoman period and determining the points of rupture and continuity between the two eras. Three different approaches appear in Ottoman studies on state and religious matters.

As for the first approach, if one starts by recognizing a duality in legal norms existing in the Ottoman world¹ it may be proposed that the Ottomans had two separate sources of legitimacy: those depending on Islamic canon law and those depending on the Sultan's acts: However this apparently did not constitute a structure that would be called "the secular".

1 Ömer.Lütfü Barkan, 'Osmanlı İmparatorluğu Teşkilat ve Müesseselerinin Şer'iliği Meselesi', XI:3-4 *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* (1945), pp. 203-204; Karen Barkey, 'Rethinking Ottoman Management of Diversity,' in A.T. Kuru & A.Stepan, *Democracy, Islam & Secularism in Turkey* (New York: Columbia University Press, 2012), pp. 19-21; Haim Gerber, *State, Society and Law in Islam* (Albany: State University of New York Press, 1994), pp. 61-78; Ümit Hassan, *Osmanlı: Örgüt-İnanç-Davranış'tan Hukuk-İdeoloji'ye*, (Istanbul: İletişim Yayınları, 2003- 5th ed.), pp. 159-242, Uriel Heyd, 'Eski Osmanlı Ceza Hukukunda Kanun ve Şeriat,' *26 Ankara Üniversitesi İlahiyat Fakültesi Dergisi* (1983), pp. 633-685; Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997) pp. 24-111; Halil İnalçık, *Osmanlı'da Devlet, Hukuk Adalet* (Istanbul: Eren, 2005-2nd ed.), pp. 30-36; İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı* (Istanbul: Hil yayın, 1995-3rd ed.), pp. 154-157 (Not taking an explicit side on this issue, İlber Ortaylı confines himself to discussing the matter along the line that the Ottoman system could not be defined as a secular one; see Ortaylı, 'Osmanlı Devletinde Laiklik Hareketleri Üzerine,' in E. Kalaycıoğlu – A.Y.Sarıbay (eds.), *Türkiye'de Politik Değişim ve Modernleşme* (Istanbul – Bursa: AlfaAktüel, 2007), pp. 157-170); Erol Özbilgen, *Osmanlı Hukuku'nun Yapısı* (Istanbul: Nihal, 1985), pp. 39-84; Sami Zubaida, *İslam Dünyasında Hukuk ve İktidar* (Istanbul : İstanbul Bilgi Üniversitesi Yayınları, 2003), pp. 170-189. Also, for an argument focusing on Cornell Fleischer's point of view, see Hilmi Yavuz, *Modernleşme, Oryantalizm ve İslam* (Istanbul: Boyut Kitapları, 1999-2nd ed.), pp. 141-143.

Nevertheless, the system that was established in the Republican era may be traced back to the dual structure of the Ottomans starting from the 15th century when Mehmet II (the Conqueror) had his profane codification.²

There also exists a second approach which states that the Ottoman structure did not have any duality as described above; on the contrary, religion and the world, together, had constituted a whole embodied in the person of the Caliph-Sultan. According to this view, the Ottoman state was a theocratic one, and thus the entire state structure took shape according to the rules stipulated by Islam. This thesis is supported by the fact that the Caliph-Sultan had religious as well as political identities, and both the vizier and the *Sheikh ul-Islam*, the chief religious official of the Ottoman Empire, were second to the sultan in political and religious matters.³

In addition to these two approaches, a third one claims that in the period from the Ottoman Empire to the Republican era there has always been state control of religion.⁴ The Caliph/Sultan had the power to appoint as well as to dismiss the *Sheikh ul-Islam*; and the *Sheikh ul-Islam* would attend to religious

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- 2 İnalçık claims that, contrary to the general view, the sultan's authority did not emerge out of his position as the caliph of Islam, but originated from a complex military-administrative formation that only partially overlapped with Islamic institutions. See *The Ottoman Empire: The Classical Age, 1300-1600* translated by Norman Itzkowitz and Colin Imber (London: Weidenfeld and Nicholson, 1973), pp. 70-104, 163-173, 186. Also see Şerif Mardin, 'Some Notes on Normative Conflicts in Turkey', in Peter L. Berger (ed.), *The Limits of Social Cohesion: Conflict & Mediation in Pluralist Societies* (Boulder-Colorado and Oxford: Westview Press, 1998), pp. 207-210. E.J. Zürcher and H. van der Linden state that, "Sultan did not want to lose the legitimacy the scholars of the Islamic law provided to him, since he claimed that he was not only an Islamic monarch, but also a unique and *only* Islamic leader. Nonetheless, the Ottoman sultans were much more successful than those who came before them in incorporating *ulema*, the religious scholars into the state apparatus through a strict appointment and control system." "Kırılma Hatını Ararken: 'Medeniyetler Çatışması' Kavramı Işığında Türk İslamının Türkiye'nin AB'ye Katılımındaki Rolü" in Hollanda Kamu Politikaları Bilimsel Kurulu, (Wetenschappelijke Raad voor het Regeringsbeleid) *Avrupa Birliği, Türkiye ve İslam* translated by Türkevi Research Center (Istanbul: "başlık" Yayın Grubu, 2007), p. 124.
- 3 Ahmet Akgündüz, 'Osmanlı hukukunda Şer'i Hukuk-Örfi Hukuk İkilemi ve Yasama Organının Yetkileri', *12/2 İslami Araştırmalar* (1999), pp. 117-122; Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri I. Kitap: Osmanlı Hukukuna Giriş ve Fatih Devri Kanunnameleri* (Istanbul: Fey Vakfı Yay, 1990), pp. 63-64; Ali. Fuat Başgil, *Din ve Laiklik* (Istanbul: Kubbealtı, 1942/2007 – 9th ed.), pp. 193-195; İsmail Kara, *Cumhuriyet Türkiyesi'nde Bir Mesele Olarak İslam* (Istanbul: Dergah Yayınları, 2008 – 2nd ed.), pp. 63-64; Hayrettin Karaman, *İslam Hukuk Tarihi* (Istanbul: İz Yayıncılık, 2007 – 5th ed.), pp. 260-261; Rasim Özdenören, *Kafa Karıştırıcı Kelimeler* (Istanbul: İz Yayıncılık, 2006 – 7th ed.), pp. 144-145.
- 4 M. Hakan Yavuz, *Secularism and Muslim Democracy in Turkey* (Cambridge, U.K. and New York: Cambridge University Press, 2009), p. 153; Sami Zubaida, 'Trajectories of Political Islam: Egypt, Iran and Turkey', in David Marquand - Ronald L. Netler (eds.), *Religion and Democracy* (Oxford and Madlen –Massachusetts: The Political Quarterly/Blakwell Publishers, 2000), p. 63.

matters on behalf of the Sultan.⁵ In this context a separate institutionalized power, like the Roman Catholic Church in the West, has never been permitted to religious authorities in the Ottoman system.⁶

Scrutinizing the institutional dimensions of the relations between state and religion, one may observe that there exist both continuity and ruptures in various institutional bodies from the office of *Sheikh ul-Islam* to the *Şer'iye ve Evkaf Vekâleti* (Ministry of Religious Affairs and Pious Foundations) and finally to the Presidency of Religious Affairs. While *Sheikh ul-Islam* was responsible for judicial, legal, scholarly, administrative and political duties as well as religious ones,⁷ the *Şer'iye ve Evkaf Vekâleti* founded by the Ankara government on 4 May 1920 was an institution responsible only for religious matters and pious foundations, but this very effective institution was at the ministerial level as far as its place in the administrative hierarchy is concerned.⁸ The founding political authority of the Republican era had preferred to configure the institution of Presidency of Religious Affairs as an administrative unit under the Prime Ministry.

It seems that the Turkish Republic's founding elite designed the new Turkish state as a modernity project and therefore spared no expenses to satisfy this goal. Actually the radical program of reform and Westernization that the Republican cadres pursued in the 1920s and 1930s had earlier started within the Ottoman Empire in the mid-nineteenth century, especially with the reception of Western codes and political principles. However, the purpose of the new leadership in this period not only was to secularize and modernize the state

5 Murat Akgündüz, *Osmanlı Devleti'nde Şeyhülislamlık* (İstanbul: Beyan, 2002), pp. 165-183; 301; Ali Bardakoğlu, *Religion and Society: New Perspectives from Turkey* (Ankara: Publications of Presidency of Religious Affairs, 2006), p. 9. For the sheikh ul-Islam's duties in the field of politics and for discussions regarding the relations between state and religion, see Esra Yakut, *Şeyhülislamlık: Yenileşme Döneminde Devlet ve Din* (İstanbul: Kitap Yayınevi, 2005), pp. 174-204. According to Poulton, "the duty of the leading *ulema*, the religious scholars, especially of sheikh ul-Islam, the highest ranking mufti, was to make sure that sultan's firman, imperial decrees, conformed to the Shari'a, the body of the Islamic religious law." See Hugh Poulton, *Top Hat, Grey Wolf, and Crescent* (London: Hurst&Company, 1997), pp. 34-35.

6 Actually in the West, it is only the Roman Catholic Church that has historically been a separate institution from the State apparatus and has existed as a legal person. By contrast, the Protestant/Anglican/Evangelical Churches were created as an *officium* of 'the State' who had adhered to the Reformation.

7 Murat Akgündüz, *Osmanlı Devleti'nde Şeyhülislamlık*, (İstanbul: Beyan, 2002), pp. 219-314.

8 Ali Fuat Başgil, *Din ve Laiklik* (İstanbul: Kubbealtı, 2007 – 9th ed.), p. 202. İsmail Kara describes this institution as "... an experience peculiar entirely to Ankara and the new state, although at first sight it seems as the projection onto Ankara of Istanbul's sheikh ul-Islam." See İsmail Kara, *Cumhuriyet Türkiye'sinde Bir Mesele Olarak İslam* (İstanbul: Dergah Yayınları, Haziran 2008/ Eylül 2008 – 2nd ed.), pp. 57 and 62.

and the 'political', but also to transform society into a modern body. Thus, in my view, the biggest difference between Republican and Ottoman Westernizations was the spectrum of their *te/os*; and laicism was one of the pillars for the Republican founding elite.

II. *Laic(ité)*, the Secular, Secularizations, Secularisms, Post-secular

Laicité/laicism/laic is used for the state's control of religion in the public sphere as opposed to secularism, which implies the separation of state and religion;⁹ and *laiklik (laicité)* is the concept that is preferred by Turkey's Republican decision-making elite in all legislation and other legal regulations which actually shape up its substance. I assert that, as a state's approach to religion, the laicism/secularism distinction is significant. However, since every society has different socio-political circumstances, the interpretation of secularism and laicism in political and thus legal systems exhibits differences as well. Both secularism and laicism are about state politics, law-making, and constitutional principles, but for the most they permeate and establish the rhythm of a phenomenology of everyday life practices.¹⁰ Neither laicism nor "(s)ecularism is ... a 'neutral', power-free space and a set of abstract principles;

9 For some insightful theoretical analyses of these concepts focusing mainly on Turkey, see Andrew Davidson, 'Hermeneutics and the Politics of Secularism,' in L.E. Cady & E.S. Hurd (eds.), *Comparative secularisms in a global age*, (New York: Palgrave Macmillan, 2010), pp. 143-158; Andrew Davidson, 'Turkey, a 'Secular' State? The Challenge of Description,' in S. Irzık – G. Güzeldere (eds.), *Relocating the Fault Lines: Turkey beyond the East-West Divide* (special issue of 102:2/3 *The South Atlantic Quarterly* (Spring/Summer 2003), pp. 333-350; Andrew Davidson, *Secularism Revivalism in Turkey: A Hermeneutic Reconsideration* (New Haven – London: Yale University Press, 1998). For another work on secularism and laicism distinction see Armando Salvatore, 'Authority in Question: Secularity, Republicanism and 'Communitarianism' in the Emerging Euro-Islamic Public Sphere,' 24 *Theory, Culture & Society* (2007), pp. 135-160. However, secular/ism and laic/ism are frequently used as synonyms in the literature. See Rossella Bottoni, 'The Origins of Secularism (Laicism) in Turkey,' 9 *The Ecclesiastical Law Journal* (2007), pp. 175-186; José Casanova, 'Catholic and Muslim Politics in Comparative Perspective,' 1 *Taiwan Journal of Democracy* (2005), pp. 102-107; Dietrich Jung, "'Secularism": A Key to Turkish Politics?,' in D. Jung – C. Raudvere (eds.), *Religion, Politics, and Turkey's EU Accession* (New York: Palgrave Macmillan, 2008), pp. 117-137; E. Fuat Keyman, 'Modernity, Secularism and Islam: The Case of Turkey,' 24 *Theory, Culture & Society* (2007), pp. 215-234.

10 José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

(they are) embodied in people's agencies and imaginaries."¹¹ In other words, these concepts are socio-political constructions; thus various secularizations, secularisms, and laicisms emerge in different socio-political climates.¹² In the USA, for example, secularity has been preferred to be interpreted as a state of impartiality towards religions and beliefs. In addition to a principle that bans the introduction of legislative activities designed to prevent the free practice of any religion, the First Amendment to the US Constitution, by means of the establishment clause, prevents the Congress from making a law establishing a state-religion. The Supreme Court's formulation regarding the establishment clause in the *Lemon-Kurtzman* case¹³ may be a key to a particular understanding of secularism: (i) the purpose of no legislative or administrative procedure may be religious (*secular purpose*); (ii) religion must not be affected, either positively or negatively, by the implementation of the procedure (*primary effect*); and (iii) the state must not show excessive concern for religion because of the procedure (*excessive entanglement*). On the other hand, in the case of France, where the shadow of the Catholic Church is still felt, and increasing populations of Islam and other faith systems like Sikhism are an issue, a harsher interpretation of laicism has been preferred where the *Conseil d'Etat* has a regulative role.

In all countries and in every historical period, secularization has been a coercive process in which the legal powers of the state, the disciplinary powers of family and school, and the persuasive powers of government and media have been used to produce the secular citizen who agrees to keep religion in the private domain. Sometimes this has been done by putting external and forcible constraints on the public political presence of religion, as in the Jacobin tradition of *laïcisme*, or in the Soviet Union and contemporary China, or in Kemalist Turkey.¹⁴

The formations of the secular follow different historical trajectories and have different religious genealogies in different places too, yet they are closely interconnected with hegemonic impositions of Western modernity and colo-

11 Nilüfer Göle, 'The Civilizational, Spatial, and Sexual Powers of the Secular,' in M. Warner, J. VanAntwerpen and C. Calhoun (eds), *Varieties of Secularism in a Secular Age* (Cambridge, Massachusetts, and London: Harvard University Press, 2010) p. 254.

12 For a critical review of the study of secularization within sociology, see Philip S. Gorski and Ateş Altınordu, 'After Secularization?', *34 Annual Review of Sociology* (2008), pp. 55-85.

13 403 U.S. 602 (1971).

14 Partha Chatterjee, 'Fasting for Bin Laden: The Politics of Secularization in Contemporary India,' in D. Scott and C. Hirschkind (eds.), *Powers of the Secular Modern: Talal Asad and His Interlocutors* (Stanford, California: Stanford University Press, 2006), p.60.

nialism.¹⁵ Talal Asad, whom in the religion-secular debate,¹⁶ by following the work of Michel Foucault and Edward Said, focuses on genealogies of power, characterises "the secular" as an epistemic category, "secularism" a "political doctrine", and "secularization" as a historical process.¹⁷ Both religion and the secular for Asad are "processual" rather than fixed ideologies.¹⁸

It was Jürgen Habermas who first introduced the term post-secular in the German Peace Prize lecture in 2001, which he further elaborated in his later writings. Habermas labels the present era as "postsecular", in which he has been increasingly stressing the importance of cultivating a stance that both reckons with the continuing global vitality of religion and emphasizes the importance of 'translating' the ethical insights of religious traditions with a view to their incorporation into a 'postmetaphysical' perspective, or in other words into a secular idiom.¹⁹ For Habermas, we live in a postsecular society where the classic assumption of the secularization thesis, whereby religion would disappear from public life, has been shown to be wrong. Two important elements – within the societal context of Germany and Western Europe – refuted the former theory: first, the appearance of public normative debates, such as abortion, stem cell research, etc., which also involved clerical institutions as legitimate public actors. Second is the visibility of Islam in Europe and its claim for Muslims' rights within the frame of rights based on citizenship.

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- 15 Nilüfer Göle, 'Manifestations of the Religious-Secular Divide: Self, State, and the Public Sphere,' in L.E. Cady and E. Shakman Hurd (eds.), *Comparative Secularisms in a Global Age* (New York: Palgrave Macmillan, 2010) p. 41.
- 16 For a very illuminating account of this debate see Arvind-Pal S. Mandair and Markus Dressler, 'Introduction: Modernity, Religion-Making, and the Postsecular,' in M. Dressler and A.S. Mandair (eds.), *Secularism & Religion-Making* (New York: Oxford University Press, 2011), pp. 4-20.
- 17 Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, California: Stanford University Press, 2003), p.1, David Scott, 'Appendix: The Trouble of Thinking – An Interview with Talal Asad,' in D. Scott and C. Hirschkind (eds.), *Powers of the Secular Modern: Talal Asad and His Interlocutors* (Stanford, California: Stanford University Press, 2006), pp. 301-302.
- 18 Hent de Vries reads Asad as, "He follows Wittgenstein's recommendation to look for 'use,' not for 'meaning,' steering clear of all attempts to essentialize either 'religion' or its supposed counterpart, 'the secular,' and insisting instead on seeing both as something 'processual' rather than, say, a 'fixed ideology' (even less that of a 'particular class')": in *Political Theologies: Public Religions in a Post-Secular World* (New York: Fordham University Press, 2006), p. 69.
- 19 See Jürgen Habermas, "Pre-political Foundations of the Democratic Constitutional State?" in F. Schuller, *Dialectics of Secularization: On Reason and Religion* (translated by Brian McNeil, C.R.V.) (San Francisco: Ignatius Press, 2005) p.46; Eduardo Mendieta, 'A Postsecular World Society? On the Philosophical Significance of Postsecular Consciousness and the Multicultural World Society: An Interview with Jürgen Habermas,' (translated by Matthias Fritsch), 3 February 2010, <blogs.ssrc.org/tif/2010/02/03/a-postsecular-world-society>, accessed 14 June 2013; Jürgen Habermas, "'The Political': The Rational Meaning of a Questionable Inheritance of Political Theology," in E. Mendieta and J. VanAntwerpen, *The Power of Religion in the Public Sphere* (New York: Columbia University Press, 2011), pp. 26-28.

In his book, *Public Religions in the Modern World* published in 1994,²⁰ José Casanova states that the core and central thesis of the theory of secularism is the conceptualization of the modernization process with regard to the structure, organization and operation of society, and he points to three components considered as essential, since Max Weber, in the development of modernity:

- I. the separation of religion from politics, economy, science, etc., because of the increasing structural differentiation between the social areas;
- II. the privatization of religion within its own field;
- III. the decreasing social importance of the religious beliefs, attachments and institutions.

According to Casanova, only the first and third elements can be implemented. Even though the privatization of religion within its own field is part of laicism, it is not essential from the perspective of modernization. Casanova's argument is that whether or not unmaking religion a private matter threatens modernity depends on how religion becomes public. If it advances, as in Poland, the formation of a civil society, or encourages, as in the USA, public debates about the liberal values, then the politicized religion and modernity are in perfect harmony with each other. If it on the other hand tries to undermine the civil society, as in Egypt, or the individual liberties, as in Iran, then the politicized religion really turns into an uprising against modernity and the universal values of the Enlightenment.²¹

Charles Taylor is another prominent scholar to exemplify liberal secularism. In *Secularism and Freedom of Conscience*, Charles Taylor and Joselyn Maclure seek to provide "an adequate conceptual analysis of the constitutive principles of secularism," stating that any understanding of secularism must "be approached

20 J. Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

21 For the critique of Casanova and similar ideas, see T. Asad, *Formations of the Secular: Christianity, Islam, Modernity, and the Present* (Stanford: Stanford University Press, 2003) and others. Casanova responded to these critiques (see "Secularization Revisited: A Reply to Talal Asad", in David Scott and Charles Hirschkind (eds.), *Powers of the Secular Modern: Talal Asad and His Interlocutors* (Stanford: Stanford University Press, 2006). pp. 12-30). Asad replied to them (see "Responses", pp. 207-210). For a work that takes up these discussions within the context of the concepts of European Secularism and the Islam of public sphere, see A. Salvatore, "Power and Authority within European Secularity: From the Enlightenment Critique of Religion to the Contemporary Presence of Islam", *The Muslim World* (96) (4) (2006), pp. 543-561.

within the broader problematic of the state's necessary neutrality toward the multiple values, beliefs, and life plans of citizens in modern societies".²²

Ahmet Kuru coins the terms "passive secularism" and "assertive secularism" to imply a state's neutrality toward various religions by allowing their public visibility for the former; and a state's confining religion to the private sphere for the latter.²³

In this context, José Casanova's related remarks may provide a suitable hint to answer the question, "to what extent has Turkey been a secular country?"²⁴: "Turkey is seen as too secular for the Islamists, too Sunni for the Alevites and too Turkish for the Kurds where Turkish values are strongly showed up."²⁵ Fuat Keyman adds another statement to this frame as, "for non-Muslim minorities Turkey is too Muslim".²⁶

III. "Diyanet"

I think that in order to understand religion, politics and politics of religion in Turkey, as an initial step a governmental organization *Diyanet İşleri Başkanlığı* (Presidency of Religious Affairs – hereinafter *Diyanet*)²⁷ should be scrutinized.

22 Charles Taylor and Joselyn Maclure, *Secularism and Freedom of Conscience* (translated by Jane Marie Todd), (Cambridge, MA: Harvard University Press, 2011), pp. 3 and 11.

23 Ahmet T. Kuru, *Secularism and State Policies toward Religion: The United States, France and Turkey* (Cambridge: Cambridge University Press, 2009).

24 For an illuminating analysis of "modes of secularism" in Turkey see M. Hakan Yavuz, *Secularism and Muslim Democracy in Turkey* (Cambridge: Cambridge University Press, 2009), pp. 153-163.

25 José Casanova, "Civil society and religion: Retrospective reflections on Catholicism and prospective reflections on Islam", 68:4 *Social Research: An International Quarterly* (2001), p. 1064.

26 Fuat Keyman, "Assertive secularism in crisis: Modernity, democracy and Islam in Turkey" in L.E. Cady & E.S. Hurd (eds.), *Comparative Secularisms in a Global Age* (New York: Palgrave Macmillan, 2010), p. 143.

27 Translations used for *Diyanet İşleri Başkanlığı* vary in the literature, including terms as Department of the Affairs of Piety, Directorate-General of Religious Affairs, General Directorate of Religious Affairs, Religious Affairs Department, Directorate of Religious Affairs, Office of Religious Affairs, and Religious Affairs Directorate. For the English term I prefer to use "The Presidency of Religious Affairs", since that happens to be the term used by the institution on various occasions (like the *Diyanet*'s official website though currently the only foreign language pages are in Arabic) and in translation of the current constitution of the Republic of Turkey: see <http://global.tbmm.gov.tr/>. However, yet in another official website of *Türkiye Büyük Millet Meclisi*, Turkey's parliament, the term "Department of Religious Affairs" has been used. See: http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

Diyanet is a secular/laic administrative unit in the Republic of Turkey established in 1924 to execute services regarding Islamic faith and practices, to enlighten society about religion, and to carry out the management of places of prayer.

Diyanet was established by the Act dated 3 March 1340 (1924) no. 429 "on the Abolishment of The Ministries of *Şer'iyye* (Religious Affairs) and *Evkaf* (Pious Foundations)". By abolishing the *Şer'iye Vekaleti* (Ministry of Religious Affairs), a new administrative unit called the *Diyanet İşleri Reisliği* (Presidency of Religious Affairs) was constituted. In other words, the new regulation placed the management of religious affairs in the hands of an administrative bureau, not in those of a ministry in the cabinet. In terms of administrative law, ministry ranks top in the hierarchy of the central administration, and is a political unit. Not placing the institution of "religion" in a political body was a key part of the overall policy of the founding political decision-making elite of Turkey who aimed to establish a secular state and 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 tried to break the potentially sacred significance of the *Diyanet*.

In my opinion, Act no. 429 is very significant in the construction of a secular system in Republican Turkey. The first article of Act no. 429 states that the Presidency of Religious Affairs has been formed as a part of the Republic to administer all provisions concerning faith, rituals and institutions of Islam. The article also explicitly pronounces that all other affairs are legislated by the parliament, namely the Grand National Assembly of Turkey and executed by the Cabinet formed by the former body. This was an attempt by the decision-making elite of early Republican Turkey to secularise the sources and references of the legal system that has mostly been achieved.

Apparently, the temptation to make secularism the equivalent of religion seems generally stronger in countries where secularism came about at the cost of a bitter struggle against a dominant religion; think, for example, of the Catholic church of Restoration France or Islam in the former caliphate of Turkey.²⁸

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

28 Charles Taylor and Joselyn Maclure, *Secularism and Freedom of Conscience* (translated by Jane Marie Todd), (Cambridge, Massachusetts, and London: Harvard University Press, 2011), p. 14.

modern body. In fact, the radical program of reform and Westernization that the Republican cadres pursued in the 1920's and 1930's had already started earlier in the Ottoman times, namely in the mid-nineteenth century, especially with the reception of Western codes and political principles. Thus, in my view, the biggest difference between Ottoman and Republican westernizations/secularizations was the spectrum of their *telos*; and *laïcité* was the pillar for the Republican founding elite, which designed the 'Presidency of Religious Affairs' as an administrative tool to 'regulate' Islam.

Since 1924, the *Diyanet* has been under the auspices of the office of the Prime Minister, and the president of the institution has been appointed by the President of the Republic of Turkey on the proposal of the Prime Minister. This administration regulates the operation of more than 85,000 registered mosques and employs more than 117,000 imams, Quran instructors, muezzins, and other religious workers, all of whom are civil servants with regular salaries. In time, the mission of the *Diyanet* has been expanded from simply supervising faith and worship. Article 154 of the 1961 Constitution of Turkey provided that the *Diyanet* was incorporated in the general administration to discharge the function prescribed by a special law.²⁹ That particular law was put into power after a long process of various debates on 15 August 1965. Act no. 633 on the organization and duties of the *Diyanet*, redefined its task in terms of "conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion".

To create an administrative body that offers services to meet the general, daily needs of practicing Islam may be justifiable as 'public service' where a majority of the population belongs to Islam; however to assign to this organization a function such as 'conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion' 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 a law on an issue as political 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. However, one may assume that the legislators of the 1961 Constitution aimed to correct the Kemalist mistake of not adequately recognising the role of Islam in the formation of the Turkish individuals' identity. The attempt to create a moral order based on Islamic va-

29 1961 Constitution of Turkey, <www.anayasa.gen.tr/1961constitution-text.pdf>, accessed 25 June 2013.

lues by state apparatus was fortified by Article 136 of the 1982 Constitution which provided the *Diyanet* to carry out its mission within the framework of the principle of secularism and with the goal of achieving national solidarity and integrity. This actually is a pronouncement of the significant relationship between religion and nationalism which in fact has been going on within the context of the Turkish nation-building process with roots not only in the Republican times but in the late Ottoman period as well.³⁰ In the framework of the revolutionary political climate, legal arrangements to protect the status of the *Diyanet* were made by Article 89 of the Law of Political Parties, Law 2820 of 22 April 1983. This article which still is in use provides for the banning of political parties that propagate the abolishment of the *Diyanet*.

The absence of a clergy in Islam³¹ has been a means of legitimising the state's intervention in religion and categorizing it as a public service.³² Defining public services as activities 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, in my opinion, does not conflict with laicist/secularist principles. An assessment of the duties of the *Diyanet* 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 that may be justifiable in order to fulfill a collective need. However, the state makes use of the *Diyanet* as an administrative tool to indoctrinate and 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. Certainly institutions are organisms constituted by human agents that process their own dynamics according to their agendas, thus sociologically and anthropologically it is interesting to scrutinize texts produced by various authorities of the *Diyanet*.

30 For a very illuminating analysis of the influential body of work by the eminent scholar Mehmed Fuad Köprülü in this context see Markus Dressler, *Writing Religion: The Making of Turkish Alevi Islam* (New York and Oxford: Oxford University Press, 2013).

31 "The absence of a clergy in Islam means that there is no special class equipped with holy abilities to speak on behalf of God and religion." Ali Bardakoğlu, *Religion and Society: New Perspectives from Turkey* (Ankara: Publications of Presidency of Religious Affairs, 2006), p.11.

32 Prof. Ali Bardakoğlu states that, "... the *Diyanet* emerged as a response to a social need for the organization of religious affairs and in order to provide religious services. The establishment of the *Diyanet* can also be seen as a response to the problem of sustaining public stability in the area of religious affairs and as a way to meet the public demand for satisfactory religious services." See Ali Bardakoğlu, "Moderate Perception of Islam' and the Turkish Model of the Diyanet: The President's Statement", 24:2 *Journal of Muslim Minority Affairs* (October 2004), p. 368.

It is consented by various authorities of *Diyanet* over the years that production and transmission of religious knowledge is a prominent task of the institution. Religious in this context refers predominantly to Islam. Professor Ali Bardakoğlu, a former president of the institution, especially underlines this mission on very many occasions. He states that "the *Diyanet* has a particular role in the production and transmission of religious knowledge."³³ Bardakoğlu suggests, it "... provide(s) sound religious information"³⁴

The *Diyanet* takes religious demands and traditional forms into account when delivering its services. However, if and when there is a departure from shared and sustained interpretations, the *Diyanet* then promotes authentic knowledge; it strives to educate people about their religious beliefs, and practices in the light of sound knowledge and scholarship. Sound knowledge helps in fighting superstitions, ignorance, false ideas, misuses of religion and abuses in the name of religion.³⁵ "We are trying to understand religion as religion ... to perceive it through its sources in a true knowledge, and to transmit it to our people in that way."³⁶

Preference for using adjectives like sound, authentic, true,³⁷ healthy³⁸ indicate an essentialist approach that produces categories of legitimate and illegitimate religions. This may be read as a predictable outcome of the legal and political construction of religion in the Republican times of Turkey. As for Islam, it has been the task of the *Diyanet* "to define, represent, organize, and regulate its public forms. (...) Religious activities outside the oversight of the state are still perceived as a threat."³⁹ What is interesting is to observe the state reflexes thereof. There appear much fewer differences than what may be expected between the early Republican times with its strong Kemalist rhetoric, and the last decade with a series of pro-Islamic AK Party governments for religious activities outside the oversight of the state.

33 Ali Bardakoğlu, "Moderate Perception of Islam' and the Turkish Model of the Diyanet: The President's Statement", 24:2 *Journal of Muslim Minority Affairs* (October 2004), p. 367.

34 *Ibid.*, p. 369.

35 *Ibid.*, p. 371.

36 TV interview, ATV: *Teke Tek* hosted by Fatih Altaylı on 9 February 2006. For the text see Ali Bardakoğlu, *21. Yüzyıl Türkiye'sinde Din ve Diyanet II* (Ankara: DİB Yayınları, 2010), p. 201.

37 TV interview, Channel 7: *Ters Köşe* hosted by Akif Beki & Fehmi Kuru on 21 December 2003. For the text see Ali Bardakoğlu, *supra* note 37, , p. 117.

38 TV interview, Channel 7: *İskele Sancak* hosted by Ahmet Hakan Coşkun on 16 January 2004. For the text see Ali Bardakoğlu, *supra* note 37, p. 128.

39 Markus Dressler, "Making Religion through Secularist Legal Discourse: The Case of Turkish Alevism" in M. Dressler and A.S. Mandair (eds.), *Secularism & Religion-Making* (New York: Oxford University Press, 2011), p. 191.

The most important work of the *Diyanet* regarding the Koran was in the first years of the Republic; Elmalı's interpretation entitled '*Hak Dini Kuran Dili*', which has been an important interpretation up until today, was commissioned by the *Diyanet* and published in 1936.

Elmalı indicates that while he was writing his interpretation he followed the Sunni sect with regard to the creed and the Hanafi sect with regard to the practice. It is likely that he was asked to write his interpretation this way and he obeyed it, because whereas he shows more dynamic and relaxed attitude in his other works, he shows a more conservative attitude in his interpretation.⁴⁰

When the Association of Turkish Women reacted to the statements given below in the hadith work of the twelve-volume '*Sahih-i Buhari Muhtasari Tecrid-i Sarih Tercümesi ve Şerhi*', the *Diyanet* commented that this book was published solely for commercial purposes:

The testimony of two women is equal to the testimony of one man. Women are deficient in both reason and religion. Women are bad luck. The things that spoil praying are dogs, donkeys, pigs and women. Hand contact with a foreign woman is hand adultery. Most of the people in hell are women.⁴¹

In a decision, dated 2 June 2003, about women becoming witnesses in judicial process and on gendered principles of inheritance, the High Council of Religious Affairs stated the following:

According to Islam, ontologically and also with regards to religious responsibility, legal competence, and fundamental rights and freedoms, there is, in principle, no difference between a man and a woman. The difference indicated in the verse about borrowing emerges in the light of the conditions of the period which reflected a passive role for the women in the commercial activities, and does not contain a general arrangement. When the verses regarding this subject are considered as a whole, the testimony of a woman is equal to the testimony of a man; however, on the inheritance law,

(...) Women are not usually responsible for providing subsistence for others. However, men are on the contrary obligated to ensure subsistence of their spouses, their daughters, their mothers or sisters in nearly all societies. The-

40 Sait Şimşek, "İslamcılık ve Kuran", in Y.Aktay (ed.) *Modern Türkiye'de Siyasi Düşünce cilt 6: İslamcılık*, (İstanbul: İletişim Yayınları, 2004), p. 703.

41 See Süleyman Ateş, "Diyanet İşleri Gözü ile Kadın", *Cumhuriyet Gazetesi*, 16 January 1990, p.15.

refore, in accordance with the principle of 'blessing as much as the burden experienced', a man who is responsible for ensuring the subsistence of his spouse, daughter and mother or sister, is given twice the share of a woman who does not have such an obligation.

- b) A woman has the right to use her financial assets any way she wants. Even if her financial condition is good, she does not have to take part in the family expenses. Therefore, from this perspective, in the case when both a woman and a man take equal shares, since he is under obligation to provide for his family and she is not, this will upset the balance against him.
- c) A man is obligated to give *mehir* (some amount of property and goods) to his spouse. However, not only does a woman not have such an obligation, she also earns the right to get *mehir* from her spouse.
- d) Although during the Islamic waiting period of a divorce process the man is obligated to cover his wife's expenses such as housing, food, clothing and medical treatment, the woman does not have such an obligation towards her husband.

As one can see, concerning the financial obligations, far from being equal to a man, in fact a woman is in an advantageous position. In many areas, the financial obligations are imposed on the man. Therefore, because of the reasons given above, in dividing the inheritance among the siblings, the man receives, in accordance with the weight of his financial obligations, two shares; and having no financial obligations, the woman receives one share. This is the fairest and the most just inheritance division."⁴²

Efforts of balancing gender equality and Islamic principles of the *Diyanet* through *khutbas*⁴³ and in expanded services to women under the generic title of family guidance within the last decade is an interesting process that reveals the continuities and raptures of patriarchal mentalities of not only the Turkish state in time but also the society as well.

42 Diyanet İşleri Başkanlığı, "Kurul Kararları Kurul Kararları Kadınların Şahit ve Mirasçı Olmaları", 2 June 2003, <http://malatyamuftulugu.gov.tr/kadinlarin-sahit-ve-mirasci-olmalari.html>, accessed 28 June 2013.

43 For some interesting analysis on Friday khutbas see James Gibbon, "Between Religion and the State: Democracy, Religious Markets, and Turkey's Directorate of Religious Affairs" (unpublished paper presented at the Ninth Mediterranean Research Meeting, Florence & Montecatini Terme, 25-28 March 2009); Ceren Kenar, *Bargaining Between Islam and Kemalism: An Investigation of Official Islam Through Friday Sermons* (MA Thesis, Boğaziçi University, 2011); Muhammet Habib Saçmalı, *Compliance and Negotiation: The Role of Turkish Diyanet in the Production of Friday Khutbas* (MA Thesis, Boğaziçi University, 2013).

A *Diyanet* publication, entitled '21. Yüzyıl Türkiye'sinde Hurafeler' (Superstitions in 21st Century Turkey) pursues the goal of "raising awareness of the people against superstitions" with a list that includes among others the following:⁴⁴ "to hope for help from places like tombs and holy burials"; lighting a candle at a holy person's burial and making a wish; believing that getting married between two religious holidays is unlucky; that an itch on right palm means money will come, an itch on left palm means money will be gone, and an itch under the foot means a trip will be taken; walking under a ladder is bad luck; having a complete Koran reading or Islamic memorial service on the 7th, 40th and 52nd days and the anniversary of the funeral; believing that the pictures drawn on sand or soil by the seaside on the day of the *Hidrellez* celebration will be owned later on; fortune reading of a drunken coffee cup, going to the fortune tellers and wizards; to believe that whoever (the bride or the groom) steps on the foot of the other one during a marriage ceremony will have the saying in the house; to have an evil eye bead, to carry an amulet. Thus, many practices encountered frequently in the Turkish 'folk' Islamic culture⁴⁵ appear to be disapproved by the *Diyanet*.

Diyanet announced the recruitment of Kurdish Islamic clergymen, called *meles* by the Kurds, as imams in south-eastern parts of Turkey. A *mele* is a traditional religious figure of vital importance among the Kurds, and he takes a leadership role in resolving societal issues such as tribal matters, honour crimes and blood feuds. They are highly respected community leaders, who have a great impact on the Kurds.⁴⁶

44 "In the introduction of the book, it is pointed out that the beliefs and practices which lack logical base and have no relation with the real life can be found in every religion and stated that ignorance, loneliness, helplessness, desperateness, fear, sadness, sickness, stress and disasters push people towards the trap of superstitions. The book stresses that it paves the way for taking root, in the world of ideas, of ignorance, superstitions, baseless interpretations and awry understandings." See *Taraf Gazetesi*, "Bunların hepsi hurafeymiş", 10 December 2008, p. 4. For emphasis on "true/correct Islam" and "superstitions" see Ali Bardakoğlu, "Hurafeyi Sahih Bilgi ile Aşmak", 186 *Diyanet Aylık Dergi*, (June 2006), p. 1; Kiyasettin Koçoğlu, "21. Yüzyılın Türkiye'sinde Hurafeler", 186 *Diyanet Aylık Dergi*, (June 2006), pp. 5-8; Fikret Karaman, "Modern Hayat ve Hurafeler", 186 *Diyanet Aylık Dergi*, (June 2006), pp. 15-17.

45 See Şerif Mardin, *Din ve İdeoloji* (Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, 1969) p. 115 and on. For a work that calls these kinds of beliefs as "superstitious" and "fallacious" and proposes the matter to be solved through education, see Fatma Yılmaz, *Din Eğitimi İşliğinde Kadınlar Arasında Yaşayan Hurafeler* (İstanbul: Cihan Yayınları, 2008).

46 Ayhan Kaya, *Europeanization and Tolerance in Turkey: The Myth of Toleration* (London: Palgrave Macmillan, 2013), p.112.

Currently, the *Diyanet* is a significant actor in the international realms of the Turkish Islamic sphere⁴⁷ because of the Turkish state's financial and organizational support. Until the 1980s, the *Diyanet's* access had been limited to Turkey's Muslims. However, after the coup of 1980, the *Diyanet* expanded its activities into countries with Turkish immigrant populations.⁴⁸ Since the early 1980's the *Diyanet* has been sending imams to Europe to counterbalance the influence of other Islamic communities on Turkish Muslims and to maintain their loyalty to the Turkish state.⁴⁹ "To counter undesirable Islamic influences, *Diyanet* is to propagate the 'correct' Sunni Islam through the mosques and compulsory classes on Islam, with a strong emphasis on ethics, human rights, and each citizen's duties towards state and country."⁵⁰ It seems in this context that the majority of the *Diyanet* followers do not have a collective identity as a member of community separate from the *Diyanet*, and consider the *Diyanet* to be above any Islamic community.⁵¹ However the *Diyanet's* role in international affairs is not limited to migrants with a Turkish background; but also for a role as an actor thereof.⁵²

47 For the role of the *Diyanet* to be evaluated as a preferring to be "a prestigious referee position instead of taking sides" see Mehmet Görmez, "Religion and Secularism in the Modern World: A Turkish Perspective", 2 *Turkish Policy Brief Series* (February 2012), p. 7.

48 "In the Netherlands, the local host association of the *Diyanet* was established in 1982 and was soon running more than 140 mosques, becoming the largest Muslim association in the country. In Germany, the *Diyanet* Foundation was founded around the same time and now has more than 800 mosques in its fold. In all cases, it is the Presidency in Ankara that appoints imams for service abroad (usually for three years); these imams are coordinated by an attaché for religious affairs in the respective embassy. The attaché is a member of the presidency, and not of the foreign office staff." Kerem Öktem, "New Islamic actors after the Wahhabi intermezzo: Turkey's return to the Muslim Balkans", (European Studies Centre: University of Oxford), December 2010, <balkanmuslims.com/pdf/Oktem-Balkan-Muslims.pdf>, accessed 28 June 2013. p. 32.

49 For a comparative analysis of the Turkish Muslim organizations in Western Europe with a special focus on the *Diyanet* see Nico Landmann, "Sustaining Turkish-Islamic Loyalties: The *Diyanet* in Western Europe" in H. Poulton and S. Farouki (eds.), *Muslim Identity and the Balkan State* (London: Hurst & Company, 1997), pp. 214-231.

50 Netherlands Scientific Council for Government Policy, *The European Union, Turkey and Islam*, (Amsterdam: Amsterdam University Press, 2007), p. 53.

51 Ahmet Yüklelen, *Localizing Islam in Europe: Turkish Islamic Communities in Germany and the Netherlands*, (Syracuse: New York: Syracuse University Press, 2012), pp. 21-23.

52 For the *Diyanet's* role in Turkish foreign policy with a special focus on Eurasia see Şenol Korkut, "The *Diyanet* of Turkey and its Activities in Eurasia after the Cold War", 28 *Acta Slavica Japonica* 2010, pp. 117-139, <src-h.slav.hokudai.ac.jp/publicatn/acta/28/06Korkut.pdf>, accessed 27 June 2013. For a very good analysis of Turkish foreign policy in the Balkans involving the *Diyanet* see Kerem Öktem, "New Islamic actors after the Wahhabi intermezzo: Turkey's return to the Muslim Balkans", (European Studies Centre: University of Oxford), December 2010, <balkanmuslims.com/pdf/Oktem-Balkan-Muslims.pdf>, accessed 28 June 2013.

Diyanet as an institution has produced its own dynamics in spite of the official ideology which tried to shape it. Thus it has taken a meaning and significance to the point of making the proposal of abolishing the institution and leaving the religious realm to the religious communities not very meaningful. Moreover, the extensive network of the *Diyanet* all over Turkey and abroad, which no other administrative body enjoys in the Turkish system, is a great opportunity for all governments, regardless of their positions in the political spectrum. However, the institution should not remain attached to its status tightly and should be reorganized in accordance with the demands of the interested actors. It is not possible for those who use the political power in a contemporary democratic state and present themselves as the representatives of the society to ignore the wishes of the social corpus. Therefore those who seek to be represented in the *Diyanet* should be given the opportunity. Also those that demand to have similar institutions should be legally facilitated.

IV. In the Scope of Freedoms of Thought, Conscience and Religion

The principle of equality, construed and applied as 'equality in blessings and burden' by the Turkish 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 public service is religion, is that the state is focused on a single religion rather than on services including all religions in the territory. However as concerns our present subject matter, this problem is relatively easy to deal with, 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.⁵³ However, services to be offered to other Islamic understandings with different practices like Alevism pose a problem.

A draft law prepared in 1963 for defining the organization and duties of the *Diyanet* proposed the establishment of a "Presidency of Religious Sects." This

53 It should also be noted that, whereas the Lausanne Treaty has recognized a number of rights for certain non-Muslim communities and individuals that have been defined in the Treaty as "the minorities", such legal provisions have largely remained unapplied. Thus, in practice, non-Muslim communities may not provide some religious services to their members as will be mentioned later in this article.

proposal, however, was criticized on the grounds that it could "pave the way for official separation" and was never implemented.

The *Diyanet* claims that Alevi and Sunnites are not subject to discrimination because, except for certain local customs and beliefs, there are no differences between these two interpretations regarding basic religious issues; hence this indicates a denial of a separate 'Alevi' religious identity. The fact that Sunnites constitute the majority apparently appears to be justifiable to Turkish Republican laic elite, as the state disregards other sects. The *Diyanet* pretends to be unaware of the religious belief of the Alevi population and the building of mosques in Alevi villages is a pressure exerted by the state to implant the Sunni belief in this section of society.⁵⁴

Legal recognition of religious group autonomy and places of worship is a pillar of religious freedom. A state that denies a religious community the very opportunity to establish and operate a place of worship is surely under a severe burden to justify it.⁵⁵ The European Court of Human Rights has taken a dim view of such matters. In *Manoussakis v. Greece*,⁵⁶ the state was held to be "restricting the activities of faiths outside the Orthodox church". In *Hasan and Chaoush v. Bulgaria*, the applicants complained that the state had interfered with their right to organise their faith. The Court maintained that "the personality of the religious ministers is undoubtedly of importance to every member of the community".⁵⁷ In 2001 a similar violation of Article 9 was found by the European Court of Human Rights regarding the Moldovan government's refusal to recognize and register the Metropolitan Church of Bessarabia.⁵⁸ The common theme held by the Court in these cases is no state may be capable of arguing against definitions of rituals or places of worships of a faith-group.

In 1999, when Turkey officially began its bid to enter the European Union, relations between the state and religion started to take a democratic turn. "The decision on principles, priorities, and conditions in the Accession Partnership

54 For a recent report of 2012 released by the U.S. Department of State Bureau of Democracy, Human Rights, and Labor titled, "Turkey: International Religious Freedom Report" including information and legal/policy framework on Alevi see <<http://www.state.gov/j/drl/rls/irf/religiousfreedom/#wrapper>>, accessed 28 June 2013.

55 Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford & New York: Oxford University Press, 2005), p. 347.

56 *Manoussakis v. Greece*, 05 July 1995, European Court of Human Rights, Application No. 18748/91..

57 *Hasan and Chaoush v. Bulgaria*, 26 October 2000, European Court of Human Rights, Application No. 30985/96, para. 62.

58 *Metropolitan Church of Bessarabia v. Moldavia*, 13 December 2001, European Court of Human Rights, Application No. 2002/ 35.

with Turkey includes the requirement that Turkey guarantees 'in law and practice' the full enjoyment of human rights and freedoms by all without discrimination on grounds of religion and belief."⁵⁹ It also requires Turkey to "adopt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities' in line with the ECHR, as well as to take into account recommendations of the Commission against Racism and Intolerance, an institution of the Council of Europe."⁶⁰ Yet another requirement in this context for Turkey is "to establish conditions for the functioning of religious communities, including legal and judicial protection – *inter alia*, through legal personality of the communities, their members, and assets, teaching, appointment and training of clergy, and enjoyment of property rights in line with Protocol 1 ECHR."⁶¹ Furthermore, Turkey must "adopt a law comprehensively addressing the difficulties faced by non-Muslim religious 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 adoption of the abovementioned law."⁶² Thus religious freedom, religious equality, autonomy of religious associations, and a special protection of religion have been targeted to be secured by the EU.⁶³

V. Conclusion

States should make no choices in terms of what should be the good in its citizen's lives, instead leaving that choice to the individuals concerned. The liberal state is not to do anything intended to favour or promote any particular comprehensive doctrine rather than another, nor to give greater assistance to those who pursue it.⁶⁴ Nozick's observation that no one way of living can satisfy the aspirations of all the individuals within a society, is one that is accepted by most and perhaps all liberal states.⁶⁵

59 Norman Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford: Oxford University Press, 2011), p. 243; See also Council Decision/EC 2006/35 (2006) OJ L22/34, 37.

60 Council Decision/EC 2006/35 (2006) OJ L22/34, 37, 38.

61 Council Decision/EC 2006/35 (2006) OJ L22/34, 38.

62 Council Decision/EC 2006/35 (2006) OJ L22/34, 37.

63 Doe, *supra* note 60, pp. 237-258.

64 John Rawls, "The priority of the rights and ideas of the good", 17:4 *Philosophy and Public Affairs* 1988, p. 262.

65 Robert Nozick, *Anarchy State and Utopia* (Oxford: Basil Blackwell, 1974), pp. 307-310.

However, especially the recent practices of the AK Party government reveal that their understanding of the state in Turkey seems not to be a liberal one. Legislative and other legally regulative attempts regarding issues like abortion, and matters involving homosexuality etc. are bricks of social engineering for an imagined social corpus where the good has already been designed, very similar to the practices of the early Republican elite of Turkey in the 1920's and 30's to achieve their own good for the people.

It is a fact that far from separating the affairs of religion and state from each other, Islam fuses them together. It intends to attach not only the inner worlds of the individuals, but also their behaviours within the state to the sublime rules. Therefore, the steps that were taken by the state of Turkey in the direction of laicism were perceived as a direct attack on the Islamic culture. Although some of the reforms of the Atatürk period were seen as directly concerning the religion itself, they were also the legal means the founding cadres of the Republic used to transform the society. Intending to restructure the various existing cultural codes of the society, starting with the alphabet, the founding cadres were not content with a project of transforming simply the superstructure institutions as it was done in the Ottoman modernization, but intended to change the whole Turkish society. The political cadres that founded the Republic of Turkey tried to push religion into the sphere of personal belief. However, this policy did not produce results especially within the rural population and even among a section of the urban population. One can read the continuity of religion in these two groups as the outcome of the fact that Islam is not only a belief for them, but represents a series of social practices with multi-dimensional functions. Although the dervish lodges were closed, the religious networks and the life styles of the conservative segments were still maintained behind the scenes. Meanwhile, Turkey experienced stable economic development that included a population increase of 2-3% per year since the 1950s. This created employment opportunities in the cities, attracting the rural population in great numbers and starting the process of the formation of squatter neighbourhoods. In this process, both the state, through channels such as the *Diyanet*, and some civil society institutions continued mutually their efforts to fulfil religious needs.

Thus, both with the internal dynamics and changing paradigms in the world, I think that religion should be considered, at the legal level, within the framework of the two higher constitutional principles in Turkey of the 2000s, which without any doubt that has a very different setting than of 1924. One of these principles is the freedom of conscience and religion, one of the fundamental rights and duties, and the other one is laicism.

Article 19 of the 1961 Constitution and Article 19 of the 1982 Constitution provides that belief, whether or not adopted by the majority of people living in that country, would be a subject of freedom. With an amendment made in Articles 175-178 of the Turkish Penal Code titled "Crimes against the Freedom of Religion", the protection of the freedoms of religious belief and worship has been provided to all religions without any discrimination. On the other hand, freedom of religious belief includes not believing as well. In order to provide a peaceful co-existence to various groups in a society, it is imperative that those who do not share a belief, to have the same right to go on with their own daily routines as those who have the freedom to fulfil the requirements of their own beliefs. A typical implementation of this should be seen in the fasting ritual of the Ramadan, a requirement of Islam. While believers fast during this month in order to fulfil a requirement of their belief, those who are not part of this belief should not be deprived of the means of continuing their daily lives. It is a fact that masses with Islamic sensibilities have been oppressed and deprived of their various needs especially during the early Republican times in Turkey. However, another danger nowadays lies in the transformation of religious practices and its ethical rules into legal ones. As Taylor suggests, "the point of state neutrality is precisely to avoid favouring or disfavouring not just religious positions but any basic position, religious or nonreligious".⁶⁶ Freedom of religion is very fundamental, but exactly the similar respect should be given to freedom from religion as well. I believe that this balance is the challenge for achieving a society of liberty and equality – but apparently an extremely difficult one indeed.

66 "Why we need a radical redefinition of secularism", in E. Mendieta and J. VanAntwerpen (eds), *The Power of Religion in the Public Sphere* (New York: Columbia University Press, 2011) p. 37.

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