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LEGAL STATUS OF PROTESTANTS IN TURKEY

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This thesis is prepared to present the legal status of Protestans in Turkey.

Contents:

What is Protestant in short?

"Protestants" or "Evangelicals" are the popular titles given to the heirs of the sixteenth-century Reformation which was distinctive in it's desire to rediscover the very message of the Gospel.

The most novel features of the Reform movement are:

1) The Bible is the only authority in matters of faith and practice: *"learn ...to not go beyond what is written*" (1 Corinthians 4:6).

2) Faith is the only 'merit' required to receive eternal life, which is a gift from God, who in the person of Christ died on the cross for all, as ultimate sacrifice for our sins: *"For it is by grace you have been saved, through faith—and this is not from yourselves, it is the gift of God"* (Ephesians 2:8).

3) To live the faith is the only intended purpose of the community of believers (the church), which should stay out of the powers of this world. This encourages the separation of church and state: *"Render therefore unto Caesar what is Caesar's and unto God what is God's"* (Matthew 22:21). So, the first steps for secularism were made.

In this sense, Protestant churches are known worldwide as Evangelical Churches that only accept the authority of the Bible and which have only one centralization and are independent of a national understanding of Christianity.

- **The legalisation process and organization of Protestants**

  According to Treaty of Lausanne, all the non-Muslims citizens of Republic of Turkey are considered as minority and thus have minority rights. Even though the term of ‘‘non-Muslims’’ were used on the Treaty of Lausanne, only the religious minorities were officially recognized and Republic of Turkey further narrows this term down in terms of these religious minorities. Accordingly, Turkey declares that only Greeks,

Armenians and Jews are granted to have minority status. Minorities in Turkey, especially minorities recognized by Treaty of Lausanne, are referred as ‘‘native foreigners’’ in literature. Under these circumstances, other non-Muslim communities including Assyrians, Chaldeans, Baha’is and Protestants were not recognized under the Turkish judicial system. These groups are neither considered among majority nor among minorities. Protestants were not officially recognized by the State until 2005.

According to Lausanne Treaty Article 40 : "*Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.*"

Until it was changed by 6th Harmonization Package of European Union in 2003, only mosque construction was regulated with Additional Clause 2 of Construction Law numbered 3194. Thanks to new Law in 2003, the term ‘‘place of worship’’ instead of ‘‘mosque’’ and ‘‘civilian authority’’ instead of ‘‘office of mufti (Turkish: Müftülük)’’ were adopted. However, it did not deliver a solution. For example: District Governorship of Ödemiş (a) first rejected the request of Protestants which was ‘‘allocating a religious facility and if it is not going to be allocated, confirmation of their meeting place as a religious facility’’; (b) and then imposed a ban on the worship of Protestants in 07.11.2006. Not having a legal prayer hall was the justification of that decision. Then, Ministry of Internal Affairs intervened and Regional Administrative Court annulled the decision mentioned as (b). Nevertheless, the decision for the request of ‘‘allocating a religious facility or confirmation of their meeting place as a religious facility’’ was not annulled. In practical terms, Administrative Chiefs rejected the applications on the grounds that ‘‘there is no Protestant community resident at that district’’. Another example: Governorship of Ankara rejected the request of Ankara Presbyterian Church on the grounds that ‘‘no Christians reside within the borders of that neighborhood according to records of neighborhood mukhtar’’. Sur Municipality of Diyarbakır Province recognized the status of the place where Protestant Community perform their prayer as a ‘‘religious facility’’, nevertheless, the governorship did not approve this status thus the religious facility could not be opened. The ground for that decision was the lack of precedent on this matter.

The applications which were made by the members of Protestant Churches Association more than ten times were rejected by the municipalities on the grounds that there is no suitable place to establish a religious facility. It remains to be a problem since municipalities do not allocate places for religious facilities except mosques in their construction plans.

Up until 2005, there was no legal Protestant Church in Turkey except only one Protestant Church. To be able to express themselves as a legal identity, the members of Istanbul Protestant Church attempted to establish a foundation in 1999. This foundation was officially registered on foundation registry after receiving its legal entity by the decision of Beyoğlu 4th Civil Court of First Instance dated 10/11/1999 and numbered E. 1999/646. The foundation completed its establishment procedures when its establishment was announced on 89th page of Official Gazette dated 24 June 2001 and numbered 15569/1-1: Official HYPERLINK "http://ist-pro-kil-vak.info/hakkimizda/resmi-belgeler/"Gazate. When the foundation applied to Beyoğlu 4th Civil Court of First Instance in 1999 in order to establish the church, ‘‘housing’’ status for its building with 250 square meters of construction-site within an area having 400 square meters was altered as ‘‘place of worship’’ by Istanbul Metropolitan Municipality on 25 August 2005 and Governorship of Istanbul also granted a ‘‘place of worship’’ status to the building on 18 August 2006. Istanbul Protestant Church became the first Turkish Church. Since it is not a minority church, it has been founded in accordance with the Code of Civil Law thus, it not subjected to Treaty of Lausanne and it is able to benefit from all the rights which are granted to new foundations.

Legal status of non-Muslims is still ambiguous. Hence, there is a legal ‘**subject**’ problem. All the non-Muslims in Turkey have a legal personality problem. There are some certain legal personality types in Turkey, however they do not have characteristics to meet the needs of religious institutions fully. Foundations, Associations and Companies are some of those organizational forms. Since those organizational forms are not designed specifically to meet the needs of religious institutions, churches are currently deprived of possibility to obtain a legal entity which satisfies their all needs. But, as a result of both legislative regulations carried out within the scope of European Union membership process and negotiations with authorities, it eventually become possible to establish Church Associations through Law of Associations in 2005. Thus, despite the ongoing problems, for the first time Protestant Churches had the opportunity to receive a legal entity. A legitimate ground was constituted for the demands of Protestants to open ‘‘place of worship’’ by receiving permits to establish Protestant churches and Protestants eventually had possibility to express their requests collectively under a legal entity. However, this regulation is not sufficient, because, Church Associations do not mean that legal entity of church is directly recognized. Thanks to this regulation, some objectives of Protestants are legitimated.

Action of closing the Kurtulus Churches Association/Ankara 1st Civil Court of First Instance

Merits No: 2007/44
Decree No: 2007/185

Governorship of Ankara field a suit against Kurtuluş Churches Association for closing the Association on January 2007 since the community worship in the representative office of the Association opened in Çayyolu by Kurtuluş Churches Association and it is a forbidden activity. In summary: the Association demanded from court to dismiss the case by stating that the aforesaid place is not a place of worship; it is just a representative office belonging to the Association and even if it was used as a place of worship, it shall not be considered as a forbidden activity since the nature of the event does not concern the public law and even if it is considered as a matter which concerns the public law, closing the Association would be non-proportional with the ‘‘accepted legitimate purpose’’. Public prosecutor gave an opinion towards closing the Association. The judge decided to refuse the action of closing by the decision given in 21.06.2007 and the decision included these expressions:

“It is hereby decided to dismiss the groundless action by virtue of the fact that no contradictory action of the defendant association against prohibitions and restrictions could be found when the following legal facts taken into consideration that legal entity of the association cannot be terminated because of opening a facility without receiving a permit and its activities cannot be prevented; in order to close and prevent activities of the association, it shall be proved with the final court decision that the association became the source of the action considered as a crime and an organic link shall be found between the action considered as a crime and the legal entity of the association…”

Odemis Sevgi Protestant Church/Izmir Administrative Court
Merits No: 2007/25
Decree No: 2007/1257

The community in Ödemiş was worshipping at the home and District Governorship of Ödemiş decided to terminate that activity. However, the Administrative Court reversed this judgement and expressed the following issues:

*“It is necessary to investigate whether applied restrictions are legally justifiable or not since it is seen that subject transaction imposes restrictions on the “freedom of religion” of individuals. The 24th Clause, titled as “Freedom of Religion and Conscience” which is located at the Part II of the Constitution of the Republic of Turkey, titled as “Fundamental Rights and Duties” governs that: “**everyone has the freedom of conscience, religious belief and conviction. Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14. No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions**”. Clause 13 of the Constitution of the Republic of Turkey governs that: “**fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the***

requirements of the democratic order of the society and the secular republic and the principle of proportionality*" and Clause 14 similarly governs that: "****none of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate activities contrary to these provisions shall be determined by law****".*

In addition to these, in accordance with the 90th Clause of the Constitution, international agreements which are duly approved have the force of law. Freedom of religion is also regulated at the 9th Clause of European Convention on Human Rights which has the force of law in Turkish Law. Both 24th Clause of our Constitution and 9th Clause of European Convention on Human Rights consider "freedom of religion" as a fundamental human right for everyone without any exclusion. Moreover, both clauses designate conditions for restricting the freedom of religion taken under protection, in other words; "limits of restriction" the freedom of religion.

Within this framework, Additional Clause 2 of Building Code numbered 3194 stipulates that necessary places for worship are assigned by taking the conditions and specific needs of planned district and region into consideration while compensating zoning plans. Places for worship can be built within the borders of provinces, cities and towns provided required that permits are obtained from the local authorities and construction is in accordance with the zoning legislation. The provision which stipulates "the places for worship shall not be allocated for other purposes in defiance of zoning legislation" is intended for meeting the needs of individuals for a place to perform their religious practices, who have different beliefs thus, the purpose of aforesaid law is not to restrict the freedom of religion; on the contrary, it was established to meet the needs of different beliefs.

Within this scope, in accordance with the law, the necessary convenience shall be provided to allocate a place for worship for the defendant and religious community that he belongs to with the transaction matter in dispute and the legal acceptance is required to confirm that precaution towards other public institutions do not bring about a negative intervention on the area of freedom of defendant and precaution towards investigating the acts constituting a judiciary and administrative crime in general is already penalized and banned through laws towards public order and well-being of the society and these are always monitored by all the public units.

Nevertheless, when the precautions which stipulates to prevent prayers performed at the place which was notified by the defendant to be used on the purpose of worship and to prevent coming together with people who share the same faith, it is seen that the bans introduced directly restrict the absolute area of freedom concerning faith at inner world of the defendant and such precaution introduces an "illicit" restriction on the freedom of religion taken under protection at the constitutional level and thus it is unlawful.

Even if it was asserted that the defendant performs mass worship at the place where was constructed as a house; the building cannot be used as a place of worship in terms of zoning law; religious activities especially annoys those who have different faiths and thus gets reactions and there is no possibility to ensure the security of the defendant and her/his religious fellows since it was not registered as a place of worship, the transaction is not compliant to laws in terms of the "reason" and "matter" since our court decided that restriction regarding performing worship and mass required by the faith of the defendant at the address notified by the defendant to the related authorities when we considered quantitative magnitude of the community constituted by individuals who share the faith of the defendant and requirements of methods and rules for allocating a place of worship regarding the zoning law and when our court take into consideration that there is no other rule, provision or method in our national regulations except additional clause 2 of the law numbered 3194 in terms of opening place of worship from any religion.

On the other hand, our court could not detect any reason stipulated by the aforesaid provisions which would justify the restriction of freedom of religion since our court decided that claims, such as religious activities of the defendant and her/his community causes restrictions on rights and freedoms of others and it disturbs the public order, safety, decency or health or it violates rights and freedoms of individuals from other beliefs, do not reflect the reality.

Article 10 of the Constitution enshrines equality for all before the law, regardless of language, race, skin color, sex, political views, philosophical beliefs, religion, confession, or similar reasons and states that administrative bodies and state organs are to treat all citizens equally and in accordance with this principle in all of its activities.

There is no law in Turkey, which specifically regulates freedom of religion or belief. A variety of other laws and regulations contain provisions, which affect freedom of religion or belief. These include: the Turkish Civil Code, the Law on Associations, the Law on Foundations, the Law on Assembly and Demonstrations, the Law on Zoning and Construction, the Turkish Criminal Code, the Basic Law on National Education, the Law on Private Educational Institutions, the Law on the Closure of Dervish Convents and Tombs, the

Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles, and the Law on the Prohibition of Certain Forms of Attire.

- **The legal entity problem of the Protestants**

None of religious groups in Turkey including Protestants directly have legal entities. National legislation restricts and damages the right of organization from time to time, let alone make it easier for religious and faith groups and provide legal assurance. As a consequence of that, religious groups prompted to live in line with current conditions.

The need for a legal entity was primarily commenced to be expressed within the context of non-Muslim communities living in Turkey. This is an understandable situation because, the legal personality status for these communities became an existence problem. Venice Commission of the Council of Europe published an opinion regarding legal personality of non-Muslims in Turkey and detected it is not in conformity with European Convention on Human Rights that religious groups in Turkey are not able to have legal personalities and it recommended Turkey to carry out legislative regulations which enable all the non-Muslim religious communities in Turkey to receive legal personalities.

The problems originating from not being able to have legal personalities for religious groups in Turkey can be listed as below:

- Belief groups and their representative institutions which have no legal entity status cannot conduct legal proceedings. It is not possible for them to open bank accounts, open lawsuits, buy property or make contracts.
    - Belief groups cannot officially employ their own religious officials and provide social security for them.
- Belief groups' attempts to plan for the future, to make investments and coordinate activities related to their common lives and existence becomes impossible, since, they cannot form a legal representative institution or supreme board.
- Although religious representative institutions are essentially included in the state protocol and/or are able to directly contact the Prime Minister and the President, their position is ambiguous because of not having a legal entity status

- Not being able to carry out legal transactions implicitly brings about many other problems. For example: it is not possible for them to purchase immovable properties to earn income in order to support and improve community life.

- Belief groups, which cannot directly acquire a legal entity status, tried to acquire this status to a certain extent by establishing foundations or associations and maintained some of their activities through these institutions. However, there are important restrictions related to these models that do not provide a direct legal entity status for them.

Consequently, religious groups live in fear for uncertainty and arbitrary interventions and maintain their activities by expecting an unjust intervention while they are struggling to operate through these models with extensive observance and restrictions.

- Having no legal entity makes religious groups and their assets unguarded against the state. Ownership of the immovable properties used for supporting many activities including worship and educations of the group is lost because of not having the legal entity even if they somehow had possession of these properties in the past and what's worse, these religious groups **are not able to become a party to legal struggles** to retrieve their assets.

- Not having a just, simple and accessible legal entity restricts the participation of religious groups in social life.

- When it comes into question to share public financial resources between various religious groups rather than using them just for supporting one religious group in the future, these resources would not be transferred to any of these religious groups since none of these religious groups have legal entities.

- When it is taken into consideration that belief activities which are monopolized by the state are related with only one belief, not being able to carry out activities concerning their beliefs by obtaining legal entities deepens and generalizes the inequality.

- When a matter concerning legal entities is submitted to the court, especially when an old religious group is in question, sometimes courts give a verdict by considering the name of the religious group written on the title deed and the fact that the immovable property was used by that religious group. On the other hand, the status of legal entity which is recognized by the courts to some extent is not considered by the institutions carrying out routine administrative transactions such as municipality and tax office

and the administrative processes end up with victimization of religious groups. Every administrative transaction shall be submitted to the court unless a legislative regulation is conducted. This situation both decelerates transactions of religious groups and places a great financial burden since it constantly requires to allocate money for the court proceedings.

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Turkish judicial system does not include regulations which would enable any religious group to obtain a status of legal personality as a religious group. However, individuals belonging to religious groups are able to establish **association** or **foundation** within the scope of current regulation. Although some certain improvements have been made in the last decade concerning the status of legal entity at both private laws, they still offer limited solutions.

Foundations

Foundation system in Turkey has a long standing background tracing to the Ottoman Empire and it was traditionally established in order to sustain immovable properties related to religions and beliefs (place of worship, etc.) and to provide services (school, hospital, scholarship, etc.) to individuals belonging to certain religious groups. One matter which shall be highlighted regarding foundations is that these institutions have the characteristics of being an asset oriented community who possess a legal entity. Foundations are asset oriented communities having legal entities and they are formed by allocating properties and rights of natural and legal persons to a certain and constant objective. Hence, it cannot ensure to obtain a legal entity as a group by coming together. All foundations are under the control of General Directorate for Foundations. Foundation system provides an indirect opportunity for activities of religious groups.

According to 101st (4) Clause of Turkish Civil Code, ''formation of a foundation contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community, is restricted.''

Istanbul Protestant Foundation which explicitly expressed in its articles of foundation that they constituted a certain asset oriented community in order to support activities aimed to meet the religious needs of Protestant Turkish citizens and foreigners who reside in Turkey or visit Turkey and share the same faith in accordance with the Constitution of the United Nations, multilateral European Agreements on human rights and freedoms and Constitution of the Republic of Turkey and Turkish legislation was founded in 1999. Main objective of the foundation is declared as fulfilling religious needs of individuals having Protestant faith in accordance with the Constitution of the Republic of Turkey and Turkish legislation. On the other hand, Kurtuluş Churches Foundation who applied for establishment with similar articles of foundation could not achieve to be set up by giving justification via the provision which indicates no foundation shall be established in order to support a certain community.

Associations

Associations are the person oriented communities which have legal entities and which are constituted by means of continuously uniting the knowledge and studies of at least seven natural or legal persons in order to achieve a certain and common goal which was not prohibited by laws aside from gain sharing. Unlike restrictions for foundations stipulated at the 4th paragraph of 101st Clause of Civil Code, there is no restriction for establishing associations with religious purposes,

Law of Associations accepted in 2004 within the context of harmonization process of European Union opened the way for establishing associations with certain religious objectives by coming together with individuals belonging to some religious or faith groups. At the present time, there are more than ten Protestant Church Associations in Turkey.

Even if it is possible for associations to come together with the members of a religious group and carry out activities for certain objectives, it does not mean that religious groups can obtain a legal entity through associations. Firstly, associations do not directly provide a status of legal entity to faith groups. For instance, within the scope of association model, any faith group or community cannot obtain a status of legal entity individually and cannot apply its own self-management rules. Associations can be founded only to carry out some activities towards needs of faith groups by the individuals who are the members of those faith groups. Nonetheless, it never means that the faith group can acquire rights and authorities as a faith group directly through such association. Associations cannot apply their own self-management rules, because, their management regimes are determined by the law. It is necessary to conduct numerous bureaucratic transactions regularly to enable association to operate without problems. As a result, in order to establish an association and to maintain its operation, it is essential to fulfill bureaucratic requirements and to possess a significant knowledge level, human resource and financial capacity.

Aside from legal entity statuses for associations and foundations which are included in our legislation, a new legal entity model which will enable faith groups to obtain directly a status of legal entity should be created.

The report regarding freedom of religion, recognition of faith groups and obtaining a legal personality published by Special Reporter of United Nations for Freedom of Religion or Faith in 2011 also propounded some guiding principles on that matter.

- Some registration procedures restrict the freedom of religion or belief of some faith groups and make it difficult to regulate their communal life in such a way that it causes long term loses. Therefore, it is significant that states apply registration processes in a just and non-discriminatory way and in such a way to serve to freedom of religion or belief.

- Freedom of religion or belief is a right held by all human beings because of their inherent dignity. According to article 18, paragraph 1 of the International Covenant on Civil and Political Rights this includes the freedom, "either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching". The possibility of engaging in various forms of community activities thus clearly falls within the scope of freedom of religion or belief. Thus registration should not be compulsory, i.e. it should not be a precondition for practising one‟s religion, but only for the acquisition of a legal personality status.
- According to international rules of laws, states have to play an active role in facilitating to govern human rights completely. Unless states provide proper legal options accessible for all religious or faith groups both legally and actually, they would not fulfill their liabilities regarding rights to have freedom of religion or belief.

- Tüzel kişilik edinme olanakları kısıtlanan din veya inanç grupları topluluk yaşamlarını istikrarlı bir çevre ve uzun dönemli bir perspektifle organize etme konusunda büyük zorluklar yaşamaktadırlar. For instance, without the status of a legal personality, religious or belief communities cannot open bank accounts or engage in financial transactions. As a result, the ownership of places of worship frequently remains precarious, in that real estate assets or other important property only belong to private individuals who informally operate in the service of the community. Furthermore, the construction of larger places of worship seems hardly conceivable under such insecure circumstances. In this context, it needs to be recalled tha the right to freedom of thought, conscience, religion or belief includes, inter alia, freedom to establish and maintain places of worship and freedom to solicit and receive voluntary

financial and other contributions from individuals and institutions. (1981 Beyannamesi, Madde 6(a) ve (f)).

- Similarly, communities lacking legal personality status are faced with additional obstacles when trying to establish private denominational schools. This in turn may have negative repercussions for the rights of parents or legal guardians to ensure that their children receive religious and moral education in conformity with their own convictions – a right explicitly enshrined in international human rights law as an integral part of freedom of religion or belief.(Article 14(4))

- It may be even more difficult to establish institutions of higher education, including theological training institutes, which are vital to intellectually further develop and convey the tenets of a faith to the next generation. This may seriously hamper the freedom to teach a religion or belief in places suitable for these purposes and the freedom to train appropriate leaders(1981 Beyannamesi, Madde 6(e)) called for by the requirements and standards of any religion or belief. In some situations, the denial of legal personality status might jeopardize the long-term survival chances of a religious or belief community.

- Moreover, religious or belief communities lacking legal personality status are barred from employing staff in an official manner. People serving for the community either have to do this on a purely voluntary basis or conclude working contracts with a private employer, which again is a situation detrimental to any long-term planning. Yet, the right to freedom of thought, conscience, religion or belief includes, inter alia, freedom to establish and maintain appropriate charitable or humanitarian institutions.

- Another problem concerns the establishment of radio stations or other media. In the absence of the status of a legal personality, it would again require individual members of the community to take all the financial responsibilities and risks in their private capacities. It seems clear that media work is extremely complicated under such

conditions. This, however, will most likely have negative effects on the possibilities to reach out to parts of the community living in remote areas or in other countries and to participate in public debates. However, international human rights law also protects the freedom to write, issue and disseminate relevant publications and the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels. (Article 6. I).

- The above-mentioned practical problems and their human rights implications show that a lack of legal personality status may adversely affect virtually the whole catalogue of manifestations protected under the non-exhaustive list in article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Furthermore, the Human Rights Council and the General Assembly have repeatedly urged States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief and, to this end "to review, whenever relevant, existing registration practices in order to ensure that such practices do not limit the right of all persons to manifest their religion or belief, either alone or in community with others and in public or private".

- All registration decisions must be based on clearly defined formal elements of law and in conformity with international law. Registration should neither depend on extensive formal requirements in terms of the number of members and the time a particular community has existed, nor should it depend on the review of the substantive content of the belief, the structure of the community and methods of appointment of the clergy. In addition, provisions which are vague or which grant excessive governmental discretion in giving registration approvals should be avoided. Members of religious or belief communities who have been denied registration must have access to remedies, including informal conflict management and formal legal measures to challenge a negative registration decision.

- Religious or faith groups whose opportunities to obtain legal entities are restricted have great challenges to organize their communal lives consistently with a long term perspective.Losing their statutes with entering new rules into force bring about a problematic situation for religious or belief communities who already gained rights for registration in terms of freedom of religion or belief. Provisions which operate retroactively or do not protect accrued rights should be avoided and in case that new rules are approved, at least sufficient transitional rules should be generated.

- **FREEDOM TO MANIFEST ONE'S RELIGION OR BELIEF**
- Freedom of religion and belief also includes rights to perform religious activities and to promulgate and make one's religion public.

- Missionary activities are continued to be taught as a national threat on Kemalism and History of Turkish Revolution course books which is included in the curriculum of 8th class of secondary education. Missionary activity which is defined as proliferation of a religion in another country is introduced as a threat which would divide Turkey and it is emphasized that citizens shall be warned on this matter.
- Protestant Churches Association applied to Ministry of National Education since proselytism is introduced as a crime in the part titled as 'missionary activities' on the subject of 'Threats for Turkey' of Kemalism and History of Turkish Revolution course book and Ministry of National Education gave the following answer on 02.10.2009: "Your request is examined. The following expressions take place [In the aforementioned book]: ''we [should] be aware towards protecting Republic of Turkey against internal and external threads and ''Armenian claims, terrorism, missionary activities, political reaction and separatism matters will be discussed… Furthermore, in the curriculum of 4-8th classes, it is stated 'negative effects of the missionary activities are emphasized'… As it is known, geopolitical and strategic position of our country resulted in being target for some negative activities. It is obligatory for us to display sensitivity against ideological and sometimes separatist activities conducted especially under the name of 'missionary activities' in our country. It is not possible to criticize whole system of education because of some isolated events… Kindly submitted for your information and please take necessary action.''

Anayasa'nın 26. Maddesinde düşünceyi açıklama ve yayma hürriyeti düzenlenmiştir.

Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.

(As amended on October 3, 2001; Act No. 4709) The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

(Repealed on October 3, 2001; Act No. 4709)

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented.

(Paragraph added on October 3, 2001; Act No. 4709)

The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.

- **The Right to Establish Schools for Religious Education and Teaching**

The manifestation of religion or belief in teaching is an inherent component of freedom of thought, religion, or belief.66 Religious or belief groups may establish educational institutions to train religious officials or organize courses and educational programs to instruct members of their communities.

Article 24 of the Constitution does not recognize the right to manifest religion or belief in teaching, but rather offers the following provision: "Religious and moral education and instruction shall be conducted under state supervision and control."According to the Law on Private Educational Institutions, "education institutions identical or similar to ones which provide religious education cannot be opened". Therefore in Turkey, Establishment of Schools for Religious Education and Teaching and the selection of compulsory and elective courses according tor religious education is the purview of the state alone.

- **The Right to Appoint Religious Officials**

Current legislation in Turkey, do not enable to train Christian religious officials or to open schools which will give religious education on the purpose of educating members of the religious community. Whereas, the right to train religious officials is one of the fundamental rules of freedom of religion and belief. Protestant community in Turkey try to solve this problem by master-apprentice method, seminars given in the country or sending students abroad. From time to time, Protestants who are not able to train religious officials and/or teachers in Turkey have to meet their needs from religious officials and/or teachers trained in other countries. On the one hand, the government does not allow Protestants to open schools to train religious officials and on the other hand, it sometimes does not give visas to or does not renew the residence permits of foreigner religious officials who are invited by the faith groups in Turkey.

Since there is no procedure which foreigner religious officials who mostly work voluntarily as a religious official at the place of worship of Turkish citizens can apply to, the risk to finalize the visa and residence permit applications of individuals invited as religious

officials with arbitrary assessments is increasing. Ministry of Labor and Social Security can impose fines to those people. In 2003, an administrative fine was imposed to Diyarbakır Protestant Church Association because of employing an unpermitted worker however, the Church Association was found rightful during the judicial procedure. While this report was written, a church in Gaziantep was locked up and sealed since the religious official working in there was a foreigner without a work permit.

- **Malatya Zirve Publishing House Case**

On 18 April 2007, three Protestant Christians consisting of one German: Tilman Ekkehart Geske and two Turkish: Necati Aydın and Uğur Yüksel who were the workers of Zirve Publishing House in Malatya were murdered by severe tortures and slicing their throats because of carrying out ‘‘missionary activities’’. 5 suspects who were detained on scene then arrested and 2 more suspects gave statements. By the assent of accusation of Office of Chief Public Prosecutor of Malatya (commissioned by 250th Clause of CMK (repealed)) dated 05.10.2007 and numbered 2007/75 with merits no: 2007/112 sor-2007/109, a lawsuit for 7 suspects was filed via the file of Malatya 3rd High Penal Court (commissioned by 250th Clause of CMK (repealed)) with merits no: 2007/125. Defendant suspects are standing trial for charges to establish an armed terrorist organization, to be an administrator at an armed terrorist organization, to be a member of an armed terrorist organization, to murder more than one person within the scope of activities of armed terrorist organization, to violate immunity of workplace and to assist to an armed terrorist organization.

Office of the Chief Prosecutor of Malatya commenced an investigation for the polices in charge at Malatya Preventive Services Department and the polices who issued judicial documents at Beydağı Police Department due to ‘malfeasance’.

The Lawsuit Filed with Supplemental Accusation Issued within the Scope of Ergenekon Terrorist Organization Investigation

While the public prosecution regarding Zirve Publishing House murders was proceeding at Malatya 3rd High Penal Court, an advice letter consisting of 8 pages signed by İlker Çınar and some other print out enclosed documents were sent to Office of Chief Public Prosecutor of Istanbul authorized by 250th Clause of CMK as the attachment of letter dated 20.10.2010 belonging to Battle Bureau of Ministry of Office of Chief Public Prosecutor of Tarsus. When these documents which cover also previous accusations of Office of Chief Public Prosecutor of Istanbul were inspected, it was seen that these documents include detailed information about the strategies of Ergenekon Terrorist

Organization for missionary activities which revealed the fact that Zirve Publishing House murders were committed within that scope. In response, Office of Chief Public Prosecutor of Istanbul invited İlker Çınar to give a statement within the scope of investigation numbered 2010/857. Taking the significance of information received from him and his life safety into consideration, protection measure was applied for İlker Çınar in accordance with the Witness Protection Act numbered 5726 and he started to be called as Deniz Uygar and his testimonies were taken two times as an anonymous witness.

While this investigation was proceeding, a new advice letter dated 11.03.2011 and one CD were sent again to Office of Chief Public Prosecutor of Istanbul. Prosecution Office sent those documents to Istanbul Anti-Terror Branch Office to carry out necessary examination. When the sound recording inside that CD confirmed the testimony of the anonymous witness Deniz Uygar (İlker Çınar), his testimony was taken again. When it was comprehended and appeared that İlker Çınar has made confirmable and consistent statements with respect to time before and after Zirve Publishing House murders, nine suspects including Mehmet Ülger were taken into technical surveillance and their houses were searched within the context of investigation for people mentioned in the statements of İlker Çınar. Suspects were arrested by the court on 21 March 2011. Within the scope of ongoing investigation, testimonies of nine suspects including Hulki Cevizoğlu, Hakan Kalyoncuoğlu and Ahmet Hurşit Tolon who was the detainee suspect of Ergenekon case were taken. İlker Çınar whose identity was uncovered during the proceedings gave two statements, however this time as a suspect.

As a result of information and documents obtained, a lawsuit for 19 suspects including retired four star general Ahmet Hurşit Tolon and Mehmet Ülger was filed via the accusation of Office of Chief Public Prosecutor of Malatya (commissioned by 250th Clause of CMK (repealed)) dated 08.06.2012 and numbered 2012/98 with merits no: 2007/383 sor-2012/114 and with the file of Malatya 3rd High Penal Court (commissioned by 250th Clause of CMK (repealed)) with merits no: 2012/157 for charges to establish and administer an armed terrorist organization, to attempt to annihilate the government of Turkish Republic or prevent it to carry out duties, to instigate for voluntary manslaughter, deprivation of liberty, violation of dwelling immunity and qualified robbery. At the 40th hearing of lawsuit dated 03.09.2012 with merits no: 2007/125, it was decided to join the file with merits no: 2012/157 with the file with merits no: 2007/125.

The lawyers of homicide suspects: Abuzer Yıldırım, Salih Gürler, Cuma Özdemir, Hamit Çeker and Emre Günaydın who are jailed pending trial for 7 years due to Zirve Publishing House murders submitted petitions to Malatya 3rd High Penal Court and demanded their clients to be released ‘‘in accordance with the law numbered 6526 which amended the Anti-Terror Law and Law of Criminal Procedures concerning the

transaction to repeal Special Courts''. Upon these applications, Malatya 1st High Penal Court which received the case file decided to release Emre Günaydın, Abuzer Yıldırım, Cuma Özdemir, Hamit Çeker and Salih Gürler on 8 March 2014 since the period of detention was reduced to 5 years. The court agreed upon imposing daily judicial control decision and abroad travel ban for the suspects. Furthermore the suspects received a supervised release provided that they do not leave their houses and they got handcuffed with electronic bracelets. Retired four star general Ahmet Hurşit Tolon was also released on 10 June 2014. On 24 June 2014, detainee noncommissioned officers Abdullah Atılgan and Murat Göktürk and specialized sergeants Mehmet Çolak and Levent Ercan Gelegen were also released by the decision of "supervised release". The court passed a verdict to release detainee retired colonel Mehmet Ülger, academician Ruhi Abat and squadron leader Haydar Yeşil at the hearing conducted on 23 January 2015. Varol Bülent Aral who stood trial as a suspected instigator remained as the only detainee in that case.

103rd hearing of the case of Zirve Publishing House murders conducted on 1 April 2015 at 1st High Penal Court of Malatya Courthouse via file with merits number: 2014/173. The court decision given one day before about Balyoz case which end in acquittal of all the suspects directly reflected on that trial of Zirve Publishing House case. The Chief Judge ordered both sides to prepare defense as to the accusations concerning their opinions as to the accusations. The trial was adjourned to 6 May 2015.

Conclusion

Legislative regulations shall be promptly made for the Protestants and other faith groups in Turkey and these regulations shall be correspondent with explicit, detailed, applicable and international standards. Protestants and other faith groups in Turkey should not be aggrieved anymore due to aforesaid issues and the problems should be promptly put on the agenda. Moreover, international agreements to which Republic of Turkey became a party shall be complied and their requirements shall be fulfilled. Opinions of Protestants in Turkey shall be also received for the solution of problems and methods to follow and joint actions shall be taken for overcoming the problems. It shall be ensured that faith groups in Turkey have more robust legal status.