

# report

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## A Quest for Equality: Minorities in Turkey





**Kurdish girl in Diyarbakir, Turkey.**  
Carlos Reyes-Manzo/Andes Press Agency.

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The aim of this project is the protection of the ethnic, linguistic and religious rights enshrined in European standards (and reflected in the Copenhagen Criteria) of minorities in Turkey. The project focuses on the problem of displacement, anti-discrimination law and remedies, and educational rights of minorities in Turkey.

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MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957.



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# A Quest for Equality: Minorities in Turkey

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# Turkey



# Executive summary

Turkey is a land of vast ethnic, linguistic and religious diversity. It is home not only to Turks, Kurds and Armenians, but also millions of Alevis, Ezidis and Assyrians. There are also Laz, Caferis, Roma, Rum (Greek Orthodox), Caucasians and Jews. A centuries-old mix of languages, cultures and traditions are practised within its borders.

But instead of celebrating this diversity, the history of the Republic of Turkey is one of severe and sometimes violent repression of minorities in the name of nationalism. Since the foundation of the state, the only protection for minorities has been that set out in the 1923 Treaty of Lausanne. Turkey has been violating the Treaty since it was adopted, not least by restricting its scope to Armenians, Jews and Rum Christians.

Minorities excluded from the Treaty of Lausanne rights have been banned from using their languages in schools and in media, and from fully exercising their religious rights. Others have been subjected to policies aimed at homogenizing the population of Turkey and destroying minority language, culture and religion. Normally, only Turkish language, culture and history have been tolerated in education and political life.

Minorities are disadvantaged in Turkish society. A 10 per cent electoral threshold prevents minority parties from gaining access to parliament. In the media, broadcasting in minority languages, having been banned for years, is severely restricted. Use of minority languages in political life and in public services is still forbidden. School textbooks reproduce negative stereotypes of minorities. There is no effective legal mechanism against discrimination. Generations have therefore been sentenced to lack of access to political participation, illiteracy and denial of their right to freedom of expression, with no recourse to justice. Over a million people, largely Kurds and Assyrians, remain displaced from their homes in the south-east.

Violence has been a part of life for many minorities under the Turkish Republic and it has been increasing in the last year. On 19 January 2007, respected Armenian human rights campaigner Hrant Dink was shot dead in Istanbul. The suspect was a teenager who told police that Dink was Armenian and 'had insulted Turkishness.'

But there is another side to Turkey. The killing of Dink inspired more than 100,000 people to demon-

strate, carrying placards that read 'We are all Armenian.' Dink's murder, the outcome of ingrained hatred against minorities, was met by a nationwide affirmation of solidarity. Turkey has made some real steps towards European standards of minority protection but much remains to be done. Turkey is at a turning point. Will it go forward to real equality?

This report sets current law and practice in Turkey against the backdrop of equivalent international standards. It considers the impact of the EU accession process, showing how far Turkey's attitude to minorities has changed in the last six years, and how far it still has to go.

Although some laws have been reformed, often this has not resulted in real change. In April 2006, the mandatory declaration of religion on ID cards was abolished. But the state continues to ask citizens to declare their religion. Non-Muslims who leave the section blank are therefore just as vulnerable as if they stated their religious affiliation. Thus it is vital that the EU focuses on the actual situation of minorities in Turkey and ensures that all minorities are considered equally.

One of the most positive developments motivated by the accession process has been the rise in the number of minority organizations demanding recognition of their distinct identities. Minorities are speaking out in the national courts and the European Court of Human Rights; they are beginning to claim their rights for themselves. In order for minorities to continue this work without fear of imprisonment and murder, the EU should put more pressure on the state to tackle minority rights violations at every level of society.

The state now has a key opportunity for further reforms and better protection of minority rights. A new constitution is on the government's agenda; the re-drafting must change discriminatory constitutional provisions, such as that on mandatory religious education. The state must then implement a comprehensive anti-discrimination law that prohibits and punishes both direct and indirect discrimination.

The lack of official and public acceptance of all groups as minorities and as equal citizens, regardless of religion, language or ethnicity, remains the biggest barrier. Once this acceptance comes, the many practical steps that are still needed for equality may be more easily attained.



# Turkey – an EU Timeline

**September 1959:** Turkey applies for associate membership of the European Economic Community (EEC).

**April 1987:** Turkey makes an application for full EEC membership.

**1993:** Adoption of Copenhagen Criteria by EU for states seeking accession. States must prove they have the 'institutions guaranteeing ... respect for and protection of minorities'.

**December 1997:** At the Luxembourg Summit, Turkey is declared eligible to become a member of the European Union.

**December 1999:** EU Helsinki Council recognizes Turkey as an EU candidate country on an equal footing with other candidate countries (see p. 6).

**March 2001:** The EU Council of Ministers adopts the EU–Turkey Accession Partnership.

**March 2001:** The Turkish government presents its National Programme for the Adoption of the Acquis (EU laws) (see p. 9).

**September 2001:** The Turkish Parliament adopts a major constitutional reform in order to meet the Copenhagen political criteria for EU membership.

**August 2002:** The Turkish Parliament begins to introduce political and human rights reforms designed to meet the Copenhagen political criteria.

**13 December 2002:** The Copenhagen European Council resolves that if the European Council in December 2004 decides that Turkey fulfils the Copenhagen political criteria, the EU would open accession negotiations.

**May 2003:** The EU Council of Ministers decides on the principles, priorities, intermediate objectives and conditions of the Accession Partnership with Turkey.

**October 2004:** The Commission presents its 'Recommendation of the European Commission on Turkey's Progress towards accession' along with its paper 'Issues Arising from Turkey's Membership Perspective'.

**December 2004:** The European Council defines the conditions for the opening of accession negotiations.

**June 2005:** The Commission adopts its proposal for a revised Accession Partnership and a Communication on the civil society dialogue between EU and Candidate countries. According to the EU: 'This communication sets out a general framework on how to create and reinforce links between civil society in the EU and candidate countries. The dialogue will have a special focus on Turkey, as the state of mutual knowledge is particularly weak with that country and misconceptions and concerns more widespread'.

**03 October 2005:** Adoption by the Council of a Negotiating Framework setting out the principles governing the negotiations followed by the formal opening of Accession negotiations with Turkey.

**December 2005:** Adoption by the Council of a revised Accession Partnership for Turkey.

**November 2006:** the Commission adopts the Communication to the Council on accession negotiations with Turkey. All dates edited from: [http://ec.europa.eu/enlargement/turkey/key\\_events\\_en.htm](http://ec.europa.eu/enlargement/turkey/key_events_en.htm)

**December 2006:** The Enlargement Strategy and Main Challenges 2006–2007 Report from the Commission to the European Parliament and the Council states: 'It is necessary to ensure freedom of expression without delay by repealing or amending Article 301 of the Penal Code and by overall bringing the legislation into line with European standards. Apart from the freedom of expression, further efforts are needed to strengthen freedom of religion, women's rights, minority rights and trade union rights. At the same time, there is a need for Turkey to address the serious economic and social problems in the South-East and to ensure full enjoyment of rights and freedoms by the Kurdish population.' [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/com\\_649\\_strategy\\_paper\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/com_649_strategy_paper_en.pdf)

**2015:** Turkey joins the EU?

# Turkey – Key events and minority rights under the Turkish Republic

- 1923:** Assembly declares Turkey a republic and Kemal Atatürk as president (see p. 6). Treaty of Lausanne grants some minority rights to 'non-Muslims' in Turkey (see pp. 7, 10).
- 1928:** Turkey becomes officially secular: clause retaining Islam as state religion removed from the Constitution (see p.20).
- 1934:** Mob attacks against Jews in Thrace (see p. 7).
- 1949:** Law allows state to change names of non-Turkish villages to Turkish (see p. 18).
- 1955:** Mob attacks against non Muslims in Istanbul (see p. 7).
- 1960:** Military coup.
- 1965:** State Institute of Statistics stops disclosing information on mother tongue gathered from the census (see p.11).
- 1971:** Military intervenes in politics by 'memorandum' and Prime Minister resigns.
- 1980:** Military coup.
- 1982:** New constitution restricting fundamental rights and freedoms comes into force. Mandatory religious education (Sunni Islam) is introduced (see p. 34).
- 1991:** Leyla Zana, a Kurdish parliamentarian speaks her language in Parliament; she is arrested and jailed for 15 years with three other MPs.
- 1992:** 20,000 Turkish troops enter Kurdish safe havens in Iraq in anti-PKK operation.
- 1994:** Constitutional Court closes down the pro-Kurdish Democracy Party (DEP).
- 1995:** Major military offensive launched against the Kurds in northern Iraq, involving some 35,000 Turkish troops.
- 2001:** Diplomatic row with France after French National Assembly recognizes the killings of Armenians under the Ottoman Empire as genocide. Constitutional amendments. The adoption of Article 301 which has since been used to prosecute scores of writers, publishers and thinkers for expressing views on the Armenian or Kurdish question that go against the state view (see p. 22).
- 2002:** Parliament declares bans on Kurdish education and broadcasting to be lifted (see p.16).
- 2003:** Parliament passes laws easing restrictions on freedom of speech and Kurdish language rights (see p.17). Kurds are still largely banned from giving their children Kurdish names (see p. 18). The Constitutional Court closes down the pro-Kurdish People's Democracy Party (HADEP).
- 2004:** First private course in Kurdish language opens (see p.16). State TV broadcasts first Kurdish-language programme (see p.17).
- 2005:** Expropriation of Roma areas of Istanbul is authorized. Roma treated unfairly (see p. 28).
- April 2006:** At least a dozen people are killed in clashes between Kurdish protesters and security forces in the south-east. Several people are killed in related unrest in Istanbul.
- 2006:** Parliament passes new anti-terror law which worries the EU and which rights groups criticize as an invitation to torture (see pp. 23, 34). Mob of hundreds attacks Roma family – no one arrested (see p. 30).
- January 2007:** Journalist and Armenian community leader Hrant Dink is assassinated. More than 100,000 people form a protest march at his funeral. Prime Minister Erdogan says a bullet has been fired at democracy and freedom of expression (see pp. 13, 30). <http://www.guardian.co.uk/international/story/0,,1997149,00.html>
- February 2007:** Former President and 12 pro-Kurdish politicians are sentenced to six months to one year in prison for making speeches in Kurdish (see p. 24).
- 12 April 2007:** In a press statement, Chief of Staff Yaşar Büyükanıt criticizes the EU and MRG for their activities on minorities in Turkey (see p. 7).
- 27 April 2007:** In a press statement, Chief of Staff states that 'Anyone who objects to the understanding "How happy is the one who says s/he is a Turk" is the enemy of the Republic, and will always be so' – which has been widely regarded by politicians, media and civil society as a memorandum to the government or a coup attempt (see p. 7).
- May 2007:** Sur Mayor Abdullah Demirbas is sacked and the municipal council is dissolved by the Council of the State for providing multilingual municipal services (see p. 19).
- 22 July 2007:** In the general elections, the AKP wins 341 seats, enough to form the government alone for the second time; 22 pro-Kurdish MPs are elected – the first to enter Parliament since 1991 (see pp. 25, 35).
- August 2007:** Abdullah Gül is elected president.
- All text in this timeline except where otherwise stated are from: <http://news.bbc.co.uk/1/hi/world/europe/1023189.stm> and [www.minorityrights.org](http://www.minorityrights.org)*

# Introduction

Turkey's acceptance in 1999 as an official candidate for membership to the European Union (EU) has generated an unprecedented political reform process, which further accelerated after 2002, when the ruling Justice and Development Party (Adalet ve Kalkınma Partisi, AKP) came to power. Significant progress has been made towards granting limited and conditional language rights to ethnic and linguistic minorities and remedying some of the property rights violations against non-Muslims; however, much remains to be done.

Prior to the July 2007 general elections, wanting to gain sufficient seats in the parliament to secure one-party rule, the AKP government demonstrated a significant decline in its commitment to the political reform process. Some EU countries moved from expressing full and firm support for Turkey's membership to distancing themselves from Turkey. The positive trend in Turkey with regard to protecting human and minority rights saw setbacks with the enactment of an anti-terror law; criminal proceedings against intellectuals, advocates and writers for criticizing Turkey's minority policy and/or advocating minority rights; rising nationalism and racism; the strengthening of ultra right-wing groups; increasing attacks against minorities; and normalization of discriminatory discourse not just on the part of the media and civil society, but from state officials at the highest level.

While the ongoing commitment of the government to the EU process and the pressure exerted by a vibrant civil society for democratization and human rights gave grounds for hope, the assassination on 19 January 2007 of Hrant Dink, a prominent Armenian journalist and intellectual with voicing dissenting views on the Armenian question, indicated that minorities and their advocates in Turkey face difficult times.

Nevertheless, the re-election of the AKP to government in July 2007, and its stated commitment to accelerate the reform process leading towards accession to the EU, provide grounds for hope. The election in August 2007 of Abdullah Gül – the former foreign minister who has worked hard to fulfil the EU human rights conditionality – as the new president is also a heartening development in terms of minority protection. Much will depend on the new government's political will to undertake reforms, and its ability to stand up to the civilian and military establishment. The government's initiation of the process to draft a new 'civic' constitution is a promising start.

## Historical background<sup>1</sup>

The notion of 'minority rights' has controversial connotations for the Turkish state and society. This may be surprising as the territory that now comprises the Republic of Turkey has had a long history of accommodating different ethnic and religious groups. From the fourteenth to the twentieth century, the empire was governed by mainly Turkish-speaking, Sunni Muslim, Ottomans who were predominantly ethnically non-Turk *devşirmes* (Christians of various ethnicities who were taken from conquered lands at a young age to serve in the military and in the palace, after having been converted to Islam). This empire had a working system of tolerance towards minorities, allowing religious groups limited autonomy in governing themselves through the millet system. This system was based on an informal hierarchy of communities, at the top of which were Sunni Hanefis.<sup>2</sup> The empire accepted thousands of Jewish refugees following their expulsion from Spain in 1492, although it was less welcoming to Muslims expelled from Spain at the same time. However, towards the end of the Ottoman Empire there was a rise in nationalism, as well as demands for rights and equality, among both minority and majority groups. The government's failure to meet society's demands for democratization and equal treatment encouraged outside powers, in particular, Russia, France and, at times, Britain, to intervene in Ottoman affairs by claiming to be protectors of Christian minorities. The culmination of this process was the near-total destruction of Christian communities – Armenian, Assyrian and Rum<sup>3</sup> – in Anatolia during the war with Russia in 1915.

The peace treaties of 1919–20, following the defeat of the Ottoman Empire and its allies, saw the victorious states requiring defeated and new states to guarantee the rights of ethnic, linguistic and religious minorities. Minority protection was imposed on Turkey in the Treaty of Sèvres. Similar to other treaties at the time, it required Turkey to guarantee the rights of 'racial, religious or linguistic' minorities, without distinction. However, at the same time, much of the former Ottoman territory was occupied by the Allied powers, with the British and French being awarded most of the Arab regions, and parts of Anatolia being occupied by Italy, France and Greece. Istanbul was occupied by the British.

The reaction in Turkey was the creation of the new Republic of Turkey under the leadership of Mustafa Kemal



Atatürk. This Republic was founded on the remains of a vast empire, which had lost 85 per cent of its territory and 75 per cent of its population over around 50 years.<sup>4</sup> The Republic of Turkey, after its successful War of Independence, negotiated a new Treaty of Lausanne in 1923, whereby it was again effectively compelled by the European powers to grant minority rights to 'non-Muslims'. The Treaty also granted limited language rights to all citizens.<sup>5</sup> Therefore there is a historical memory in Turkey of 'minority rights' being associated with an unjustified interference in internal affairs, and they are portrayed in the official language as a once-and-for-all granting, in 1923, of special treatment to non-Muslims. While a separate legal regime was created for some non-Muslims (in practice only Armenians, Greeks and Jews), all Muslims, categorized as 'Turks', became subject to homogenization policies. Inherent in this dichotomy was a trade-off between minority status and full citizenship: non-Muslims had to pay the high price of 'second-class citizenship' in return for minority rights, and various ethnic groups, as well as individuals belonging to non-Sunni denominations of Islam, were compelled to suppress their differences in exchange for 'full citizenship'.

The process of eradicating non-Muslims from Anatolia continued after Lausanne with the 1923 population exchange agreement,<sup>6</sup> whereby Turkey and Greece 'exchanged', i.e. expelled their respective Rum and Turkish minorities, with only a few exceptions. The remaining non-Muslims would essentially receive second-class citizenship under the guise of a minority protection regime. Despite this official protection, a series of policies since 1923 has contributed to their near-eradication as groups: the encouragement and tolerance of mob attacks – in 1934 against Jews in Thrace<sup>7</sup> and in 1955 against non-Muslims in Istanbul<sup>8</sup> – the exclusive military conscription of non-Muslims to serve in labour battalions in 1941 and 1942,<sup>9</sup> the levy on non-Muslims of a disproportionate and discriminatory wealth tax in 1942,<sup>10</sup> the deportation of Istanbul Rums in 1964,<sup>11</sup> and the systematic confiscation of properties belonging to non-Muslim foundations since 1960s. These incidents, laws and policies achieved two outcomes: the flight of the vast majority of the remaining non-Muslims from Turkey and the transfer of wealth to Muslims. On the other hand, various ethnic groups who shared a common Muslim identity were labelled as 'Turks' and became subject to homogenization policies through various laws and policies adopted in the 1920s and 1930s: the establishment of the Directorate of Religious Affairs (Diyanet İşleri Başkanlığı, Diyanet) on 3 March 1924;<sup>12</sup> 'Citizen, speak Turkish!' campaigns;<sup>13</sup> nationalist theories advocating the supremacy of the Turkish history and language;<sup>14</sup> the forced resettlement of minorities in predominantly Turkish areas in order to assimilate them into the 'Turkish culture';<sup>15</sup> the

prohibition of the use of non-Turkish names;<sup>16</sup> the ban on the use of minority languages in schools<sup>17</sup> and in courts;<sup>18</sup> and the requirement of 'belonging to the Turkish race' for recruitment to military academies and employment in the public sector.<sup>19</sup> Thus, the distinct cultures, languages and histories of various ethnic groups were suppressed in return for the 'prize' of full citizenship.

It was against this background that Turkey found itself having to comply with the EU's Copenhagen criteria for accession, that all candidate countries should have stability of institutions guaranteeing respect for, and protection of minorities. While Turkey found itself having to undertake major reforms in order to fulfil this EU requirement, the concept of 'minority' has continued to be a matter of contention and to trigger discriminatory reactions. Public officials at highest levels make offensive statements about minority identity, portraying it as an undesirable and unworthy status. For example, Zeki Sezer, the leader of Democratic Left Party (Demokratik Sol Parti, DSP) 'blamed' the government for portraying Kurds and Alevis as minorities for the sake of entering the EU.<sup>20</sup> Advocacy on minority rights is considered as conspiracy against or betrayal of the state by nationalists and some public officials. Most recently, during a press conference, Chief of Staff Yaşar Büyükanıt blamed the EU for creating new minorities in the Republic by calling ethnic and religious communities, such as the Alevis and Kurds, minorities in its reports on Turkey. In the same speech he condemned MRG for implementing a project on protection of minorities in Turkey and considering some ethnic, linguistic and religious groups in Turkey, such as Assyrians and Roma, as minorities.<sup>21</sup> Soon after, in a midnight statement posted on its website on 27 April – which has been widely regarded by politicians, media and civil society as a memorandum to the government or a coup attempt – the Chief of Staff stated that 'Anyone who objects to the understanding "How happy is the one who says s/he is a Turk" is the enemy of the Republic, and will always be so.'

This negativity was inevitably internalized by Muslim minorities, such as Kurds and Alevis, some of whom vehemently reject the minority tag for fear of being perceived as a security threat, notwithstanding that they at times effectively demand minority rights, such as public education in their mother tongue and a share of the national budget for religious services.<sup>22</sup> Non-Muslims indeed associate minority status with lesser citizenship:

*'I do not feel myself as an equal citizen. I never have. At any rate, laws do not see me as such ... We are always perceived as a potential threat ... an enemy in the eyes of the people. The granting of minority status under Lausanne deprived non-Muslims of equal citizenship.'*<sup>23</sup>

# International standards on minority rights

The international protection of minority rights began with the treaties after the First World War, which required many states in Europe and the Middle East (largely the defeated or new states) to guarantee the protection of minorities. These included Turkey under the Treaty of Lausanne. In the subsequent 90 years, the protection of minority rights has developed to where it is a fully understood part of the general protection of human rights, aimed at ensuring the full equality of vulnerable ethnic, linguistic and religious groups. Minority rights are concerned with integrated societies that respect all the diversity within them, not with separation.

The international definition of ‘minority’ developed by the United Nations (UN) in 1979 is widely agreed upon:

*‘A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.’<sup>24</sup>*

The existence of minorities in any given country is an objective matter, which does not rest on the subjective policies of states.<sup>25</sup> As put by the former High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE), ‘the existence of a minority is a question of fact and not of definition’.<sup>26</sup> Similarly, the UN Human Rights Committee has stressed that ‘[t]he existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision by that state party but requires to be established by objective criteria’.<sup>27</sup>

Minority rights today have been developed by three main organizations of which Turkey is a full member – the UN and, in Europe, the OSCE and Council of Europe. Minority rights are also very important for the EU, to which Turkey is in the process of acceding.

## The United Nations

The UN human rights conventions do not contain binding provisions on minority protection – except for Article 27 of the International Covenant on Civil and Political Rights (ICCPR) which guarantees minorities’ right to enjoy their culture, to profess and practise their religion,

or to use their own language in community with the other members of their group – but advocate formal equality through anti-discrimination provisions contained in the UN Charter, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention on the Rights of the Child (the Child Convention) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) extend additional protection to children and women. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides universal protection against discrimination.

The only minority-specific instrument at the UN level is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration). This Declaration was approved unanimously by the UN General Assembly.

As a member of the UN, Turkey is legally bound by the UN Charter. The customary law nature of the UDHR also makes this instrument binding. Turkey is a party to the ICCPR,<sup>28</sup> the ICESCR, the Child Convention,<sup>29</sup> CEDAW and CERD.

## Council of Europe

The most relevant instrument on minorities in Europe is the Framework Convention for the Protection of National Minorities (FCNM). The first binding treaty on minorities, the FCNM imposes on signatories conditional and qualified duties to take affirmative steps to promote minority cultures. Turkey is one of only four of the 47 member states of the Council of Europe not to have signed the FCNM. All 12 new EU members have become party to it before or after their entry to the union.<sup>30</sup>

The most powerful European instrument is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 14 prohibits discrimination on the basis of, *inter alia*, membership to a national minority. Turkey is a party to the ECHR and is bound by the jurisdiction of the European Court of Human Rights (ECtHR). The ECtHR has stated that the protection of minorities is a basic European principle.<sup>31</sup> Protocol 12 to the ECHR prohibits discrimination in enjoyment of all rights guaranteed by law. Turkey signed this protocol on 18 April 2001, but has not yet ratified it.

## OSCE

The OSCE advocates the protection of minorities as a conflict prevention measure. This security approach to minority issues produced the Copenhagen Document in 1990, which reaffirms the principle of non-discrimination and calls upon states to take affirmative actions to ensure full equality between minorities and the majority. The OSCE has developed a particular expertise on minority issues, especially through its High Commissioner on National Minorities. It has developed written guidelines to summarize European standards on particular issues, including minority education, linguistic rights and effective participation of minorities and the use of minority languages in the broadcast media.<sup>32</sup>

## The European Union

The European Charter on Fundamental Rights prohibits discrimination on the grounds of 'membership of a national minority'. The EU's enlargement policy

requires all candidate countries to fulfil the Copenhagen political criteria, which include the principle of minority protection.<sup>33</sup> The principle of non-discrimination is strongly grounded in the EU's *acquis communautaire*. The 1997 Treaty of Amsterdam introduced Article 13, a general anti-discrimination clause. The European Council used the competence it had been given under Article 13 to adopt the Employment Directive,<sup>34</sup> which prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation, and the Race Directive,<sup>35</sup> which makes discrimination on grounds of racial or ethnic origin unlawful in employment, training, education, and access to social security, health care, social advantages, and goods and services, including housing. With the adoption of these directives, which are binding on all of its members, the EU now has a common legal framework on anti-discrimination. As part of the accession process, Turkey will have to adopt a legal framework on anti-discrimination to harmonize its national legal framework with the EU *acquis communautaire*.

# Turkey's minority policies: the legal framework

## The Treaty of Lausanne

The status of minorities in Turkey is established by the 1923 Treaty of Lausanne, which defines minorities on the basis of religion.<sup>36</sup> It envisions full citizenship rights for non-Muslims and lays on the Turkish government affirmative obligations. The Treaty establishes the supremacy of its provisions in the Turkish legal system.<sup>37</sup>

Although Lausanne grants minority status to all non-Muslims, in practice, Turkey has restricted the scope of the Treaty to Armenians, Jews and Rums.<sup>38</sup> This has unlawfully left other non-Muslims, such as Assyrians, Bahais, Georgians, Maronite Christians, Protestants and Ezidis outside the protection of the Treaty. Assyrians have been particularly vocal in pointing out their unlawful exclusion and demanding the recognition of their rights: 'The biggest problem for Assyrians in Turkey today is that they are not allowed to exercise their rights under Lausanne. This is a violation of the treaty.'<sup>39</sup>

Turkey has been systematically violating Lausanne since the adoption of the Treaty. However, even the full implementation of Lausanne would fall short of extending legal protection to all minorities in Turkey and meeting their rising expectations. Lausanne's restrictive definition excludes Turkey's numerous ethnic, linguistic and cultural minorities. The Treaty falls far behind contemporary international standards. The only other state to rely on a First World War treaty today as a purported reason to limit its duties towards minorities, is Greece, which uses the same Treaty of Lausanne to deny the existence of a Turkish minority in Western Thrace.

## The Constitution and legal framework

The Turkish constitutional scheme 'solves' the question of minorities without ever addressing it. There is no reference in the Constitution to the word 'minority', not even the Lausanne minorities.

There is no legislative framework for minorities in Turkey, either directly through laws granting minority rights or indirectly through an anti-discrimination law. To the contrary, despite significant constitutional and legislative reforms, various laws seek to limit the political, participatory, religious, educational and linguistic rights of minorities.

## Foreign policy

Turkey's foreign policy with respect to international treaties also seeks to ensure that no minorities other than non-Muslims are given legal protection. If the treaty in question is specifically on minority rights, the policy is one of non-signature, as in the case of the FCNM. If the treaty is not on minorities *per se*, but entails provisions granting them rights, then the policy is one of signature with reservations with respect to such provisions.<sup>40</sup> The combination of the Turkish Constitution and foreign policy serves a dual purpose: ensuring that Turkey remains in compliance with Lausanne without granting non-Muslims minority status in the Constitution and preventing the widening or deepening of Lausanne's protection.

On the other hand, Turkey's foreign policy vis-à-vis other states, particularly Greece, Iraq and Western Europe, which zealously advocates for the religious freedoms and political rights of ethnic Turks in these countries, points to a fundamental contradiction. It also weakens the sense of citizenship and belonging of its own minorities.

# Key minority groups in Turkey

Minorities who differ from the majority on the basis of their ethnicity, denomination and mother tongue remain unacknowledged in the eyes of the law. The number of individuals belonging to various minority groups in Turkey is unknown, since the state does not ask citizens about their ethnic, religious or other origin in censuses. Up to 1990, censuses included a question about mother tongue, but after 1965 the State Institute of Statistics stopped disclosing this information.<sup>41</sup> Thus, the only official information on minorities in Turkey relates to the number of individuals who declared their mother tongue in 1965. This information is out of date and probably inaccurate because some individuals might not have disclosed their mother tongue, and because mother tongue is more an indicator of the language spoken in the family than the ethnic origin of the individual.<sup>42</sup>

There is no scientific research on the numbers of minorities in Turkey. The list below is non-exhaustive; it includes the main minority groups, irrespective of whether they self-identify as ‘minorities’, and non-conclusive information about each. The quantitative estimates below should be read with caution; they are mostly provided by the minorities themselves and are not supported by academic research.

## Ethnic and linguistic minorities

### Caucasians

Mistakenly referred to as Circassians, this group consists of various peoples of Caucasian origin: Abkhazians, Chechens, Circassians,<sup>43</sup> Daghistanis, Ossetians and various Turkic groups. ‘Caucasia’ refers to the original homeland of these groups, whose ancestors immigrated from Russia in the mid-nineteenth century. Each group has its own language. The mother tongues of Abkhazians, Chechens, Circassians and Daghistanis belong to the Iberian-Caucasian language family, whereas Ossetians speak an Indo-European language and Turkic groups speak Turkic languages. Ninety per cent of Caucasians in Turkey are Circassian, while the majority of the remaining 10 per cent is Abkhaz. All Caucasians are Muslim. Chechens and Daghistanis belong to the Şafi denomination of Islam, whereas the rest are Hanefi. Caucasians live in 15 provinces in north-west, central and southern Turkey. According to the Federation of Caucasian Associations, the number of individuals who

self-identify as Caucasian is 3 million.<sup>44</sup> With the opening of the border with Georgia in 1988, the break-up of the Soviet Union and the global rise in identity politics, a differentiation has emerged within Caucasians. Unlike other groups, Circassians and Abkhaz aspire to return to their historical homelands, where they had left behind a small minority. With the development of relationships between these two groups and their homelands across the border, non-Circassian and non-Abkhaz ethnic groups started to form their own associations.<sup>45</sup>

### Kurds

Kurds are the largest ethnic and linguistic minority in Turkey. The estimated numbers claimed by various sources range from 10 to 23 per cent of the population.<sup>46</sup> According to the 1965 national census, those who declared Kurdish as their mother tongue or second language constituted around 7.5 per cent of the population.<sup>47</sup> However, for reasons indicated above, it is possible that this figure was under-inclusive at the time. Kurds speak Kurdish, which is divided into Kurmanci, Zaza and other dialects. The majority are Sunni Muslims, while a significant number are Alevis. Historically concentrated in eastern and south-eastern region of the country, where they constitute the overwhelming majority, large numbers have immigrated to urban areas in western Turkey. Initially, from late 1950s, the Kurdish immigration was voluntary and economic. With the outbreak of armed conflict in 1984 between the Turkish army and the Kurdistan Workers’ Party (Partiya Karkerên Kurdistan, PKK), more than 1 million Kurds were forcibly evicted from rural and urban areas in eastern and south-eastern Turkey.<sup>48</sup> The displaced settled in urban centres in the region as well as towns in western and southern Turkey, and many fled to Europe.

### Laz

The Laz are a people of Caucasian origin sharing similar roots with the Migrels who live between Abkhazia and Georgia today. There are two main groups of Laz in Turkey. The first group lives in the eastern half of the Black Sea region, in Rize and Artvin provinces. The second group are the descendants of immigrants who escaped the war between the Ottoman and Russian Empires in the late nineteenth century and settled in Adapazarı, Sapanca, Yalova and Bursa, in western and eastern parts of the Black Sea and Marmara regions,



respectively. Both of these groups were originally Orthodox Christians who converted to Sunni Islam during the fifteenth century. They speak Lazuri, a South Caucasian language related to Georgian and Abkhazian. According to the 1965 census, the number of individuals who declared themselves as Laz was 250,000. Their number today is estimated to be between 750,000 and 1.5 million. The majority of Laz have immigrated to urban cities in western Turkey in the last 20 years.<sup>49</sup>

## Roma

While the general perception is that the Roma in Turkey live mainly in Eastern Thrace near the Bulgarian and Greek borders, in fact they live all across the country and, in terms of absolute numbers, are not concentrated in any particular region.<sup>50</sup> Various groups are included under the general heading of Roma/Gypsy, such as 'Roma' who live predominantly in Eastern Thrace, 'Teber/Abdal' who live across Anatolia and 'Poşa' who live in north-east Anatolia, Çankırı, Kastamonu and Sinop. While there are various Roma languages such as 'Romani' (an Indo-European language spoken by the Roma) and 'Abdilti' (an Altaic language spoken by the Teber), the mother tongue for the majority of Roma has become Turkish. A recent study shows that there are around 2 million Roma in Turkey.<sup>51</sup> According to one researcher, who has identified 70 Roma neighbourhoods in Istanbul alone, the real number may be as high as 5 million, as most Roma live in overcrowded households and many do not have identity cards. The vast majority of Roma are Muslim (nearly half Sunni and half Alevi), while there are a small number of Rum Orthodox Roma, as well as a small but increasing number of Protestants who have converted from Islam in the last decade.

## Others

Various other ethnic minorities living in small and under-termined numbers around the country are Arabs (Alevi, Sunni and Christian), Bulgarians, Bosnians, Pomacs and Albanians.

# Religious minorities

## Alevi

Alevi is the term used for a large number of heterodox Muslim Shi'a communities with different characteristics.<sup>52</sup> Technically falling under the Shi'a denomination of Islam, yet following a fundamentally different interpretation than the Shi'a communities in other countries as well as the Caferis in Turkey, Alevi constitute the largest religious minority in Turkey. They differ considerably from

the Sunni Muslim majority in their practice and interpretation of Islam. Linguistically, they consist of four groups: Azerbaijani Turkish, Arabic, Turkish and Kurdish (both Kurmanci and Zaza). The last two categories constitute the largest Alevi groups. The number of Alevi is a matter of contention. Estimates range from around 10 per cent to as much as 40 per cent of the total population.<sup>53</sup> An academic study launched in November 2006 estimates that Alevi are around 11.4 per cent of the population.<sup>54</sup> A survey conducted for the daily *Milliyet* and launched on 21 March 2007 claims that the proportion of those who disclosed themselves as Alevi is much lower at 5.7 per cent (4.5 million).<sup>55</sup> The methodology and findings of the survey were criticized by all Alevi organizations. The Alevi-Bektaşî Federation claims that there are around 25 million Alevi in Turkey, constituting nearly 33 per cent of the population.

## Armenians

Armenians are among the ancient people of Anatolia. The majority of Armenians in Turkey today belong to the Orthodox Church, while there are also a few Catholic and Protestant Armenians. Their number was around 2 million during the Ottoman Empire. Today, slightly more than 60,000 remain. Of these, around 60,000 are Orthodox, 50,000 of whom live in Istanbul, around 2,000 are Catholic and a small number are Protestant. Catholic Armenians have an archbishop in Istanbul and their spiritual leader is the Roman Catholic Church in Rome. The Orthodox community has its own Patriarchate in Istanbul. Armenians run private schools providing primary and secondary education in their mother tongue.

## Assyrians

Also called Syrian Orthodox Christians or Syriacs, the language and practices of Assyrians originated in early Christianity. Their historical homeland in Turkey is the provinces of Mardin and Hakkari in the south-east. Around 95 per cent of Assyrians in this region have left Turkey because of persecution and displacement.<sup>56</sup> A 1995 study estimates the number of remaining Assyrians to be around 15,000,<sup>57</sup> the majority of whom live in Istanbul and around 2,000–3,000 of whom live in the south-east.<sup>58</sup> Assyrians belong to the same ethnicity and speak the same language (Assyrian). They are divided into four main groups based on differences of theological interpretation and denomination.

The Assyrian Orthodox community in Turkey has four metropolits: Turabdin, Mardin, Adıyaman and Istanbul. Their patriarchate is in Damascus, Syria. The Deputy Patriarch of Assyrian Catholics is also in Istanbul; their patriarchate is in Lebanon.

## Caferis

According to their own understanding, Caferis' presence in Turkey is a result of the fact that their historical homeland in the province of Iğdır was transferred from Russia to Turkey when the borders of the latter were drawn. Most Caferis are ethnically Azerbaijani Turks. However, they define themselves primarily as a religious group belonging to the Shi'a denomination of Islam. According to the information provided by a former Minister of Culture, the number of Caferis is around 3 million. Caferider, the national organization of Caferis, endorses this figure. As a result of economic immigration since the 1980s, the highest number of Caferis – around 500,000 – live in Istanbul. The lack of a vibrant economy and the resulting hardships in Iğdır also led to waves of international migration to Europe.

## Jews

The Jewish community in Turkey dates back to the Roman Empire.<sup>59</sup> The vast majority of Jews in Turkey are descendants of Sephardic Jews expelled from Spain in 1492. Their language is Ladino, a variant of fifteenth-century Spanish. There is also an ethnic Ashkenazi minority, who speak Yiddish. There are around 23,000 Jews, in Turkey, 600 of whom are Ashkenazi.<sup>60</sup> The vast

majority live in Istanbul, around 2,500 in İzmir and the rest in very small numbers elsewhere. There are 19 synagogues in İstanbul, one of which belongs to Ashkenazis.

## Reformist Christians

Also known as the new Christians in Turkey, they are a heterodox group made up of Presbyterians and Protestants. This group includes both citizens and expatriates. The estimated number of Protestants in Turkey is 4,000–6,000, most of whom live in Istanbul, Ankara and İzmir. Protestantism has been a part of Turkey's history for 200 years, first spreading among the non-Muslim minorities. Conversion from Islam to Protestantism was very rare until the 1960s, but Muslim converts currently constitute the majority of Protestants.<sup>61</sup>

## Rum Orthodox Christians

The Rum Orthodox community comprises ethnic Rums in Istanbul, Gökçeada (İmros) and Bozcaada (Tenedos), as well as Arabic- and Turkish-speaking Antakya Rum Orthodox Christians (Antiochians) who are not ethnically Rum. Until recently, the total number of Rum Orthodox in Turkey was pronounced to be around 2,000–3,000. A recently launched research study put the number of ethnic Rums in Istanbul at 5,000.<sup>62</sup> According to an official from the Rum Orthodox Patriarchate,

### Hrant Dink

Hrant Dink, a prominent Armenian intellectual and an advocate of minority rights in Turkey, was editor-in-chief of the weekly Armenian-Turkish newspaper *Agos*. In 2005, he was convicted for 'denigrating Turkishness' in a series of articles he wrote about the Armenian diaspora, and sentenced to six months' imprisonment. The sentence was upheld but its execution was suspended in July 2006.

As a result of his trial and conviction, Dink was subjected to continuous harassment, insults and death threats in courts, in the media and on the streets. Although Dink had informed officials about the death threats, no measures were taken to protect him. In the complaint he filed with the ECtHR (published after his death), Dink reports that, after publication of an article he wrote about the Armenian roots of the adopted daughter of Mustafa Kemal Atatürk – which caused great controversy – he was threatened in 2004 by a deputy-governor of Istanbul and a civilian whose identity was not disclosed to Dink. Dink states that he was invited by the deputy-governor to his official residence and that the unnamed civilian warned Dink that they 'would not be able provide his security' if he continued to write about the Armenian issue.

Hrant Dink was assassinated outside his office in Istanbul on 19 January 2007. The suspect, a minor from Trabzon, reportedly told the police that he killed Dink because Dink was Armenian and 'insulted Turkishness'.

Nearly a year after the assassination, the administrative investigation has not produced results, other than the dismissal of a few low-level police officers and a change of post for a few high-level civilian and security bureaucrats.

In fact, the Ministry of Interior showed a tendency to close the files on the ground of lack of evidence. This is most evident in the conclusion by the ministry inspectors that the Trabzon Police Department was not negligent in failing to follow up on the credible and detailed intelligence they had received prior to the assassination from an informant – who was later singled out as the instigator of the killing – that Dink would be killed. The judiciary has demonstrated a more positive attitude in the criminal case against 18 men charged with involvement in the assassination, including the assassin and the above-mentioned instigator/informant. During the first hearing of the case, on 2 July 2007, the court decided to widen the investigation into alleged misconduct by security officers and ordered that statements should be taken from a number of implicated individuals. The second hearing takes place on 1 October 2007.

as of 24 March 2007, the number has fallen to 4,000.<sup>63</sup> In addition, there are 280 ethnic Rums in Gökçeada, 20 ethnic Rums in Bozcaada, and around 1,800 Antiochian immigrants in Istanbul. The number of Antiochians remaining in Antakya is around 10,000.<sup>64</sup> Thus, there are around 16,100 Rum Orthodox Christians in Turkey, only 4,300 of whom fall under the protection of Lausanne because the Turkish state does not recognize the rest as Rum Orthodox.<sup>65</sup>

## Ezidis

Ezidis (also called Yezidis) adhere to a non-monotheist religion of ancient origin in the Middle East. While they are ethnic Kurds, Ezidis emphasize their distinct reli-

gious identity. They speak Ezidi, a dialect of Kurdish.<sup>66</sup> Historically concentrated in eastern, southern and south-eastern Turkey, their number was around 60,000 in early 1980s. From the mid-1980s, nearly all of them emigrated to Europe to escape persecution and armed conflict. The number of Ezidis remaining in Turkey is unknown. Research in Diyarbakır, Mardin, Urfa, Batman and Şırnak in July 2006 identified 410 Ezidis living in these provinces. The number of Ezidis who have emigrated from Kars and Ağrı in eastern Turkey to large cities in the west, as well as the remaining Ezidis in central Turkey and southern provinces of Maraş and Antep, is unknown. In recent years, Ezidis have been returning to their historical homelands in small numbers.

# Issues regarding minority protection in Turkey

## Linguistic rights of minorities

### Education

**International standards** – The international standards on educational rights of minorities are evolving. Article 14(1) of the FCNM holds that ‘every person belonging to a national minority has the right to learn his or her minority language’ and lays on states a conditional and qualified requirement to do their utmost to allow persons belonging to minorities to receive education in, or teaching of, their languages. Similarly, the Copenhagen Document (para. 34) provides that states shall try to ensure persons belonging to minorities ‘have adequate opportunities for instruction of their mother tongue or in their mother tongue’.

The OSCE’s Hague Recommendations call upon states to mobilize their resources to the best of their ability to implement minority education rights,<sup>67</sup> to ensure the participation of minority representatives in the formulation and implementation of policies on minority education,<sup>68</sup> to enable parents to choose their mother tongue as the medium of teaching at pre-school and kindergarten,<sup>69</sup> to teach minority languages at primary and secondary levels,<sup>70</sup> to provide adequate facilities for the training of teachers,<sup>71</sup> to include in the general curriculum the teaching of the histories, cultures and traditions of minorities,<sup>72</sup> and to enable the active participation of minority representatives in the development of such a curriculum.<sup>73</sup>

On the question of *private* education and teaching, international standards are clear: states cannot prohibit or prevent minorities from establishing their own institutions. The FCNM recognizes the right of minorities to have private education in their languages.<sup>74</sup> The Copenhagen Document confers on minorities the same right, as well as the right to seek funding from the state.<sup>75</sup> The Hague Recommendations recognize the right of minorities ‘like others, to establish and manage their own private educational institutions’<sup>76</sup> and to seek funding from the state and elsewhere,<sup>77</sup> and assert that ‘states may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions’.<sup>78</sup>

Article 2 of Protocol No. 1 to the ECHR guarantees the rights of parents to have their children receive ‘education and teaching in conformity with their own religious and philosophical convictions’. The ECtHR has held language to be a ‘conviction’.<sup>79</sup> The Court has ruled that

where states do extend minorities the right to have education in their language, they must provide adequate facilities for the completion of such education.<sup>80</sup>

While practices in EU member states differ considerably, there is a trend towards improving the laws and policies to the benefit of minorities.<sup>81</sup> Many states fund public education in minority languages on the basis of a judgement they make as to which groups are recognized as a minority under domestic law. Some states allow selected minority groups in their territories to have instruction in minority languages in public schools, as in Sweden (for the Sami minority), Denmark (for the German minority in South Jutland), the Netherlands, as well as in Italy and Belgium (in regions enjoying autonomy). Others provide for the teaching of minority languages in public schools where there is sufficient demand and/or in the case of selected minorities, as in Austria, Hungary, Italy, Sweden and the United Kingdom. Some states also provide funding for minority education in private schools. The Polish and Hungarian states, for example, provide additional subsidies to local authorities running schools for minorities.

**The law and practice in Turkey** – There are constitutional restrictions on the use of minority languages in education. Article 42 of the Constitution declares Turkish the ‘mother tongue’ of Turkish citizens and prohibits public education in any other language, reserving the terms of Lausanne.<sup>82</sup> Under Article 3, Turkish is ‘the language’ as opposed to ‘the official language’ of the state. What makes this provision problematic is its restrictive interpretation by the Turkish courts, as evident in a recent decision to dissolve a teacher’s union on the ground that its advocacy of education in one’s mother tongue violated Article 3. The Constitution does not acknowledge the presence of minority languages. At the same time, it provides public funding for the preservation and promotion of the Turkish language, history, and culture.<sup>83</sup>

The Treaty of Lausanne grants non-Muslims the ‘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’.<sup>84</sup> The Treaty also extends a conditional right to government funding for primary public education in minority languages.<sup>85</sup>

As part of the EU process, some of the restrictions on minorities’ ability to learn their languages have been lifted.

A 2002 law allowed the opening of private courses for teaching minority languages,<sup>86</sup> subject to the requirement that such instruction does not violate the 'indivisible integrity of the state'.<sup>87</sup> In 2003, a new law allowed the teaching of such languages in existing private courses, but specified that the new law by no means suggested teaching 'Turkish citizens as their mother tongue any language other than Turkish'.<sup>88</sup> The implementing regulation introduced significant restrictions with regard to the curriculum, appointment of teachers, and the criteria for enrolment, including a minimum age restriction,<sup>89</sup> which prevents children from attending such schools. The first private course in Kurdish was opened in the province of Batman on 1 April 2004. Others followed in Diyarbakır, Şanlıurfa, Adana, Istanbul, Van and Mardin. However, the courses were closed down in 2005 because of bureaucratic restrictions and people's reluctance to pay to learn their mother tongue.

Various Kurdish politicians, civil society representatives and intellectuals have expressed demands for public education in their mother tongue in areas where Kurds are concentrated. Other ethnic groups have also started to demand to learn their mother tongue, though not necessarily in the public education system. Laz and some Caucasian communities are demanding teaching of their languages to their children in the public schools, as the current legislation does not enable them teach their languages to their children and some communities do not have resources to open private courses.

While non-Muslims have the right to establish, manage and control their educational institutions, arbitrary governmental policies restrict this right. The limitation of the protection of Lausanne to Rums, Armenians and Jews deprives other non-Muslim minorities of their right to education in their mother tongue. Like other non-Muslim minorities, many Assyrians wish to receive education in their mother tongue.

Lausanne minorities cannot fully enjoy their rights either. The teachers of 'Turkish culture' classes<sup>90</sup> and the deputy principals of private minority schools must be Turks (read 'Muslim') appointed by the Ministry of National Education.<sup>91</sup> Minority schools do not have any say in the selection of these teachers, who are directly appointed by the Ministry of Education and are not subject to the supervision of the principal, who is a non-Muslim.

*'How can a principal not have authority over teachers working at his/her school? The principal ... [has] to spend extra energy to manage the situation. It is a constant battle ... It shows that the state does not trust minorities to teach the Turkish language ... This means that equal citizenship is in words only.'*<sup>92</sup>

Pursuant to a ban introduced in the late 1970s, minority schools are not allowed to accept students from other non-Muslim groups. This is particularly problematic for Assyrians who do not have their own schools.<sup>93</sup> Erol Dora, a lawyer of Assyrian origin, points out that the situation has become worse with the EU process since this ban has now been formalized through a new law.<sup>94</sup> While the implementation of a rule restricting enrolment to pupils whose fathers are non-Muslim has recently been eased in practice,<sup>95</sup> there is still a legal barrier to the enrolment of children of mixed marriages whose fathers are not members of the non-Muslim minority to which the school belongs.<sup>96</sup> The practice still requires that one of the parents belong to the non-Muslim minority in question.<sup>97</sup>

International standards are clear about the distinction between private and public education, and impose on states a duty to recognize the right of minorities to have private education in their languages and to seek government funding. The law and practice in Turkey falls far short of these standards. The state's interference in the affairs of minority schools deprives non-Muslims of their rights under Article 40 of Lausanne to run their own educational institutions, and reflects mistrust and discriminatory attitude towards non-Muslim citizens.

## Media

**International standards** – International human rights standards guarantee freedom of expression, as is evident in the ECHR,<sup>98</sup> the ICCPR<sup>99</sup> and the Copenhagen Document.<sup>100</sup> The ECHR also provides that states may not discriminate in the exercise of freedom of expression on the basis of language.<sup>101</sup> In interpreting freedom of expression in the context of media, the ECtHR ruled that, while states are permitted to issue licensing regulations, 'the grant or refusal of a licence may also be made conditional on ... the rights and needs of a specific audience'.<sup>102</sup>

The Copenhagen Document<sup>103</sup> and the FCNM<sup>104</sup> extend free speech protection to minorities, while the OSCE Guidelines recognize the right of minorities to 'receive, seek and impart information and ideas in a language and media of their choice without interference and regardless of frontiers'.<sup>105</sup> It guarantees non-discrimination in the exercise of this right.<sup>106</sup>

The FCNM prohibits discrimination in minorities' access to the media,<sup>107</sup> and requires states to adopt measures to facilitate such access and to promote tolerance and pluralism.<sup>108</sup> It grants minorities unconditional rights in the creation and the use of print media,<sup>109</sup> whereas it imposes a qualified duty on states in ensuring the creation and use of sound radio and television media.<sup>110</sup>

The Oslo Recommendations grant minorities the right to establish and maintain broadcasting in their own language and require states to adopt non-discriminatory



regulations based on objective criteria.<sup>111</sup> They call on states to ensure that minorities 'have access to broadcast time in their own language on publicly funded media' and make sure that 'the amount and quality of time allocated to broadcasting in the language of a given minority [are] commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs'.<sup>112</sup>

OSCE Guidelines require states to ensure the effective participation of minorities in the implementation and enforcement of state policies on broadcasting,<sup>113</sup> to support balanced public broadcasting,<sup>114</sup> and to facilitate the establishment and maintenance of private media in minority languages.<sup>115</sup> The Guidelines require state regulation, including licensing, to be objective, non-discriminatory and not restrictive – by intent or effect – of broadcasting in minority languages,<sup>116</sup> and prohibit the 'imposition of undue or disproportionate requirements for translation, dubbing, post-synchronization or sub-titling'.<sup>117</sup>

The practice in EU member states varies.<sup>118</sup> Some states have legislation requiring public service broadcasting in selected minority languages. Examples are Austria, Cyprus, Finland, Hungary, the Netherlands and Slovakia. Others, such as France and Latvia, do not require, but allow minority language broadcasting subject to time restrictions. Croatia and the Netherlands provide funding for broadcasting in minority languages. Austria, Denmark,<sup>119</sup> Hungary, Poland and Slovakia have participatory legal frameworks requiring government bodies to consult the representatives of selected minorities in decision-making processes. Many EU member states have provisions for the promotion of minority cultures in broadcasting.

**Law and practice in Turkey** – The only comprehensive set of minority rights in the area of broadcasting has been granted in the Treaty of Lausanne, which grants not only non-Muslim minorities, but *all citizens* the right to use 'any language ... in the press, or in publications of any kind'.<sup>120</sup> However, Turkey has never allowed Muslim minorities to exercise this right.

In recent years, relative progress has been achieved in this area. The 2001 constitutional amendments<sup>121</sup> removed the restrictions on the use of any 'language prohibited by law' in expressing and disseminating ideas in print and broadcasting media<sup>122</sup> and by printing houses and the press.<sup>123</sup> However, the amendments left untouched the restrictions attached to the exercise of these rights for the purposes of safeguarding 'the indivisible integrity of the State with its territory and nation'. In the past, prosecutors' expansive reading of this language has caused the prosecution and conviction of journalists and the closure of print and broadcasting media. The Supreme Board of Radio and Television (Radyo-Televizyon Üst Kurulu, RTÜK) Law still

contains similarly restrictive provisions, as well as prohibiting broadcasting which incites violence or hatred.<sup>124</sup>

Repeated violations may result in the suspension of broadcasting licence for up to one year or the permanent cancellation of such licence.<sup>125</sup> Indeed, RTÜK relied on Article 4(b) in initially suspending for one month in October 2006 the broadcasting of the 'Anatolia's Voice' radio station for playing a song about the Kurdish question<sup>126</sup> and in suspending it without limitation in February 2007.<sup>127</sup> These limitations have been imposed only on regional media, which are usually run by minorities. In August 2004, RTÜK relied on Article 4(a) and (b) in suspending for 90 days the broadcasting of Gün TV and Can TV in Diyarbakır and Hakkari FM radio station.

A series of new laws in 2002 and 2003 effectively opened the way for broadcasting in minority languages. These limited and conditional broadcasting rights were restricted by an executive regulation,<sup>128</sup> which establishes direct state control over broadcasts,<sup>129</sup> prohibits children's programmes and the teaching of minority languages,<sup>130</sup> restricts broadcasting to a few hours every week,<sup>131</sup> subjects decisions on the language and dialect of broadcasting and the profile of viewers to bureaucratic authorization,<sup>132</sup> requires simultaneous and subsequent translation into Turkish for TV and radio programmes, respectively,<sup>133</sup> and prohibits broadcasting in violation of national security, general morality and the indivisible territorial and national integrity of the state.<sup>134</sup> To implement the reforms, a new regulation came into force on 25 January 2004, allowing private broadcasting in minority languages at the national level for the first time. However, there are strict time limitations and local and regional broadcasting are subject to the authorization of RTÜK upon completion of an audience profile. Diyarbakır-based Gün TV attempted to get a judicial annulment of the regulation on the ground that it is discriminatory and restrictive, but failed.

As a result of the reforms, on 7 June 2004, the Turkish Radio-Television Corporation (Türkiye Radyo Televizyon Kurumu, TRT) commenced broadcasts in five minority languages and dialects: Zaza and Kurmanci dialects of the Kurdish language, Arabic, Bosnian and Circassian. TV broadcasts are for 45 minutes five days a week, while radio broadcasts begin at 6 a.m. and last for 30 minutes each day five days a week. The start of national public broadcasting in minority languages is a significant step, but the involvement of the state in selecting of languages without consultation with minorities is undemocratic. Members of the Laz community have been particularly critical about the exclusion of their language from public broadcasting. Minorities whose languages are selected criticize the content and time restrictions, and the outdated nature of news programmes. They see the broadcasts as symbolic, and thus failing to meet the needs of their communities.

There is no national private broadcasting in minority languages. Three private local broadcasters – Söz TV and Gün TV in Diyarbakır, and Medya FM radio in Urfa – launched local broadcasting in Kurdish upon receiving authorization from RTÜK on 17 March 2006.<sup>135</sup>

It is prohibitively difficult for local and regional stations operating on limited human and financial resources to comply with the regulations on translation of programmes and submission of written and audio transcripts to RTÜK and the Police Department's Bureau on Monitoring Broadcasts.<sup>136</sup> RTÜK's decision in June 2006 to exempt cultural programmes from time restrictions was hailed in the national media.<sup>137</sup> However, broadcasters demand a complete revision of the regulation, arguing that the translation requirement prevents them from making live broadcasting and providing their viewers with fresh news.<sup>138</sup>

## Place and personal names

**International standards** – The ECHR grants everyone the right to 'respect for his [*sic*] private and family life, home and correspondence',<sup>139</sup> which may only be restricted to protect democracy.<sup>140</sup> The ECtHR considers names to be part of a person's private life and has produced judgments on this.<sup>141</sup>

The Oslo Recommendations recognize minorities' right 'to use their personal names in their own language according to their own traditions and linguistic systems' and impose an absolute duty on states to ensure that public authorities officially recognize and use these names.<sup>142</sup> The Recommendations extend the same right to private entities such as cultural associations and business enterprises established by minorities.<sup>143</sup> On the use of place names, the Recommendations impose on states a relatively qualified duty.<sup>144</sup>

The FCNM also grants minorities an absolute right to use their names in the minority language and to the official recognition of these names according to modalities under national law.<sup>145</sup> It brings upon states an unqualified duty to recognize that 'every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature to the public'.<sup>146</sup> On the use of place names, the FCNM also imposes a qualified obligation on states.<sup>147</sup>

Many EU member states have legislation regulating the use of bilingual signposts and the use of minority names, for example, Denmark and Germany. Recent developments indicate that the EU practice is shifting towards greater tolerance concerning the use of minority names.

**Law and practice in Turkey** – Article 3 of the Turkish Constitution declares Turkish as 'the language of the state'. The Constitution neither provides for nor prohibits

the use of personal and place names in minority languages. However, the Provincial Administrative Law of 1949 allows the Ministry of Interior to change 'village names that are not Turkish and may give rise to confusion'.<sup>148</sup> In the past decades, particularly during late 1920s and 1930s, the names of scores of Kurdish, Assyrian and Armenian villages and towns have been changed into Turkish. However, the original names of these places remained in the collective memory of the local population and are used by many Kurds, Armenians and Assyrians in daily life.

The use of minority languages in people's names was prohibited until recent years, which was detrimental for Muslim minorities. Non-Muslim minorities' names were permitted to be used, however. As part of the reform package of 15 July 2003,<sup>149</sup> an amendment to the Civil Registry Law<sup>150</sup> removed the restriction on parents' freedom to name their children with names deemed 'offensive to the national culture', which in practice was used to ban non-Turkish names, but kept the requirement that the names should comply with 'moral values' and should not be offensive to the public.<sup>151</sup> A circular issued by the Ministry of Interior in September 2003 restricted the scope of the amended law to names containing the letters of the Turkish alphabet only, effectively banning names using the letters q, w and x, common in Kurdish. Thus Kurds are still precluded by law from giving their children Kurdish names which involve these three letters. There is no restriction on the use of these letters for commercial entities, such as Show TV, a national broadcaster, and all keyboards and typewriters in Turkey include these letters, so their use by public officials is feasible. As in every other area, legal reform may not be sufficient to solve the problems of minorities. Arbitrary bureaucratic restrictions may prevent minorities from exercising their rights. In fact, Laz parents who wish to name their children Laz names 'face arbitrary bureaucratic hurdles from time to time'.<sup>152</sup>

## Use of minority languages in access to public services

**International standards** – While human rights documents are by and large silent on the issue, minority-specific instruments contain specific provisions which call upon states, to the best of their financial ability, to facilitate individuals' use of their own languages in accessing public services. The FCNM recognizes minorities' right to 'use freely and without interference his or her minority language, in private and in public, orally and in writing'<sup>153</sup> and lays on states a qualified and conditional duty to facilitate the exercise of this right in relations with administrative authorities.<sup>154</sup> Similarly, the Copenhagen Document lays upon OSCE members a qualified duty to

ensure that minorities are provided with adequate opportunities for using their mother tongue before public authorities.<sup>155</sup> Governments may not be able to accommodate every demand at all times due to financial constraints. In that case, they 'should focus on those institutions of most importance to the local populations, e.g., taxing authorities, police, health and safety officials, and emergency services'.<sup>156</sup>

The Oslo Recommendations grant minorities a conditional right to acquire official documents in both the official and minority language in regional and local institutions.<sup>157</sup> They extend a similarly qualified right to 'have adequate possibilities to use their language in communications with administrative authorities' and require such authorities to 'wherever possible, ensure that public services are provided also in the language of the national minority'.<sup>158</sup> Finally, they require states to ensure that elected members use minority languages in their activities in cities and regions where minorities are present in significant numbers.<sup>159</sup>

Human rights instruments unconditionally require states to 'ensure that individuals facing criminal charges – whether or not members of national minorities – are informed of the charges against them in their own language and are provided with an interpreter at no cost if they cannot understand the language used in court'.<sup>160</sup> This affirmative duty is imposed vis-à-vis all individuals under the ECHR<sup>161</sup> and the ICCPR,<sup>162</sup> and specifically vis-à-vis minorities under the FCNM<sup>163</sup> and the Oslo Recommendations.<sup>164</sup>

***Law and practice in Turkey*** – There is no legal framework enabling minorities to use their mother tongue in their relations with public authorities. The constitutional provisions on the right to free trial are silent on the right to use minority languages during prosecution.<sup>165</sup> On the other hand, Article 39 of the Treaty of Lausanne grants all 'Turkish nationals of non-Turkish speech' the right 'for the oral use of their own language before the Courts' and requires the state to facilitate the exercise of this right. The provision does not make a distinction between criminal and civil proceedings. The legal framework regulating criminal proceedings guarantees the accused the partial right to be provided, upon need, with an interpreter to follow the final remarks made by the prosecutor and the defence lawyer.<sup>166</sup> Defendants are not provided with a competent interpreter, which particularly affects older Kurds and women, who are not fluent in Turkish. Instead, translation is provided by court clerks or anyone present, who may not necessarily be competent to translate legal proceedings. The law regulating civil proceedings, on the other hand, does not provide minorities with a similar right.

Public services are not provided in any language other than Turkish, even in areas populated predominantly by minorities and where there are many individuals who do not know the official language. This is particularly the case for Kurds in eastern and south-eastern Turkey. In recent years, bold local initiatives have been made by some municipalities to provide public services in minority languages. In the municipality of the Sur district in Diyarbakır, Mayor Abdullah Demirbaş commissioned an American expert to prepare software in the Kurdish language to be used in official correspondence. The municipality also published a children's book in Turkish and Kurdish. On 6 October 2006, the Sur municipal council endorsed the principle of 'multilingual municipal services' and decided to provide services in Armenian, Assyrian, English, Kurmanci and Zaza dialects of Kurdish, Turkish and other languages. This decision was taken following a survey by the Sur municipality which showed that 72 per cent of district residents spoke Kurdish in daily life, 24 per cent spoke Turkish, and the remainder Arabic, Assyrian, Armenian and Chaldean. Mayor Demirbaş defended the council's decision in the name of 'more effective ... and accessible municipal services'.<sup>167</sup>

However, this action met with prosecutorial investigation and administrative measures.<sup>168</sup> Upon the application of the Ministry of Interior, the Council of State unanimously ruled for the dismissal of Mayor Demirbaş and the dissolution of the Sur municipal council on 22 May 2007, on the ground that the municipality's use of local languages in the provision of services was of a political nature and violated, among others, Article 42 of the Constitution.<sup>169</sup> The choice of this provision, which prohibits education in any language other than Turkish, is curious. The court's reasoning shows a judiciary detached from the realities of society: 'Since the language of education and teaching in our country is Turkish and those Turkish citizens who know how to read and write can speak and write Turkish, there can be no reasonable justification to provide municipal services in languages other than Turkish'.<sup>170</sup> This effectively disqualifies those Turkish citizens who have not received any formal education and thus cannot speak Turkish from receiving any public services. The decision was reviewed and overturned on 27 July 2007 based on breach of procedural rules. The merits of the decision are still being reviewed.<sup>171</sup>

There is a direct link between minorities' ability to communicate with administrative authorities and their access to health, justice, education and other services. A recent semi-official survey on internally displaced persons (IDPs) conducted by the Hacettepe University Institute of Population Studies shows that 'not speaking Turkish' ranks third among reasons for IDPs' lack of access to health services; 27.4 per cent of IDPs, the vast

majority of whom are Kurdish, responded positively to this question.<sup>172</sup>

The recognition of the right to public services in minority languages is particularly important for minority women, specially Kurdish women living in rural areas, many of whom are illiterate and/or do not speak Turkish. A study undertaken by the Diyarbakır municipality's Centre for Research on Women's Issues, based on interviews with 472 married women in 97 villages, shows that around 80 per cent of these women are illiterate.<sup>173</sup> The percentage of boys attending schools is higher than that of girls in Turkey. The study found that while 5 per cent of boys of school age were not attending school, for girls the figure was 18 per cent. Minority women have less chance to learn Turkish than men, who learn the official language either at schools or during military service. This puts women in a vulnerable position, dependent on their husbands and fathers, unable to access public services on their own and unaware of their rights as citizens. The non-recognition of language rights is particularly detrimental for minority women, as is evident in the subjecting of a 71-year-old Kurdish woman to a Turkish language test in a police station in Adana when her imprisoned son asked to speak to his mother in Kurdish during visiting hours.<sup>174</sup>

## Freedom of religion, thought and conscience

**International standards** – International standards provide different levels of protection for the internal and the external aspects of religious freedom. While freedom to *have* a religion, thought and conscience is an absolute right not subject to restriction, freedom to *manifest* one's religion, thought and conscience in public is subject to certain restrictions.

This dichotomy is visible in Article 18 of the ICCPR and Article 9 of the ECHR. While Article 8 of the FCNM does not entail a differentiated level of protection, the reading of this provision together with Article 23 suggests that the extent of protection of religious freedom shall be in line with that under the ECHR. Accordingly, any restriction imposed on freedom of religion must be prescribed by law, serve a legitimate purpose and be proportionate.

The ECtHR held that 'while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching'.<sup>175</sup> While states have a margin of appreciation in regulating the manifestation of religion, in two similar cases (Greece<sup>176</sup> and Bulgaria<sup>177</sup>) the Court found states' interference in the internal affairs of Muslim minorities

through intervening in the elections of religious leaders to be in violation of Article 9. In another case, the ECtHR found a state's refusal to register the church of a religious minority to violate the ECHR.<sup>178</sup>

The Advisory Committee stated that religious minorities are 'national minorities' for the purposes of the FCNM.<sup>179</sup> The question of state funding of religion has come up in Advisory Committee reports. The Committee stated that a state church system *per se* is not contrary to the FCNM. There is also no obligation on states to fund religious activities. However, where states do provide such support, they must comply with the principle of equal protection and not discriminate between different religions.<sup>180</sup>

**Law and practice in Turkey** – The Constitution guarantees equal protection before the law, irrespective of 'philosophical belief, religion and sect'.<sup>181</sup> It also enumerates secularism among the fundamental characteristics of the republic.<sup>182</sup> However, there are a few constitutional provisions which infringe on religious freedom and go against the principle of secularism. Religion classes at primary and secondary schools are compulsory.<sup>183</sup> Article 42 requires this education to be conducted under the 'supervision and control of the state'. Article 136 provides constitutional protection to the Diyanet, which follows the Sunni Hanefi version of Islam.

The Treaty of Lausanne protects the religious freedom of non-Muslim minorities and grants them the right to have religious education and instruction.<sup>184</sup> In practice, however, this protection is restricted to Rums, Armenians and Jews only, leaving out other non-Muslim minorities. Paradoxically, this does not preclude Assyrians, ancient Christians whose churches pre-date Lausanne, from operating their religious institutions. However, new Christians are having significant difficulties in exercising their religious freedoms. On the one hand, an amendment to the zoning law replaced the term 'mosque' with 'place of worship' in authorizing local authorities to issue construction permits. This effectively granted non-Muslims the right to build places of worship.<sup>185</sup> However, Protestants face bureaucratic restrictions. For example, in late March 2007, a municipality in Turkey replied after a considerable delay to the application of a Protestant church for a construction permit, advising the community to apply to the Diyanet instead.<sup>186</sup>

On the other hand, the Lausanne minorities cannot fully enjoy their religious freedom either. The state denies their religious institutions legal personality, which causes great difficulties in administration, property rights and clergy training. The state does not recognize the Rum Orthodox Patriarchate and deals instead solely with the Patriarch himself, which results in a highly inefficient system.<sup>187</sup> Due to the lack of legal personality, the official



registry records do not name the Patriarchate as the legal owner of its properties, leaving the Patriarchate vulnerable to confiscation of its properties. The ban on the training of clergy, the absence of operative Christian theological schools, and the citizenship criterion imposed on clergy eligible to provide religious services in Turkey creates a shortage of priests. Currently, there are only 31 Rum Orthodox priests providing services in 90 churches. The Rum Orthodox theological seminary in the island of Heybeliada (*Halki*) remains closed.<sup>188</sup> As a result, there is a risk that there may not be a suitable candidate to succeed the Patriarch upon his death. According to a Rum Orthodox priest, authorities are 'perfectly aware that if the *Halki* seminary does not re-open one day, the Patriarchate will close down'. The *de facto* ban against the Rum Orthodox Patriarchate against using its 14-centuries old 'ecumenical' title has turned into law through the decision of the High Court of Appeals on 26 June 2007. In a case concerning the dismissal of a priest, the court held that the Patriarchate's claim to the ecumenical title has no legal basis.<sup>189</sup> The ruling is not only *ultra vires*, since the court ruled on a religious question which exceeds its mandate, but is also against the letter and spirit of Lausanne, the Constitution and the ECHR.

As a result of Lausanne's restrictive definition of minorities on the basis of 'religion' instead of 'religion, sect and denomination', minorities within Islam are also excluded from its protection. Instead, their distinct identities have been lumped together as 'Muslims', and the religious affairs of all Muslims have been subjugated to state control through the Diyanet. Alevis and Caferis are not permitted to have representation in this institution. The state allocates substantial funds to provide religious services for Sunni Muslims: to pay the salaries of *imams*, construct mosques and oversee pilgrimage.<sup>190</sup> It does not provide any funding to non-Sunni Muslims. The group that has suffered the most is the Alevis, who conduct religious ceremonies (*cem*) presided over by holy men (*dede*) at homes in small groups or at their own houses of worship (*cemevi*). The state refuses to recognize *cemevis* as places of worship and they are not listed as such in the new zoning law. Municipalities can thus deny Alevis construction licences to build *cemevis*. Granting such discretionary power to local authorities results in inconsistencies, as is evident in the presence of *cemevis* in some districts of Istanbul and not in others. The legal framework also risks the prosecution of Alevis for merely exercising their religious rights, as is evident in a case filed in 2006 against the Pir Sultan Abdal Cultural Association for constructing an unauthorized building. What makes this case striking is that the Sultanbeyli municipality not only refused a zoning permit to the association, although 'most buildings in the district, including the hospital con-

structed by the municipality, lack such permit',<sup>191</sup> but also called on the prosecutor to imprison the Alevis involved for up to two years. The case resulted in acquittal.<sup>192</sup>

The compulsory teaching of religion in primary and secondary education is detrimental to all individuals who do not wish to receive this instruction. While these classes cover basic information about other religions, they are predominantly about the theory and practice of Sunni Hanefi Islam. The classes are particularly discriminatory against non-Sunni Muslim minorities, since the exemption offered in practice to Christian and Jewish students is not available to them. Recently, Alevis have challenged this practice in political and legal forums. While Alevi organizations are united in criticizing the policy, their grounds as well as demands differ considerably. While some Alevis underscore the incompatibility of religion classes with the principle of secularism and demand their abolition, others, in contrast, demand that information about the Alevi faith be included in the curriculum and that textbooks be prepared in consultation with Alevis. So far, the government has partially responded to the demands of the second group. Textbooks have been revised to include basic information about selected spiritual leaders of Alevis. Not satisfied, the Cem Foundation filed a lawsuit against the Ministry of Education on the ground that the information did not truly reflect the Alevi faith.<sup>193</sup> The Alevi-Bektaşî Federation has also resorted to courts in cooperation with a number of national and international Alevi organizations in support of a petition filed with the ECtHR by an Alevi parent arguing that compulsory religious instruction violates Article 9 of the ECHR. In its first decision on these classes, the ECtHR found there had been a violation of the right to education under Article 2 of the 1st Protocol to the ECHR.<sup>194</sup>

Compulsory religious instruction in schools is discriminatory not only against Alevis, as is often emphasized by the EU,<sup>195</sup> but also against other non-Sunni Muslims and Sunni Muslims who either do not conform to the Sunni Hanefi faith or do not agree with its official version. It is also discriminatory against atheists, agnostics and secularists, who may not wish their children to receive any religious education.

Another step taken with the stated purpose of protecting the religious freedom of Muslim minorities has been the abolition in April 2006 of the mandatory indication of religion in ID cards, which enables citizens to petition the registry office to have no reference to their religious affiliation in their IDs. However, the state continues to *ask* citizens to declare their religion. This is problematic, first, because it imposes a burden on individuals and, second, because it leaves room for bureaucratic discretion, which may result in arbitrary rejections and discriminatory practices. An executive of the Alevi-Bektaşî Federation argued



that the new regulation was a way of labelling Alevis: 'It would be very difficult for any person who leaves that section blank to find employment. He would have a hard time during military service. Which Alevi would dare do that? The EU has been tricked by the government.'<sup>196</sup>

The constitutional and legal framework designed to secure state control over religion violates the religious freedom of *all* believers: not just the Alevi and non-Muslim minorities, but also other non-Sunni (Shi'a) minorities – such as the Caferis – and various sects within the Sunni majority such as the Nakshibendis and Kadiris. State funding of Sunni religious practices is discriminatory against Alevis; it is also discriminatory against non-Hanefi Sunnis and even Hanefis who may have theological differences with the Diyanet's interpretation of Islam. State control over religion also runs against the basic concept of secularism guaranteed under the Constitution.

## Freedom of expression

**International standards** – Freedom of expression is firmly guaranteed under international human rights law, including the conventions Turkey is a party to, such as the ECHR<sup>197</sup> and the ICCPR,<sup>198</sup> as well as the Copenhagen Document of the OSCE.<sup>199</sup> The Copenhagen Document<sup>200</sup> and the FCNM<sup>201</sup> also extend specific free speech protection to minorities.

Under the ECHR, freedom of expression extends 'not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that 'offend, shock or disturb'.<sup>202</sup> Freedom of expression is not an absolute right; it is subject to legal restrictions. However, such restrictions must be 'prescribed by law', and legal provisions limiting free speech must be sufficiently precise and adequately accessible to ensure legal certainty and foreseeability.<sup>203</sup> Furthermore, only limitations that rest on one of the legitimate grounds specified in human rights law and that are 'necessary in a democratic society' are permissible.<sup>204</sup> Lastly, limitations must be proportionate to the aims pursued; namely, they must be the least restrictive measure available to achieve those aims. In cases involving the prosecution and conviction of journalists, editors and owners of newspapers and/or the seizure of such papers, the Court held that the aim to protect territorial integrity does not justify such disproportionate measures.<sup>205</sup>

**Law and practice in Turkey** – The October 2001 constitutional amendments achieved considerable progress in the protection of free speech through removing from Articles 26 and 28 the restriction on the use of any 'language prohibited by law' in the expression and dissemination of thought and in broadcasting, respectively. However, the

amendments left untouched the restrictions attached to the exercise of these rights for the purposes of, *inter alia*, safeguarding 'the indivisible integrity of the State with its territory and nation'.

Legislative reforms bolstered the constitutional amendments by changing some of the provisions of the Penal Code.<sup>206</sup> However, in some cases the legislature effectively re-enacted the draconian provisions of the code under new names. For instance, the new Articles 301<sup>207</sup> and 216<sup>208</sup> replaced the old Articles 159 and 312, respectively. Prosecutors have a strong tendency to use the new restrictive provisions to bring charges against individuals advocating the rights of minorities. The combination of *de jure* limitations in the letter of the law and *de facto* restrictions observed in their implementation continues to pose an obstacle to the peaceful expression of dissent.

The prime example of this is the frequent arbitrary recourse by prosecutors to Article 301 of the Penal Code, which prohibits 'denigrating Turkishness'. Since its adoption, Article 301 has provided the basis for charges brought against a number of intellectuals, writers, publishers, journalists and human rights advocates for expressing opinions about minority rights. While some of the cases resulted in acquittal<sup>209</sup> or dismissal,<sup>210</sup> Hrant Dink was convicted under Article 301 and sentenced to six months' imprisonment.

Scores of journalists, authors, editors, publishers and intellectuals expressing dissenting views on the Kurdish or the Armenian question are currently being tried under Article 301.<sup>211</sup> While much national and international attention has focused on 301 cases, prosecutors also resort to other restrictive clauses of the Penal Code to curtail the peaceful advocacy of minority protection: Articles 216,<sup>212</sup> 220(8)<sup>213</sup> and 305.<sup>214</sup> Grigory Amoev, a Russian citizen of Kurdish descent, is currently being prosecuted under Article 216(1) for 'inciting hatred and enmity' for singing at a cultural festival in Diyarbakır a song containing the word 'Kurdistan'.<sup>215</sup> Abdullah Demirbaş was prosecuted under Article 220(8) for demanding the use of minority languages in public services.<sup>216</sup> This provision is a particular threat for Kurdish intellectuals and activists or individuals who express dissenting views on the Kurdish question. Any alternative opinion that is perceived to be in line with the demands of the PKK can be interpreted to constitute 'propaganda of an organization or its goals'. Between 1 June 2005, when the new Penal Code entered into force, and November 2006, a total of 150 individuals have been prosecuted under Article 220(8) in Diyarbakır alone, 46 of whom have been convicted.<sup>217</sup> Sezgin Tanrikulu, the President of Diyarbakır Bar Association, stated that the provision is used in particular to prosecute individuals expressing opinions on the Kurdish question.

While considerable progress had been made in recent years in amending the clauses of the 1991 anti-terror law on free speech, the amendments in June 2006 constitute a significant setback.<sup>218</sup> The new law retains the over-inclusive definition of terrorism contained in the 1991 law,<sup>219</sup> and introduces a wide and long list of ‘terrorist offences’<sup>220</sup> and ‘offences committed for terrorist purposes’.<sup>221</sup> It introduces new restrictions on free speech,<sup>222</sup> creates new expression offences,<sup>223</sup> criminalizes ‘praise of terrorist offences and offenders or making the propaganda of the terrorist organization’<sup>224</sup> and imposes severe sanctions on the media such as heavy fines for owners and editors of media organs<sup>225</sup> and prison sentences for journalists.<sup>226</sup> Most disconcertingly, the law reintroduces the temporary closures of publications without a formal hearing and even, at times, upon the order of a prosecutor.<sup>227</sup>

The law’s draconian scope, combined with the tendencies of prosecutors in Turkey to liberally interpret the concept of ‘unity of the State with its territory and nation’, may have a chilling effect on the expression of dissenting views on minority issues that are deemed to be politically sensitive.<sup>228</sup> Indeed, on 21 August 2007, Murat Öztürk, President of the Ağrı branch of the pro-Kurdish Democratic Society Party (Demokratik Toplum Partisi-DTP) was convicted to one year imprisonment under Article 7(2) of the anti-terror law for a speech he made in the Newroz celebrations on 21 March 2007.<sup>229</sup> The severe sanctions imposed in the law may also have a chilling effect on the coverage of minority issues in the media. The printing of the pro-Kurdish daily newspaper *Gündem* was suspended three times between its launch on 17 January and 12 July 2007, on the ground that it ‘made propaganda’ for the PKK in violation of Article 6(7) of the anti-terror law.<sup>230</sup>

## Freedom of assembly and association

**International standards** – Freedom of association refers to freedom to both form and join an association. The ECHR guarantees freedom of association (Article 11) without discrimination on the basis of an open-ended list of protected traits (Article 14). The prohibition of an association solely on the grounds that it advocates minority rights or asserts minority identity is incompatible with this freedom. The ECtHR considered authorities’ refusal to register an association established by a minority group with the aim of promoting the culture of that minority to be incompatible with Article 11. The Court held that the mere establishment of an association for advocating on behalf a minority group does not threaten national security, and that the existence of minorities is an objective fact that must be tolerated and supported by states.<sup>231</sup> Freedom

of association is also protected under Article 7 of the FCNM. In interpreting this provision, the Advisory Committee asserted that the recognition of minority associations may not be discriminatory.<sup>232</sup> The Copenhagen Document provides that persons belonging to national minorities have ‘the right to establish and maintain their own educational, cultural and religious institutions, organizations or associations’.<sup>233</sup>

Freedom of assembly refers to the right to call, organize and join a meeting or demonstration alone or in community with others. It is thus closely linked to freedom of expression and association. Freedom of *peaceful* assembly is protected in Article 11 of ECtHR and Article 7 of FCNM, subject to legitimate restrictions prescribed by law in the name of national security, public safety, the rights of others and other specified grounds. While states may establish a system of prior notification for public assemblies, meetings and demonstrations, they cannot impose a systematic ban on the exercise of this right by an organization declared unconstitutional on the ground that it asserted minority identity.<sup>234</sup>

**Law and practice in Turkey** – The amendments made to the Law on Associations in November 2004 lifted many of the restrictions on the freedom of association.<sup>235</sup> Most importantly, the establishment of associations is no longer subject to prior authorization.<sup>236</sup> The reforms also created more space for minorities to exercise their freedom of association, *inter alia* by setting up associations to develop their culture. Following these reforms, some minorities, such as Roma, Caucasians and Assyrians, have set up such associations.

Associations are allowed to use minority languages in non-official correspondence.<sup>237</sup> However, the law retains a ban on the establishment of associations to realize purposes prohibited under the Constitution.<sup>238</sup> The over-inclusive reading of this principle by Turkish prosecutors and judges in the past has resulted in the inclusion among prohibited purposes, *inter alia*, of the advocacy of peaceful solutions to the Kurdish problem.

Minority associations face obstacles in exercising their rights. Ankara Governorship demanded the Kurdish Democracy Forum Association amend some provisions in its statute which, among others, advocated a solution to the Kurdish problem, involved the letter ‘q’ – which does not exist in the Turkish alphabet – and aimed at engaging in scientific and cultural activities for the promotion and development of the Kurdish language and culture. While the Association made some amendments, they were not deemed to be sufficient.<sup>239</sup>

A case brought against the Union of Education and Science (Eğitim ve Bilim Emekçileri Sendikası, Eğitim-Sen) in April 2004, on the grounds that its advocacy of

‘mother-tongue education’ in its statute violated Articles 3 and 42 of the Constitution resulted in a decision for the dissolution of the union. The High Court of Appeals upheld the decision of the lower court. Subsequently, Egitim-Sen revoked the relevant clause in its statute to avoid dissolution.

Similarly, a court in Diyarbakır ordered the closure of a Kurdish association on the ground that its statute aimed to set up a Kurdish archive, museum and library and to carry out its activities in Kurdish.<sup>240</sup> In another court decision, on 20 April 2006, Kürt-Der was dissolved for advocating in its activities broadcasting and education in Kurdish, and for using the Kurdish language as the medium of communication in its internal affairs.

Some progress has been achieved in the area of freedom of peaceful assembly. Most significantly, the August 2002 amendments to the Law on Association and Assembly eased the restrictions on public demonstrations by limiting the government’s authority to cases where there is a ‘clear and imminent threat of a criminal offence being committed’.<sup>241</sup> However, the law still grants governors broad authority to postpone demonstrations for the purpose of, *inter alia*, the protection of national security. The tendency of prosecutors in Turkey to broadly interpret the concept of national security raises concerns.

## Political participation and participation in public life

**International standards** – The ICCPR guarantees the right of everyone, without discrimination, to take part in public affairs, to vote and be elected, and to equal protection in access to public services.<sup>242</sup> The CERD contains a similar provision.<sup>243</sup> The right to political participation is protected under the ECHR through Article 11, which guarantees freedom of association, and more directly under Article 3 of Protocol 1, which guarantees the right to free elections. The ECtHR ruled that political parties are associations for the purposes of Article 11. While freedom of association is guaranteed, legitimate restrictions prescribed by law and that are necessary for the preservation of democracy are permissible so long as they are proportional to the aim pursued. Political parties are permitted to carry out advocacy on minority rights.<sup>244</sup>

International standards on minority protection give more substance to this right. The UN Declaration recognizes the right of persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life,<sup>245</sup> and requires states to consider taking appropriate measures.<sup>246</sup> Article 15 of the FCNM requires states to ‘create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in

public affairs, in particular those affecting them’. Article 7 guarantees freedom of association, which extends to political parties as well. The Advisory Committee found legislation prohibiting as such the establishment of political parties by national minorities to be problematic.<sup>247</sup>

The Copenhagen Document guarantees minorities’ right to effective participation in public affairs and points to the establishment of local or autonomous administrations as a means of promoting minority identities.<sup>248</sup> The Lund Recommendations call for the provision through special arrangements of opportunities for minorities to have an effective voice in the central government,<sup>249</sup> the facilitation of minority representation in the electoral system through, among others, lower numerical thresholds,<sup>250</sup> the dedication of adequate resources to facilitate self-governance of minorities,<sup>251</sup> and the decentralization of central government administration.<sup>252</sup>

There is no common European standard on national electoral thresholds. In most European countries, the threshold is not above 5 per cent. The national electoral threshold is 5 per cent in Germany, Poland, Russia and Slovakia; 4 per cent in Bulgaria, Greece, Hungary and Sweden; 3 per cent in Romania and Ukraine; 2 per cent in Denmark and 0.67 per cent in Holland.

**Law and practice in Turkey** – The Constitution guarantees all citizens the right to political participation, and grants women and men equal rights of access to the political system. Article 33 of the Electoral Law (Law No. 2839) requires political parties to pass a national electoral threshold of 10 per cent in order to be represented at the national parliament. Turkey has ratified Protocol No. 1 to the ECHR.

No steps have been taken towards aligning the Law on Political Parties (LPP) with European standards. The LPP prohibits the ‘creation of minorities’, which precludes parties from claiming the existence of minorities,<sup>253</sup> and the ‘aiming of and engaging in activities towards disturbing the unity of the nation by creating minorities on the territory of the Republic of Turkey through protecting, advancing or spreading languages and cultures other than the Turkish language and culture’.<sup>254</sup> The LPP also prohibits political parties from using minority languages at their meetings and in their statutes, programmes and propaganda.<sup>255</sup> An exception is made for ‘languages other than those forbidden by law’, permitting the translation of party statutes and programmes into foreign languages.<sup>256</sup>

The ban against the use of minority languages has resulted in frequent prosecutions against individuals for speaking Kurdish. The former president and 12 executives of the pro-Kurdish Party for Rights and Liberties (Hak ve Özgürlükler Partisi, HAK-PAR) were sentenced in February 2007 to six months to one year in prison for making

speeches in Kurdish during their party congress and sending invitations in Kurdish to the President, Prime Minister and the President of the Parliament.<sup>257</sup> The court also decided to call on the prosecutor to file a case for the dissolution of the party. A similar case for the formal<sup>258</sup> closure of the Democratic People's Party (Demokratik Halk Partisi, DEHAP) is pending before the Constitutional Court.

Article 81(c) of the LPP restricts the activities of political parties. In one case, banners prepared by the DTP containing 'Happy Newroz' messages in Turkish and Kurdish were confiscated by Beyoğlu Prosecutor's Office in Istanbul.<sup>259</sup> It also has implications for freedom of press. On 19 March 2006, the Ardahan penal court ordered the confiscation of a regional newspaper when it published an ad by the DTP titled 'Invitation to the Newroz Celebration'. According to the court, the use of the word 'Newroz' (rather than Nevruz, its Turkish spelling) was contrary to Article 81(c).<sup>260</sup>

The prohibition of minority languages in political activities indirectly discriminates against minorities who do not speak Turkish and hampers their exercise of freedoms of speech, association and assembly. The number of women who are illiterate and/or who do not speak Turkish is much higher than for men, so the ban is particularly detrimental for minority women. Kurdish female politicians may be prosecuted simply for uttering a few words in Kurdish for their female constituency. Handan Çağlayan, the former vice-president of DEHAP, was prosecuted for greeting in Kurdish the predominantly female crowd at a pre-election rally.<sup>261</sup>

Kurdish politicians face continuing prosecutions for their activities. In February and March 2007, a series of arrests, searches, seizures and prosecutions have been launched against leaders of the DTP, the latest of successive pro-Kurdish political parties. On 18 February, İbrahim Sungur and Abdulvahap Turan, President of the Van branch and member of the DTP respectively, were arrested for making propaganda for the PKK during a police raid on the party headquarters in Van.<sup>262</sup> On 23 February, Hilmi Aydoğdu, the President of the Diyarbakır branch, was arrested on the basis that he violated Article 216 by allegedly stating in an interview that his party would 'consider any future attack on Kerkuk [in Iraq] as an attack on Diyarbakır'.<sup>263</sup> Within ten days in late February and early March, 55 DTP executives and members were detained, seven of whom were arrested.<sup>264</sup> Hasip Kaplan, the DTP's lawyer, stated that party members and Kurds are subject to a widespread and systematic attack, which was an alarming sign of 'progress towards police state'.<sup>265</sup>

The persecution of DTP officials is dismaying in light of the increasing political tension over the Kurdish question in Turkey. The arrest, prosecution and conviction of

party leaders, and searches and seizures of party offices, are not only in violation of settled case law of the ECtHR but also hampers the democratic representation of Kurds. These incidents served to jeopardize the effective participation of independent candidates nominated by the DTP in the general elections of 22 July 2007.

The 10 per cent national electoral threshold is a considerable obstacle to the representation of minorities in the national parliament. It is particularly detrimental for the pro-Kurdish parties, who have repeatedly failed to surpass the national threshold, despite having received the highest percentage of votes in Turkey's eastern and south-eastern regions populated predominantly by the Kurds. In the general elections of 2002, DEHAP won in 13 provinces in eastern and south-eastern Turkey, but could not enter parliament because it received only 5.8 per cent of all the votes nationwide.

The exclusionary aspect of the threshold has been the subject of public debate in the run-up to the 2007 general elections. The Social Democracy Foundation,<sup>266</sup> the Turkish Businessmen and Industrialists Association (TÜSİAD)<sup>267</sup> and the European Commission<sup>268</sup> called for the lowering of the threshold to assure both stability in government and justice in representation. The electoral system was seriously undermined in the general elections of 22 July 2007 by political parties across the spectrum, which circumvented the threshold by nominating their leaders and members as independent candidates. As a result, a total of 26 independent candidates entered parliament. Of these, 20 are Kurdish parliamentarians, nominated by the DTP; they later formed a group, thus enabling the DTP to be represented in parliament as a party.

The threshold was a matter of controversy in a recent ECtHR judgment, when applicants claimed that their right to free election under Article 3 of Protocol 1 of the ECHR was violated in the 2002 elections, when they ran for DEHAP in the province of Şırnak but lost because of the threshold. In a judgment on 30 January 2007, the ECtHR noted that the 10 per cent threshold is the highest in Europe, expressed a preference for a lower threshold in the name of fair representation, but held that Turkey did not overstep the wide margin of appreciation states have in designing electoral systems which best suit the needs of their countries.<sup>269</sup> In June 2007, the Grand Chamber accepted the case for review.

Minorities do not have equal and sufficient access to public offices in Turkey. There is an unwritten yet well established practice of not hiring non-Muslims in military, police, foreign services and high administrative offices. There was not a single non-Muslim member of parliament in the previous Turkish Grand National Assembly. Despite protests from non-Muslim communi-



ties, none of the political parties nominated non-Muslim candidates on top slots in their lists before the 22 July 2007 elections. Thus there is still not a single non-Muslim in the new parliament. In the previous parliament, there were no Alevis among the 354 AKP deputies. Upon protests, the AKP leadership nominated a number of Alevis, as a result of which there are four Alevi AKP members of the new parliament.

Out of the 81 provincial governors in Turkey, not one is an Alevi or a non-Muslim. 'Non-Muslims cannot become public servants. I cannot even be a garbage collector. We are banned from certain jobs listed in a law dating back to the 1930s, which is still in force. I see this as a sign of lack of trust on the part of the state.'<sup>270</sup>

There are no legal obstacles to the participation of women in general, and minority women in particular, in public affairs and politics in Turkey. However, there are *de facto* hurdles and the extremely low representation of women in political life has been an issue of public debate.

## Property rights

**International standards** – The right to property is protected under the ECHR.<sup>271</sup> The Guiding Principles on Internal Displacement (Guiding Principles), adopted by the UN in 1998 to address the needs of IDPs worldwide, extend guarantees for their property rights. Principle 21 states that 'no one shall be arbitrarily deprived of property and possessions' and requires property and possessions left behind by IDPs to be protected by the state against destruction, arbitrary and illegal appropriation, occupation or use. Principle 28 requires authorities to establish the conditions and provide the means for IDPs' voluntary return or resettlement and reintegration. It also requires the undertaking of special efforts to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration. Principle 29(2) grants IDPs the right to the restitution of property or the payment of just compensation.

**Law and practice in Turkey** – The Constitution guarantees the right to property. Article 35 recognizes the right of everyone to own and inherit property and provides that this right 'may be limited by law only in view of public interest'.

The Turkish government has endorsed the Guiding Principles in a decision issued by the Council of Ministers on 17 August 2005.<sup>272</sup>

### Kurds, Assyrians, Ezidis, Arabs

In the context of the armed conflict between the Turkish armed forces and the PKK during 1984–99, masses of civilians were displaced from their homes in eastern and

south-eastern Turkey. The Hacettepe survey estimates the number of IDPs as between 953,680 and 1.2 million, nearly three times more than the official figures.<sup>273</sup> The vast majority of the displaced are Kurds, while a small number are Assyrians, Ezidis and Arabs. Most of these now live in the large cities in eastern Turkey and particularly the metropolises in western Turkey, however a significant number of them have fled to European countries and Iraq. A parliamentary commission,<sup>274</sup> various non-governmental organizations (NGOs)<sup>275</sup> and the Hacettepe survey show that the vast majority of evictions were carried out by the security forces. Many of the evictions took place when security forces either forced villagers to evacuate or burned down the houses and properties.<sup>276</sup> These evictions have violated various fundamental human rights of the displaced – the ECtHR ruled that Turkey had violated ECHR articles on the right to life, the prohibition of torture, the right to private and family life, the right to property and the right to an effective remedy in cases concerning such acts of the security forces.<sup>277</sup>

IDPs were not awarded just compensation or provided with alternative housing. They were not allowed to return to their homes until 1999, when the armed conflict had ended. The eruption of the armed conflict in recent years disrupted the sporadic, seasonal and partial returns that had started after 1999. There are two main government programmes providing assistance and compensation to IDPs: the Return to Village and Rehabilitation Project (RVRP) of 1999 and the Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism (Compensation Law) of 2004.

The RVRP covers the 14 provinces in east and south-east Turkey formerly governed under the State of Emergency. The project provides IDPs with limited in-kind aid for the construction of their houses and makes infrastructure expenditures in villages where there is return. The government has never disclosed the scope, purpose and budget of the RVRP, nor provided guidelines on the determination of the type and amount of aid IDPs are entitled to receive.<sup>278</sup> The Hacettepe survey shows that 49.9 per cent of IDPs are unaware of the RVRP and that 37 per cent have applied to the project so far.<sup>279</sup> While 36.2 per cent are not considering return, 38.1 per cent said they would return if the appropriate conditions were provided;<sup>280</sup> 88.5 per cent of returnees said they have not received any state assistance.<sup>281</sup>

The Compensation Law<sup>282</sup> provides IDPs with compensation for the pecuniary losses they have suffered since 1987. Provincial damage assessment commissions, predominantly made up of civil servants, are tasked with implementing the law. The law does not indemnify material damages that occurred between 1984 and 1987, and



does not provide compensation for pain and suffering. No public information campaign was carried out on the Compensation Law targeting displaced persons in Turkey or abroad. Implementation is inadequate because of the slow evaluation process; inconsistency in compensation amounts; the high number of rejections; the lack of independence and impartiality of the commissions; and the lack of resources of the commissions.<sup>283</sup> Notwithstanding, in a premature decision, the ECtHR ruled that the Compensation Law is an adequate national remedy that IDPs should exhaust prior to applying to Strasbourg, and ruled the nearly 1,500 pending cases inadmissible.<sup>284</sup>

As of the end of May 2007, a total of 269,905 applications have been filed, of which 66,321 have been evaluated. Of these, 42,146 have resulted positively.<sup>285</sup> In light of the slow pace of the commissions in evaluating the applications, and the findings of the Hacettepe survey that 53.4 per cent of IDPs are not aware of the Compensation Law and only 37.1 per cent have applied so far, a series of amendments were made in the law. A December 2006 amendment gave commissions a one-year extension to evaluate the applications and authorized the government to grant further extension upon need.<sup>286</sup> The law was further amended in May 2007, extending the deadline for applications until 30 May 2008.<sup>287</sup>

## Non-Muslims

While the Treaty of Lausanne protects the property rights of non-Muslim minorities, the Directorate General of Foundations (Vakıflar Genel Müdürlüğü, VGM) exercises an unchecked and arbitrary authority over these institutions. There are three bases to this practice. First, the VGM held in the 1960s that the lists of property that community foundations declared in 1936 were effectively their founding statutes.<sup>288</sup> Thus, non-Muslim foundations had legal title only to the property they had declared in 1936 and all property they acquired after that date – for example, through donations – should pass to the state. In 1974, the High Court of Appeals upheld this unlawful and discriminatory policy.<sup>289</sup> Second, the VGM has held that a provision in the Law on Foundations conferring on it the authority to take over the management of foundations that do not serve ‘a legal or practical purpose’ also applies to community foundations.<sup>290</sup> For years, the VGM has exercised an unlimited discretion in deciding, for example, whether a church which has lost much of its congregation still serves its religious purpose. Where the VGM decided in the negative, it took over the management of the church and confiscated its properties.<sup>291</sup> Third, the VGM has also assumed the management of foundations without functioning boards of directors. The Law on Foundations requires foundations to hold elections for their boards. However, there was no provision in

the law for the conduct of such elections until 2004. This legal vacuum left community foundations at the mercy of the bureaucracy. For example, the Istanbul governorship did not allow the Rum Orthodox community to hold board elections after 1991.<sup>292</sup> As a result, the boards of many foundations in Gökçeada and Bozcaada have become non-operational<sup>293</sup> and the VGM assumed the management of these foundations.

Within the framework of recent reforms, a series of amendments to the Law on Foundations gave the community foundations the right to acquire and sell property, and to gain legal title over property they currently use.<sup>294</sup> Yet, in requiring the VGM’s permission, the law makes it extremely difficult for community foundations to register the property they still use. The implementing regulation<sup>295</sup> requires non-Muslim foundations to follow cumbersome bureaucratic application procedures<sup>296</sup> and restricts the kinds of property they can have title to.<sup>297</sup> Furthermore, the applications can only be filed by the 166 community foundations listed in the regulation.<sup>298</sup> As of 27 March 2007, only 29 per cent of the applications to register have had a positive outcome.<sup>299</sup> Applications for acquisition through purchase or donation, and for sale of property, on the other hand, have been successful.<sup>300</sup> A regulation laying out the conditions for the elections of boards of directors was adopted on 16 September 2004.<sup>301</sup> However, in limiting the electoral districts to the boroughs where community foundations are located and imposing a residence requirement on the candidates, the regulation disregards the fact that very few or no non-Muslims are left in many of the boroughs. While the expansion of the electoral districts to the province level is possible, the regulation makes such a measure subject to the discretion of the Ministry of Interior upon an investigation by the governorship.<sup>302</sup>

The reforms failed to address the most important property issues of community foundations: (1) the restitution of properties confiscated from them, which is particularly acute for the Rum Orthodox community;<sup>303</sup> and (2) the discontinuance of the VGM’s assumption of the management of foundations and the restitution of properties confiscated on the basis of the 1936 Declarations or the payment of just compensation.

A 2005 ruling by the Council of State overturning a 1997 VGM decision to take over the management of the Büyükkada Rum Girls’ and Boys’ Orphanage Foundation is a welcome judicial intervention. The court held that the authority of the VGM to assume the management of non-functioning foundations did not extend to those belonging to non-Muslim minorities.<sup>304</sup> The VGM appealed against the decision and continues to retain the management of the orphanage.<sup>305</sup>

A much-awaited recent amendment to the Law on Foundations failed to produce a solution.<sup>306</sup> The law

does allow the restitution of properties acquired after 1936 but that were later confiscated and registered in the name of the Treasury or the VGM.<sup>307</sup> However, it does not foresee the payment of just compensation for properties subsequently sold to third parties and this enabled the VGM to circumvent the law through selling to third parties properties currently registered with the Treasury or the VGM.<sup>308</sup> In some cases, tenders were cancelled due to public reaction,<sup>309</sup> but in others sales were quietly completed.<sup>310</sup> Furthermore, the law confers on the VGM the power to take over the management of foundations that have not held board elections for 10 consecutive years.<sup>311</sup> Finally, the law continues to give only one seat for the representation of all non-Muslim foundations in the 15-member 'Assembly of Foundations', despite repeated protests by these groups. Because of the presidential veto of nine provisions, the law has not yet entered into force.<sup>312</sup> The President vetoed the provisions on the ground, *inter alia*, that the conferral of new rights and privileges on old (community) foundations goes against the Treaty of Lausanne, the founding principles of the Republic, the principle of non-discrimination, national interests and public benefit.<sup>313</sup> This static approach to law and the discriminatory mentality, which associates the granting of new rights to citizens with a violation of 'national interests', by the President of Turkey and the former President of the Constitutional Court speaks volumes about the prevalent attitude towards non-Muslims in Turkey.

Thus, the new Law on Foundations failed to meet expectations. Indeed, the community foundations that had taken their cases to the ECtHR did not withdraw their cases upon the enactment of the law,<sup>314</sup> and new applications were filed when the nature of the law had become clear.<sup>315</sup> The law failed to satisfy the ECtHR as well. In a decision of 9 January 2007, the ECtHR found that Turkey violated Article 1 of Protocol No. 1<sup>316</sup> and gave the government notice to return the title deeds or pay 890,000 euros compensation by 9 July 2007. The decision sets a precedent for other cases pending at the ECtHR. Yet, following the presidential veto, the parliamentary justice commission passed the law without any changes and sent it to the parliament for deliberation. Despite the expiry of the deadline, the previous parliament failed to amend the law in accordance with the ECtHR's ruling, due partly to the opposition of the outgoing president Ahmet Necdet Sezer. The new parliament is expected to take the draft law into its agenda as a matter of priority.

## Roma

On 16 June 2005, the parliament enacted a law<sup>317</sup> on the restoration, protection and use of historical and cultural

immovable properties. The implementing regulation, issued on 14 December 2005, authorized competent authorities to undertake, with the approval of the cabinet, expedited expropriation in cases where routine expropriation processes cause delay in the execution of a project.<sup>318</sup> Based on this authority, the Council of Ministers issued a decision<sup>319</sup> authorizing the district municipality of Fatih in Istanbul to undertake expedited expropriation projects in districts including the historically Roma neighbourhoods of Sulukule Neslişah and Hatice Sultan.

Expropriation has started in these neighbourhoods. As of 20 March 2007, 120 houses had been sold to the municipality or third parties.<sup>320</sup> There are allegations that local authorities do not inform landowners about their rights; that Roma who sold their houses are not paid the rental subsidy they have been promised; and that speculators buy houses from the Roma at very low prices only to sign a contract with the municipality to purchase renovated houses at low prices and in reasonable instalments. Five Roma families, the Sulukule Association on the Development and Protection of Romani Culture and the Istanbul branch of the Chamber of Architects filed a motion for stay of execution of the project and the annulment of the regulation and the Council of Ministers' decision.<sup>321</sup>

Before the Council of Ministers' decision, urban regeneration projects by various municipalities around Turkey caused the forced eviction of Roma during 2006, resulting in the demolition of houses and the displacement of families in Istanbul, Ankara, Bursa and Zonguldak.<sup>322</sup> In Küçükbakkalköy district of Istanbul alone, 156 houses were demolished on 19 July 2006, including 15 houses with title deeds.<sup>323</sup> The projects were designed without consulting the local communities, and evictions were undertaken without prior notice. The police reportedly violated legal procedures by not producing a court order for eviction and at times resorted to violence during evictions.<sup>324</sup>

As a result, hundreds of families are now homeless and living in extremely poor conditions, without clean running water.<sup>325</sup> The displacement of Roma families deprived their children of their educational rights. In Küçükbakkalköy, the children of Roma who try to survive in the ruins of their demolished houses are unable to attend school because the local authority (*muhtar*) refuses to issue certifications of residence required for enrolment.<sup>326</sup> The Accessible Life Association (Ulaşılabilir Yaşam Derneği, UYD) reports that the authorities are planning to evict an additional 3,500 Roma from Sulukule and hundreds of Roma from Kuştepe in Istanbul, as well as hundreds more in the provinces of İzmit, Çanakkale, İzmir and Tekirdağ.<sup>327</sup>

The forced eviction of Roma families violates their property rights and rights to private and family life, and

their basic economic and social rights to shelter, education, health, and adequate nutrition, clothing and living conditions. The targeting of the Roma in hundreds of cases of forced evictions within a matter of few months also raises questions about discrimination on the basis of race and ethnicity. Indeed, the UYD reports that while the houses of Roma in Küçükbakkalköy and Kağıthane were destroyed, the houses of their next-door neighbours – who are Turks – were left untouched.<sup>328</sup>

## Anti-discrimination

**International standards** – The right to be free from discrimination in the exercise of human rights is guaranteed under international documents. Initially, non-discrimination was guaranteed under the ECHR solely as an ancillary right.<sup>329</sup> However, with the adoption in June 2000 of Protocol No. 12 to the ECHR, there is now a general prohibition of discrimination.<sup>330</sup> Belonging to a minority is enumerated as a protected ground in Article 14 of the ECHR and Article 1 of Protocol No. 12, which Turkey has signed but not yet ratified. Discrimination is also prohibited under the UDHR,<sup>331</sup> the ICCPR,<sup>332</sup> the ICESCR,<sup>333</sup> the CEDAW,<sup>334</sup> the Child Convention,<sup>335</sup> the CERD,<sup>336</sup> the UN Declaration<sup>337</sup> and the FCNM.<sup>338</sup>

Discrimination on the ground of membership to a national minority is prohibited under the not-yet-in-force European Charter of Fundamental Rights of the EU.<sup>339</sup> Two instruments of EU primary law, the Race Directive and the Employment Directive, provide individuals in all EU states protection from discrimination. The Race Directive prohibits discrimination on the grounds of racial or ethnic origin in a wide range of areas, including access to employment, working conditions, social protection, education, access to goods and services, and housing. It prohibits both direct and indirect discrimination, and binds both public officials and private individuals. The Employment Directive prohibits discrimination on the grounds of 'religion or belief, disability, age or sexual orientation as regards employment and occupation'.<sup>340</sup> It prohibits both direct and indirect discrimination. Both directives require states to designate a body for the promotion of equal treatment, to engage in dialogue with NGOs and to present periodic reports on implementation.

**Law and practice in Turkey** – Article 10 of the Constitution guarantees equal treatment and non-discrimination. The Treaty of Lausanne specifically provides non-Muslims the right to equality before the law and to be free from discrimination.<sup>341</sup>

Turkey does not have a general anti-discrimination law. Promising piecemeal steps were taken in recent years

through the incorporation of anti-discrimination provisions in various laws. An amendment to the Labour Law<sup>342</sup> prohibits discrimination in employment relations on grounds, *inter alia*, of language, race, religion and denomination.<sup>343</sup> Ethnicity and national origin are not listed. The prohibition of discrimination is limited to employment relations and does not extend to recruitment. The Penal Code extends its protection to everyone without making 'any distinctions on the basis of race, language, religion, sect, nationality, colour, sex, political or other opinion, philosophical belief, national or social origin, birth, economic and other social status and without extending privileges to anyone'.<sup>344</sup> The Code also penalizes, in Article 216(1), incitement to enmity or hatred on the basis of race, religion, sect or region, where such incitement leads to a clear and imminent threat to national security. Incitement to hatred on the basis of sex or sexual orientation is not criminalized. While prosecutors frequently use Article 216(2) to bring charges against individuals who express non-violent opinions, they do not resort to Article 216(1), which could potentially be used to protect minorities against hate speech, racism and anti-semitism.

Legal reforms alone will not suffice to protect minorities against discrimination unless prevalent mentalities change. 'Yes, laws and the Constitution change on one hand. However, I feel uneasy about this. Will these changes remain on paper? Our problem has never been the law, but the mentality of the average citizen. There is a need to develop social projects, to give education against discrimination'.<sup>345</sup> Generally, minorities point out that the kind of discrimination they face is not systematic and collective, but *ad hoc* and individual. 'Discrimination in Turkey is individual, subtle and inconsistent. This is true for public authorities as well'.<sup>346</sup> Speaking about minorities' access to public services, an activist of Rum origin adds: 'In public offices, you are at the mercy of public officials. But access to public services should not be a matter of discretion. For fear of being identified by their accents, Rums cannot claim their rights in public institutions'.<sup>347</sup>

The educational system is not immune to widespread stereotypes and prejudices towards minorities. School textbooks published by the Ministry of Education for primary and secondary education contain discriminatory language inciting hatred against non-Muslims. A joint project on textbooks conducted by the History Foundation and Turkey's Science Academy found this statement in a geography textbook: 'Almost everyone living in Turkey is a Turk. Until recently, there were also Rums and Armenians in addition to Turks. Some of these groups have attempted to harm the country when they found the chance to do so'.<sup>348</sup> An Armenian teacher blames such language for the killing of Hrant Dink: 'The state has created such an Armenian image that being an Armenian has become an

insult. Why did those children become murderers? I cannot be angry at them. The real perpetrators are the state and the education system. Textbooks continue to perpetuate enmity for Armenians and Christians.<sup>349</sup> While the elimination of such language from textbooks is a necessary measure to fight against discrimination, it is by no means sufficient: attitudes must also change.

The State Supervisory Council's reference to community foundations in a 2006 report on the acquisition of property by *foreign* legal personalities<sup>350</sup> speaks volumes about the discriminatory mindset of public institutions. Another example of discriminatory practices of higher bureaucratic institutions is the issuing of sermons and publication of materials by the Diyanet which are hostile towards proselytizing activities.<sup>351</sup>

Lawmakers are not immune from the discriminatory attitudes against minorities. During parliamentary debates over the draft law on foundations, members of parliament made derogatory comments about non-Muslims and expressed concern over whether granting new rights to minorities would allow foreign interference in Turkey's internal affairs. Lawmakers from the Republican People's Party (Cumhuriyet Halk Partisi, CHP), main opposition party, objected to granting additional rights to non-Muslims without incorporating in the law a 'principle of reciprocity' vis-à-vis Greece. In protest, 183 non-Muslim citizens, including prominent intellectuals and artists, issued a declaration against the discriminatory mentality of lawmakers.<sup>352</sup> The derogatory, discriminatory and at times racist remarks and decisions by highest state organs and individuals serve to alienate non-Muslims.

Minorities also suffer from harassment from law enforcement officers. Recently, it was reported that individuals identifying themselves as police officers asked a number of Roma associations based in and outside Istanbul whether they receive funding from the EU, and questioned them about the organizations and individuals they collaborate with.

In the past few years, there have been fatal physical attacks against non-Muslim intellectuals, clergy and places of worship. The tragic death of Hrant Dink vividly demonstrates the depth of hostile and racist feelings towards non-Muslims in Turkey. Dink's assassination came nearly a year after that of Father Andrea Santoro of the Catholic Church in Trabzon, who was murdered in February 2006. Three months after Dink's murder, on 18 April 2007, Zirve, a publishing house in Malatya, was attacked by extremists and three of the staff members murdered. The publishing house produced Bibles and books on Christianity and had been threatened previously.<sup>353</sup>

Minorities, particularly non-Muslims, have been increasingly subject to threats in 2007. An Armenian

lawyer stated that Armenian schools, businessmen and religious institutions have been receiving threats by email, letter and phone. They have asked local police stations to investigate these threats and provide protection. The Patriarch has also sent a letter to the Governor of Istanbul asking for protection for Armenian institutions and businessmen. The response was that the governorship would not be able to afford the cost and they should pay for security from private companies themselves.<sup>354</sup> Many community members said that they felt unsafe and would like to leave the country.<sup>355</sup> The Diyarbakır Church has also been increasingly threatened by email. Although police did not initially take these threats seriously, after the incident in Malatya, they provided a security guard who has been guarding the church around the clock.

There is also a rise in racist attacks against minorities around Turkey. By and large, law enforcement officials have failed to protect the victims and arrest the perpetrators. In Afyon province, for example, a Roma family was attacked on 29 April 2006 by hundreds of non-Roma following the alleged abuse of female students by two young Roma. The mob burned several houses belonging to Roma. No one was arrested.<sup>356</sup> In some cases, authorities opted for the 'solution' of asking victims to leave the premises. For example, 55 Kurdish residents of the Kemalpaşa district in İzmir who had been attacked by a mob of ultra-nationalists following the killing of their leader were obliged to move to the province of Aydın when municipality officials told them to leave and the police said they would not be able to protect them against future attempts.<sup>357</sup> Similarly, when a group of residents chanted slogans against five Kurdish construction workers who were involved in a fight with a group of non-Kurds in Bozkır district of Konya, the police escorted the workers out of the district.<sup>358</sup>

Hate speech is a ground for concern for all minority groups. Circassians are concerned about extreme right-wing websites which incite hatred against them. The development and robust implementation of a legal framework to regulate hate speech is among their main demands.<sup>359</sup> Kurds have been subject to a systematic hate speech campaign by nationalist left groups such as the Turkish Labour Party (İşçi Partisi, İP), which disseminates racist materials on its websites and in its journals, calling on Turks not to buy from Kurdish shop owners, not to marry Kurds, not to listen to Kurdish music, etc. There is a rise, or rather resurfacing, of anti-semitism, which is an issue that is barely discussed in Turkey: 'Anti-semitism is an unnamed and deliberately avoided problem in Turkey ... politicians disregard the problem. After all, there are only around 9,000 eligible Jewish voters.'<sup>360</sup> The representatives of the Jewish community share this concern: 'Extreme nationalism and anti-

semitism are the biggest problems of the Jewish community in Turkey today.<sup>361</sup>

Turkey has not recognized the competence of the Committee on the Elimination of Racial Discrimination to receive individual applications under Article 14 of the Convention and has ratified the Optional Protocol to

the ICCPR that guarantees individuals application to the Human Rights Committee with a reservation on applications that could be brought under Article 26. These are mechanisms that could be used by minorities against discrimination and hate speech.



# Ways forward

The EU accession process, and its requirement that all applicant states show that they can fully protect their minorities, requires Turkey to find a long overdue solution to its national identity. More than 80 years after the establishment of the nation-state, the 'nation' is still searching for a way to accommodate the multitude of different religions, languages and cultures within the borders of Turkey. Not only various minorities, but also a significant segment of the majority feels excluded by Turkey's ethnic and religious based citizenship. But now, despite the negative reaction to the concept of 'minorities' by some Muslim minorities (due to the negative image given over decades to non-Muslims), the genie of minority rights is out of the bottle. The rhetoric of minority rights has already become part of the national discourse, in substance if not yet in form. Arguably, the most significant achievement of the EU process has been the way in which it has created space for various minority groups to demand recognition of their distinct identities, the reformulation of the exclusive Turkish citizenship and the removal of barriers to the free exercise of their religious, political and cultural rights. This is evident in the increasing number of new minority associations, the cases filed by minorities in national courts and the ECtHR, and the abundance of new visual and written material on minority cultures, languages, food and history. This seems to be an irreversible trend.

The authorities are lagging behind these dynamic social forces. Enacting legal reforms is necessary but, by itself, insufficient to bring real and meaningful change in social and official attitudes towards minorities. The internalization of legal reform requires a radical transformation of the prevalent mentality of both the state and the society. A durable solution to minority issues, and an end to the pervasive prejudice against

minorities, requires a major change in the rhetoric of the state. Patronizing, dismissive and nationalist rhetoric by government officials thwarts any potentially positive impact of reform laws. And it is here, perhaps, that Turkey has failed the most. Turkey's multicultural heritage is yet to be embraced at the highest state level; even the mere mention of minorities and minority rights continues to trigger nationalist reactions by political leaders; and there is yet to be an official recognition of and apology for the traumatic experiences non-Muslim citizens have suffered over past decades in the hands of their own state. Minorities suffer a great deal of discrimination, the existence of non-Sunni minorities continues to be disregarded, the use of minority languages or symbols in public can result in criminal prosecutions, non-Muslims are still not employed in the civil service, and parliament does not reflect the will of the people or the multicultural aspect of society. At the international level, Turkey continues to take an extreme view of the denial of minority rights, being one of the handful of European states that has not even signed the FCNM.

It cannot be denied that groundbreaking reforms have been undertaken in recent years, granting limited yet significant rights to individuals belonging to minorities. Yet much more remains to be done. The new constitution may be the most significant change yet. Undoubtedly, the task is a difficult one, in light of the politicization of minority rights, and rising nationalism, leading to violence against minorities. However, it is the legacy of people such as Hrant Dink that will provide the Turkish state and society with hope, determination, courage, solidarity and empathy. To conclude: 'The state should not fear its own children. Not every one who asks for language and cultural rights demands territory.'<sup>362</sup>

# Recommendations

## 1 To the Government of Turkey

### Policies on minorities

- Turkey should immediately develop and adopt a comprehensive policy on minorities, moving beyond the Treaty of Lausanne to be in accordance with contemporary international standards. All ethnic, linguistic and religious groups should be recognized as minorities in accordance with international standards.
- In doing so, authorities should adhere to a democratic and participatory process in consultation with female and male representatives of various minority groups.
- The process of drafting a new constitution, initiated in September 2007 by the new AKP government, should be transparent, participatory and democratic. The government should ensure the inclusion of minorities and their representatives in this process and take into account their problems and demands in reviewing the draft constitution.
- All constitutional provisions that are not in line with international standards and are preventing the adoption of legal reforms towards protection of minorities, such as Articles 3 and 42, should be amended. Principles on the protection of different ethnic, linguistic and religious groups' economic, social and political rights, and taking positive measures when this is necessary, should be added to the Constitution .
- Turkey should ratify the FCNM, the European Charter on Regional or Minority Languages, etc.
- Turkish public officials, and particularly the national government, should adopt a positive approach to all minorities in their public statements.

### Education

- The requirement that deputy principals and Turkish culture teachers in non-Muslim schools should be Muslim should be lifted. The government should fully comply with its obligations under Lausanne and not interfere with the internal affairs of these schools.
- All legal and practical restrictions on education in and teaching of minority languages in private schools and courses should be lifted. Applicable law and regulations should be non-discriminatory towards the use of any languages.
- Where there is sufficient demand, government should allocate funds to enable minority children to learn

their mother tongue as a second language in public schools.

- To bring minority children who do not speak Turkish to equal footing with the majority, the government should, according to need, provide pre-school public education in minority languages.
- Discriminatory information on minorities should be removed from all textbooks in consultation with experts and minority representatives.
- The curriculum of primary and secondary schools should be revised in consultation with experts and minority representatives so as to teach students Turkey's multicultural history and structure, and to familiarize them with minority cultures.
- Measures should be taken to increase attendance of minority children, particularly girls and displaced, at school. Special measures should be taken when necessary.
- No one should be prosecuted or persecuted for requesting education in minority languages.

### Media

- Any laws and regulations on the use of minority languages or covering minority issues in all media organs should be non-discriminatory. Media organs using minority languages should not be treated more adversely than those using Turkish.
- The High Board of Radio and Television's mandate on the closure of stations or other such measures regarding minorities should be strictly limited.
- Restrictions on broadcasting in minority languages, such as undue content and time restrictions, as well as translation and reporting requirements imposed on broadcasting in minority languages should be eased. These broadcasts should be treated equally to broadcasting in Turkish.
- Public broadcasting in minority languages should be expanded to include other minority languages. The quality of the programmes should be raised and all should be planned in consultation with minority members.
- All media organs, including newspapers, the internet, radio and TV broadcasts, should be closely regulated to effectively combat hate speech, racism and anti-semitism.

- All media organs should be encouraged to broadcast programmes on the history and culture of minorities to strengthen tolerance within the society.
- Disproportionate measures taken against print media, such as confiscation and banning publications, should be eased.

### **Place and personal names in minority languages**

- The circular prohibiting the use of certain letters in personal names should be annulled. The government should ensure that minorities are free to use names of their choosing.
- The government should immediately cease the practice of changing the original names of churches – as in the case of the Armenian Orthodox Ahtamar Church in Van – and other places into Turkish.
- Minorities who wish to reinstitute the old names of their towns, villages, streets, schools, etc. should be granted the right to do so.

### **Use of minority languages in access to public services**

- The administrative and criminal proceedings brought against municipalities for providing services in minority languages should cease. Municipalities should be entitled to provide services in different languages when this is necessary and there is a demand. They should receive the necessary budget from the state for these services.
- The mayor and municipal council of the Sur district of Diyarbakır should be reinstated in their democratically acquired positions. The criminal case brought against the mayor and council members should be dropped and no other such case should be initiated against them for the use of Kurdish or other languages in local service provision.
- Minorities who do not speak Turkish should be granted the right to use their own language in both civil and criminal proceedings, as well as in access to public services, and be provided with interpreters by the state.
- Particularly in areas populated predominantly by minorities and where there is a significant number of individuals who do not speak the official language, the government should make every effort to facilitate minorities' access to all public services through providing interpreters or hiring local public servants who speak the minority language.

### **Freedom of religion**

- The mandatory religion classes should be abolished. A participatory, democratic and non-discriminatory solu-

tion should be reached to address the demands of all citizens belonging to both minority and majority religions and sects to have their children receive religious education outside the educational system (non-formal education), if they should so desire.

- The government should comply with its obligations under Lausanne and not interfere with the internal affairs of the religious institutions of non-Muslims. The ban on the training of clergy, opening of theological institutions and the use of religious titles should be lifted.
- All arbitrary and unlawful restrictions on the registry of places of worship belonging to religious minorities should be abolished.
- All religious and denominational minorities should be granted the right to establish, manage and control private religious institutions with legal personality, and to exercise this right without arbitrary restrictions.
- The Diyanet should be reformed so as to allow the representation of non-Sunni and non-Hanefi Muslims and to provide all Muslims with public funding for their religious practices. The rights of non-Muslim religious groups and non-practising and atheist citizens should be protected equally to those of Sunni Muslims.
- The religion section in ID cards should be abolished.

### **Freedom of expression**

- Criminal law should be used for prosecuting actual violence and racial hatred, according to international laws against racial discrimination and freedom of expression. It should not be used to limit freedom of expression, the use of minority languages or peaceful activism on behalf of minorities.
- All law enforcement agents, prosecutors and judges should be required to take training in the international laws on freedom of expression and on racial discrimination.
- Articles 220, 301 and 305 of the Penal Code should be abolished, and the legislature should not replace them with similar provisions.
- Article 216 should be used for its intended purpose in a democratic society: the prosecution of hate speech, anti-semitism and racism.
- The Turkish government should bring its constitutional and legal framework into full harmony with international standards on free speech.
- The anti-terror law should be amended to bring it into conformity with European standards.
- Administrative sanctions should be made against prosecutors, or other law enforcement agencies that are shown to repeatedly investigate and open prosecutions in violation of minority rights, including attacking freedom of speech.

- Victims of repeated prosecutions in violation of international law should have the right to gain compensation from the Ministry of Justice.
- The highest officials of the government should demonstrate firm commitment to the principle of freedom of expression.
- The training given to judges and prosecutors on ECHR standards should be intensified. It should be supported by training on the judicial protection of freedom of expression in other countries.

### **Freedom of assembly and association**

- The implementation of the Law on Associations and the Law on Foundations should be brought in line with ECHR standards.
- The Law on Associations should be amended to enable associations to advocate for minority rights.
- Associations should be guaranteed the full use of any language in their activities.
- Judges and prosecutors should be trained in European standards so as not to interpret grounds for dissolution of associations in an unduly restrictive manner.
- The government should develop a mechanism to prevent the imposition of arbitrary bureaucratic restrictions on associations.

### **Political participation and participation in public life**

- Article 81(a), (b) and (c) of the LPP should be amended so as to remove restrictions on political parties established by minorities or that advocate minority rights.
- The substance and implementation of the LPP should be brought into full compliance with the ECHR standards.
- Political parties should have the right to full use of any language in all activities. The authorities should ensure that election campaigns can be conducted in minority languages, particularly in areas where large numbers of the population do not speak Turkish as a first language.
- Judges and prosecutors should be trained on the ECtHR case law, particularly with regard to the dissolution of political parties.
- The legal campaign against the DTP should cease. The government should ensure that prosecutors do not make arbitrary arrests and indictments in contravention of the ECHR.
- The national electoral threshold should be lowered to 5 per cent to conform with European standards and to ensure justice in representation.
- Special measures should be adopted to ensure that all internally displaced persons can participate in elections.

- Efforts should be made to introduce structural mechanisms to substantially increase the participation of all minorities in politics and public service.
- Such efforts should be made with due regard to the specific needs of minority women.

### **Property rights**

- The Law on Foundations should be amended to comply with the ECtHR's ruling.
- The Law on Foundations should provide for the return to non-Muslim foundations of their properties. For properties which have passed to third parties, efforts must be made to ensure that such third parties acted in good faith. If not, properties should be taken back from them. If they have, then foundations should be paid just compensation.
- A centrally coordinated, fully independent administrative body with sufficient budgetary and human resources should be established to assess claims of minority foundations for return of their property.
- The forced eviction of the Roma should stop. The immediate humanitarian needs of those evicted should urgently be provided for. The national and local government should conform with domestic and international law in designing and implementing urban regeneration plans.
- The government should initiate a public information campaign to ensure that beneficiaries are informed about the Compensation Law. This campaign should be extended to displaced persons outside Turkey.
- The government should urgently ensure uniformity in the implementation of the Compensation Law and make sure that commissions do not make arbitrary and unfair decisions.
- An administrative body should be set up to review the inadmissibility decisions of the commissions.
- The village guard system should be abolished.
- In line with the recommendation of the Special Representative of the UN Secretary-General on the Human Rights of IDPs, a national strategy should be developed in consultation with IDPs and human rights organizations; and a central body should be established to implement this strategy, and sufficient budget should be allocated to this institution.
- The qualitative findings of the Hacettepe survey should be released without delay. All findings of the survey should be incorporated into future policies.
- IDPs who wish to return should be guaranteed full and equal access to the RVRP; special measures for rebuilding their economic and social life should be taken.
- To facilitate the integration of urban IDPs, economic and social policies should be implemented to ensure

their access to public services, employment and education.

### Anti-discrimination

- All perpetrators behind the assassination of Andrea Santoro and Hrant Dink, as well as the slaying of Zirve Publishers staff, should be identified and prosecuted. Prosecutors should fully investigate the possible links between these three incidents.
- A comprehensive anti-discrimination law which prohibits both direct and indirect discrimination by both public and private actors in all walks of life, and which provides effective remedy for the victims of discrimination should be enacted. The grounds should be non-exhaustive.
- The new Minister of Interior should fully investigate the negligence of public officials, including security and intelligence officers, who failed to protect Hrant Dink, despite having received credible and detailed intelligence about the plot to kill Dink.
- An independent national institution on anti-discrimination should be set up and provided with sufficient funding and mandate.
- All school textbooks should be screened by sociologists, psychologists, human rights advocates and historians. Discriminatory phrases about minorities and biased accounts of Turkey's history should be eliminated. Textbooks should be rewritten to include objective information about all minority groups in Turkey, with the aim of familiarizing children with minority cultures.
- The government should closely monitor all media, especially the internet, to detect racist language which incites hatred against minorities and minority rights advocates.
- The government should take all measures to ensure that security officials prevent physical attacks and

lynching of minorities, to protect victims where such attacks occur and hold perpetrators accountable.

- The government should urgently launch a nationwide campaign on tolerance, equality and diversity through redesigning the curricula at all levels of education, penalizing print and broadcasting media programmes which incite hatred against minorities, training all public officials at all levels on universal values of human rights.

### To the EU

- The EU as a whole, and the Commission in particular, should develop an overall approach to minority rights protection in Turkey that is strong and clear. This should set out clear benchmarks for Turkey to achieve, based on European law and standards using Council of Europe and OSCE standards. This should be based on best practice in Europe, not the lowest common denominator. In particular, the example of France, which is unique in Europe, should not be used.
- Throughout the accession process the EU should support the comprehensive and objective monitoring of the situation of all minorities in Turkey, measuring progress against benchmarks. Minorities should fully participate in this.
- The EU should assist minorities to understand and access the accession process and reviews, both in Turkey and in Brussels.
- The EU should provide information to minorities and government officials on best practices on minority rights implementation in other parts of Europe. Exchange and study visits for minorities and for officials should be organized.
- All EU member states should fully support and contribute to the EU's work in Turkey on minority rights.



# Notes

- 1 This account is partly based on Kurban, D., 'Unravelling a trade-off: reconciling minority rights and full citizenship in Turkey', *European Yearbook of Minority Issues*, vol. 5, 2004/5, Leiden, Martinus Nijhoff, 2006, pp. 343–53. See also Macmillan, M., *Peacemakers: The Paris Peace Conference of 1919 and its Attempt to End War*, London, John Murray, 2002.
- 2 For more on the *millet* system, see Oran, B., 'Minority concept and rights in Turkey: The Lausanne Peace Treaty and current issues', in Z.F. Kabasakal Arat (ed.), *Human Rights in Turkey*, Philadelphia, University of Philadelphia Press, 2007, 35–52.
- 3 In Turkey, those known in the West as Greek Orthodox are referred to as Rum.
- 4 Mahçupyan, E., 'Türkiye'de Gayrimüslim Cemaatlerin Sorunları ve Vatandaş Olamama Durumu Üzerine', Istanbul, Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı, TESEV), June 2004/1, retrieved April 2007, [http://www.tesev.org.tr/etkinlik/demokratiklesme\\_cemaatler.php](http://www.tesev.org.tr/etkinlik/demokratiklesme_cemaatler.php)
- 5 The British had attempted to ensure a wide protection of minorities (including ethnic minorities) in the 1923 Treaty but, unlike in 1919–20, agreed to a much more limited protection of minorities.
- 6 See Gökaçtı, M.A., *Nüfus Mübadelesi: Kayıp Bir Kuşağın Hikayesi*, Istanbul, İletişim, 2005.
- 7 The Jewish inhabitants of Eastern Thrace were attacked by mobs, their property looted and they were expelled from the region. See Aktar, A., *Varlık Vergisi ve 'Türkleştirme' Politikaları*, Istanbul, İletişim, 2000, 71–99.
- 8 In what are known as 'the incidents of 6 and 7 September', violent mobs attacked the persons and property of non-Muslim civilians in Istanbul. The main target was the Rum Orthodox community due to the escalation of the crisis between Greece and Turkey over Cyprus. However, Armenians and Jews were also attacked. See Güven, D., *Cumhuriyet Dönemi Azınlık Stratejileri ve Politikaları Bağlamında 6–7 Eylül Olayları*, Istanbul, İletişim, 2006.
- 9 While the 1941 conscription was limited to non-Muslims in Istanbul, a further draft issued in 1942 covered all non-Muslims living in the country. See Bali, R., *Devletin Yahudileri ve 'Öteki' Yahudi*, Istanbul, İletişim, 2004, pp. 299–319.
- 10 The Wealth Levy Law, No. 4305, adopted on 11 November 1942, entered into force on 12 November 1942. Enacted with the stated aim of alleviating the war-time financial crisis, the law introduced a discriminatory tax scheme whereby non-Muslims and those who had converted to Islam were taxed at a disproportionately higher level than Muslims; 1,229 non-Muslims who were unable to pay their taxes were transferred to labour camps, where 21 died. The practice ended *de facto* in December 1943 with the release of remaining non-Muslims from the camps, and *de jure* with the annulment of the law on 15 March 1944. See Aktar, *op. cit.*; Bali, R., *Bir Türkleştirme Serüveni: 1923–1945*, Istanbul, İletişim, 2005.
- 11 Having failed to resolve the Cyprus conflict as it had wished, the Turkish government deported tens of thousands of Rums of Istanbul who carried Greek passports, including those married to Turkish citizens, confiscating their properties and assets. See Demir, H. and Aktar, R., *Istanbul'un Son Sürgünleri*, Istanbul, İletişim, 2004.
- 12 For more on the Diyanet, see Çakır, R. and Bozan, İ., *Sivil, fief-faf ve Demokratik bir Diyanet İşleri Başkanlığı Mümkün mü?*, Istanbul, TESEV, 2005.
- 13 Aktar, *op. cit.*, p. 58.
- 14 Kaya, A., 'Cultural reification in Circassian diaspora: stereotypes, prejudices and ethnic relations', *JEMS*, no. 31, 2005, p. 135, citing the 1932 Turkish History Thesis and the 1936 Sun Language Theory.
- 15 Law on Settlements, No. 2510, adopted on 14 June 1934.
- 16 Law on Surnames, No. 2525, adopted on 21 June 1934.
- 17 Pierse, C., *Cultural and Language Rights of the Kurds: A Study of the Treatment of Minorities under International Law in Turkey, Iraq, Iran and Syria in Light of International Human Rights Standards*, London, Kurdish Human Rights Project, 1997, p. 6.
- 18 McDowall, D., *A Modern History of the Kurds*, London, I.B. Tauris, 1996, p. 191.
- 19 For examples, see Oran, B., *Türkiye'de Azınlıklar: Kavramlar-Teori- Lozan- İç Mevzuat- Uygulama*, Istanbul, İletişim, 2005, p. 73.
- 20 'Sezer: Aleviler Azınlık Değildir', *Milliyet*, 4 September 2006.
- 21 NTVMSNBC, 13 April 2007, <http://www.ntv.com.tr/news/405466.asp>
- 22 This observation is based on public statements made by Kurdish and Alevi representatives and personal observation.
- 23 Interview with an Assyrian activist, 22 March 2007.
- 24 *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, Submitted by F. Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (UN Doc.E/CN.4/Sub.2/384/Rev.1, 1979).
- 25 Not all countries follow the evolving standards of international law; France does not acknowledge the existence of minorities within its borders, and Greece limits its recognition to the religious minorities. Yet these countries are the exception rather than the norm.
- 26 M. van der Stoep, keynote address at the opening of the OSCE Minorities Seminar, Warsaw, 1994, available at <http://www.osce.org/hcnm/13022.html>
- 27 Human Rights Committee, General Comment 23, Art. 27 (50th session 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1/1994, 38.
- 28 But with reservation with respect to Article 27.
- 29 But with reservation with respect to Articles 17 and 30.
- 30 Belgium, France and Greece have not yet ratified it.
- 31 *Gorzelik v. Poland*, 2002.
- 32 OSCE, Guidelines on the Use of Minority Languages in the Broadcast Media, 10 October 2003, [http://www.osce.org/documents/hcnm/2003/10/2242\\_en.pdf](http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf)
- 33 Conclusions of the Presidency, European Council summit, Copenhagen, 21–22 June 1993.
- 34 Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303/16.
- 35 Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180/22.
- 36 Treaty of Peace with Turkey, 24 July 1923, 28 LNTS 11 (Treaty of Lausanne).
- 37 Art. 37.
- 38 For a long time, Turkey succeeded in convincing the national and international community of the accuracy of this misinterpretation. For example, in its earlier annual progress reports, the European Commission effectively endorsed this unlawful policy calling for due examination of the 'concrete claims of

- non-Muslims, *whether or not they are covered by the 1923 Lausanne Treaty* (emphasis added). European Commission, 2000 Regular Report on Turkey's Progress towards Accession.
- 39 Interview with Erol Dora, a lawyer, 22 March 2007.
- 40 This is the case for Article 27 of the ICCPR; Articles 17, 29 and 30 of the Child Convention; Article 13(3) and (4) of the ICESCR; as well as the OSCE instruments.
- 41 Özsoy, A.E., Koç, İ. and Toros, A., 'Türkiye'nin Etnik Yapısının Anadil Sorularına Göre Analizi', *Nüfusbilim Dergisi*, no. 14, 1992, p. 102.
- 42 *Ibid.*, p. 109.
- 43 Circassians are actually Adighes, but have adopted the name 'Circassian' originally attributed to them by outsiders. Interview with a Circassian researcher, 26 March 2007.
- 44 Information received from a Federation official, 26 March 2007. A Circassian researcher believes this number to be 2 million at most; interview, 26 March 2007.
- 45 The information in this section is based on interviews with a Circassian researcher and a Circassian activist, 26 March 2007, unless indicated otherwise.
- 46 Martin van Bruinessen had estimated the proportion of Kurds in 1975 to be around 19 per cent; van Bruinessen, M., *Agha, Shaikh and State: The Social and Political Structures of Kurdistan*, London, Zed Books, 1992, p. 15. David McDowall put the proportion at 23 per cent in 1996; McDowall, *op. cit.*, p. 3. The European Commission against Racism and Intolerance (ECRI) puts the figure at 10 to 20 per cent; ECRI, 1999 *Report on Turkey*, [http://www.coe.int/t/E/human\\_rights/ecri](http://www.coe.int/t/E/human_rights/ecri)
- 47 Özsoy *et al.*, *op. cit.*, p. 106.
- 48 For information on the human rights of displaced persons see: *The Problem of Turkey's Displaced Persons: An Action Plan for their Return and Compensation*, Istanbul, Minority Rights Group International, Diyarbakır Bar Association, Mesopotamian Culture and Solidarity Association and Foundation for Society and Legal Studies, December 2006, pp. 16–18, [http://www.minorityrights.org/admin/Download/pdf/Turkey\\_actionplan.pdf](http://www.minorityrights.org/admin/Download/pdf/Turkey_actionplan.pdf)
- 49 The information in this section is based on an interview with Özcan Sapan, editor in chief of Chiviyazıları, a Laz language publishing house, 26 March 2007.
- 50 Unless otherwise indicated, the information in this paragraph is from an interview with a Roma activist, 21 March 2007.
- 51 Research study conducted by Bilgi University, 2006 *Progress Report*, p. 22.
- 52 Van Bruinessen, M., 'Kurds, Turks and the Alevi revival in Turkey', 1996, [http://www.let.uu.nl/~Martin.vanBruinessen/personal/publications/Alevi\\_revival.htm#\\_ftn1](http://www.let.uu.nl/~Martin.vanBruinessen/personal/publications/Alevi_revival.htm#_ftn1)
- 53 *Ibid.*
- 54 Toprak, B. and Çarkoğlu, A., *Değişen Türkiye'de Din, Toplum ve Siyaset*, Istanbul, TESEV, 2006.
- 55 '“Aleviyim” Diyenlerin Sayısı 4,5 milyon', *Milliyet*, 21 March 2007.
- 56 Interview with Erol Dora, a lawyer, 22 March 2007.
- 57 Interview with an Assyrian researcher, 21 March 2007.
- 58 Interview with Erol Dora, a lawyer, 22 March 2007.
- 59 Bali, R., 'Turkish Jewry Today', *Changing Jewish Communities*, no. 17, 2007, p. 1.
- 60 Information from a spokesperson conveying the institutional view of the Jewish community.
- 61 Information from İsa Karataş, spokesperson of the Turkey Union of Protestant Churches.
- 62 Kotzamanis, V., paper presented at the international conference 'Meeting in Istanbul: Today and Tomorrow', 30 June–2 July 2006, Istanbul. Kotzamanis based this number on his field research in Istanbul.
- 63 Interview with a Rum Orthodox priest.
- 64 *Ibid.*
- 65 *Ibid.*
- 66 Ezidi is the name preferred by the Ezidis in referring to their dialect over the more well known name Kurmanci. They claim that the latter has a derogatory meaning ('slave') and was used to refer to Ezidis who converted to Islam. The information in this section comes from Bexsi Günay, an Ezidi investigative journalist based in Germany, 27 March 2007.
- 67 Art. 4.
- 68 Arts 5, 6 and 7.
- 69 Art. 11.
- 70 Arts 12 and 13.
- 71 Art. 14.
- 72 Art. 19.
- 73 Art. 20.
- 74 Art. 13.
- 75 Para. 32(2).
- 76 Art. 8.
- 77 Art. 10.
- 78 Art. 9.
- 79 ECtHR, *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*, 23 July 1968.
- 80 ECtHR, *Cyprus v. Turkey*, Application No. 25781/94, 10 May 2001 (concerning Northern Cyprus' provision of primary schooling in Greek for the Greek minority without providing education at the secondary level).
- 81 The information provided in this paragraph is based on the Advisory Committee's opinions on the implementation of the FCNM and thematic reports on minority education.
- 82 Under Article 42(9), the teaching of and education in foreign languages determined by law are exempted from this prohibition. This exception is made for public and private schools that give elementary through postgraduate education in selected foreign languages approved by the state.
- 83 Art. 134.
- 84 Art. 40.
- 85 Art. 41.
- 86 Law on the Amendment of Certain Laws, No. 4771, 3 August 2002, *Official Gazette*, no. 24841, 9 August 2002, Art. 11.
- 87 *Ibid.*, Art. 11(c)(2).
- 88 Law on the Amendment of Certain Laws, No. 4963, 30 July 2003, *Official Gazette*, no. 25192, 7 August 2003, Art. 23(a).
- 89 Regulation Regarding the Learning of Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives, *Official Gazette*, no. 25307, 5 December 2003.
- 90 The 'Turkish culture' classes are on history, geography, Turkish language and literature, and sociology; interview with an Armenian teacher, 23 March 2007.
- 91 The law requires teachers of Turkish culture classes and the deputy principal in schools opened by 'foreigners' to be 'of Turkic origin and a citizen of the Turkish Republic', Law on the Private Education Institutions, No. 625, adopted on 8 June 1965, Art. 24.
- 92 Interview with a lawyer of Armenian origin, 26 March 2007.
- 93 Interview with Erol Dora, a lawyer, 22 March 2007.
- 94 *Ibid.*
- 95 'As a result of the EU process in recent years, the Ministry of Education is more tolerant towards Armenian schools' (interview with an Armenian teacher, 23 March 2007).
- 96 The declaration of the parents is not sufficient; the 'minority schools enrolment commissions' make an investigation on the basis of official records and decide whether the parents are telling the truth, *ibid.*
- 97 Interview with a lawyer, 26 March 2007.
- 98 Art. 10(1).
- 99 Art. 19.
- 100 Para. 9(1).
- 101 Art. 14.
- 102 ECtHR, *Lentia and Others v. Austria*, Application No. 36/1992/381/455-459, 24 November 1993, para. 32.
- 103 Para. 32.
- 104 Art. 7.
- 105 Section I, Art. 1(1).
- 106 Section I, Art. 4.

- 107 Art. 9(1).
- 108 Art. 9(4).
- 109 Art. 9(3).
- 110 Art. 9(3).
- 111 Art. 8.
- 112 Art. 9.
- 113 Section II, Art. 5.
- 114 Section II, Art. 7.
- 115 Section II, Art. 8.
- 116 Section III, Art. 9.
- 117 Section III, Art. 12.
- 118 OSCE High Commissioner on National Minorities, *Minority-Language Related Broadcasting and Legislation in the OSCE* (2004), [http://www.osce.org/publications/hcnm/2004/10/10605\\_13\\_en.pdf](http://www.osce.org/publications/hcnm/2004/10/10605_13_en.pdf)
- 119 For the German-speaking minority in South Jutland only.
- 120 Art. 39(4).
- 121 Law on the Amendment of Some Provisions of the Constitution of the Republic of Turkey, No. 4709, 3 October 2001, *Official Gazette*, no. 24556, 17 October 2001.
- 122 *Ibid.*, Art. 9, amending Article 26 of the Constitution.
- 123 *Ibid.*, Art. 10, amending Article 28 of the Constitution.
- 124 Law on Radio and Television Broadcasting Companies, No. 3984, 13 April 1994, *Official Gazette*, no. 21911, 20 April 1994, Art. 4(b).
- 125 *Ibid.*, Arts 33(a) and (b).
- 126 Önderoğlu, E., 'Anadolu'nun Sesi Radyosu'na 30 Gün Kapatma', *Bianet*, 17 October 2006.
- 127 Örer, A., 'Anadolu'nun Sesi Radyosu Sustu', *Bianet*, 13 February 2007.
- 128 Regulation on the Language of Radio and Television Broadcasts, implementing Law No. 4771, *Official Gazette*, no. 24967, 18 December 2002.
- 129 The regulation provides that '[b]roadcasting in different traditional languages and dialects Turkish citizens use in their daily lives shall be made by the Turkish Radio-Television Corporation [TRT]', referring to public television and radio owned and controlled by the state; *ibid.*, Art. 5(2).
- 130 'Broadcasting for adults may be provided in one or more of these languages and dialects in the areas of news, music, and culture. No broadcasting shall be made towards the teaching of such language and dialects'; *ibid.*, Art. 5(3).
- 131 The regulation restricts radio broadcasting to 45 minutes per day and a total of four hours per week, and television broadcasting to half an hour per day, not to exceed a total of two hours per week; *ibid.*, Art. 5(6).
- 132 'The Supreme Board [of Radio and Television] makes the decisions regarding the language and dialect or languages and dialects of broadcasting, the area of coverage, the profile of viewers and listeners'; *ibid.*, Art. 7(1).
- 133 *Ibid.*, Art. 5(6).
- 134 *Ibid.*, Art. 8(1).
- 135 'Taahhütname İmzalandı, Kürtçe Yayın Başlıyor', *Bianet*, 17 March 2006.
- 136 '“Medya FM” in Kürtçe Yayını Çok Zahmetli', *Bianet*, 6 April 2006.
- 137 'Kürtçe Yayında Sınırlar Kalkıyor', *Radikal*, 11 June 2006.
- 138 'Anadilde Yayın Yönetmeliği Revize Edilsin', *Bianet*, 12 June 2006.
- 139 Art. 8(1).
- 140 Art. 8(2).
- 141 See *Burghartz v. Switzerland*, Application no. 16213/90, 22 February 1994; *Unal v. Turkey*, judgment of the ECtHR, 16 November 2004.
- 142 Para. 1.
- 143 Para. 2.
- 144 Para. 3.
- 145 Art. 11(1).
- 146 Art. 11(2).
- 147 Art. 11(3).
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- 186 Information from İsa Karataş, spokesperson for the Turkey Union of Protestant Churches.
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- 207 Türk Ceza Kanunu, No. 5237, 26 September 2004, *Official Gazette*, no. 25611, 12 October 2004. Article 301 reads: '1) A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years. 2) A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punishable by imprisonment of between six months and two years. 3) In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third. 4) Expressions of thought intended to criticize shall not constitute a crime.'
- 208 Article 216 prohibits (1) 'inciting enmity or hatred among groups of population which differ on the basis of class, race, religion or sect' and (2) 'publicly denigrating a group of the population on the basis of class, race, religion or sect'.
- 209 Novelist Elif İyafak, who was charged with 'denigrating Turkishness' for the statements made by a character on the 'Armenian genocide' in one of her novels, was acquitted in the first hearing.
- 210 The case against the Nobel Prize-winning author Orhan Pamuk for statements he had made during an interview about the killing of Kurds and Armenians in Turkey was dropped due to a technicality. Charges brought against professors İbrahim Kaboğlu and Baskın Oran, the former president and committee member of the Prime Ministry Advisory Board on Human Rights respectively, on the basis of 'publicly denigrating judicial institutions of the state', for writing and publishing a report criticizing official policies on minority rights were also dropped. See Oran, B., 'Azınlık Hakları ve Kültürel Haklar Raporu'nun Bütün Öyküsü', *Birikim*, vol. 188, 2004, pp. 17–25. However, the High Court of Appeals overturned this judgment on 13 September 2007; 'Yargıtay'dan özgürlüğe fren', *Radikal*, 14 September 2007.
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- 288 Commonly referred to as the '1936 Declarations', the lists submitted upon state order by community foundations in 1936 were rediscovered in 1960s by the bureaucratic establishment with the outbreak of hostilities between Greece and Turkey over Cyprus. See Oran, *op. cit.*, *Türkiye'de Azınlıklar...*
- 289 The reasoning of the High Court of Appeals rested on the ground that entities established by non-Turks were not entitled to own property in Turkey. In referring to non-Muslim citizens as 'non-Turks', the court held them to the same lower legal standards as foreigners and provided legal legitimacy to a discriminatory and unlawful bureaucratic practice.
- 290 Article 1(d) of the Law on Foundations, No. 2672. In reality, the provision was intended to govern foundations that existed prior to the enactment of the Civil Code on 4 October 1926. Thus it was not applicable to community foundations that were given foundation status in 1936 pursuant to the Law on Foundations.
- 291 The VGM confiscated 22 foundations belonging to the Rum Orthodox; Metropolit Meliton of the Rum Orthodox Church, paper presented at the conference 'From Lausanne to Present: Minority Foundations and Their Problems within the Framework of the Law on Foundations', TESEV Democratic Change Group, Istanbul, 26 May 2006.
- 292 *Ibid.*, p. 5. For more on the board elections, see Kurban, D., *Vakıflar Kanunu Tasarısı'nın Cemaat Vakıfları'nı İlgilendiren Hükümleri Üzerine TESEV Görüşleri*, Istanbul, TESEV, 2004, pp. 4–5, [http://www.tesev.org.tr/TESEV\\_ %20vaki flagorus.doc](http://www.tesev.org.tr/TESEV_%20vaki%20flagorus.doc).
- 293 Metropolit Meliton, *op. cit.*, p. 6.
- 294 The Law on Foundations was amended three times in August 2002 (Law No. 4771), January 2003 (Law No. 4778) and November 2006 (Law No. 5555).
- 295 Regulation on the Community Foundations' Acquisition and Enjoyment of Immovable Property, and on the Registry on the Name of These Foundations of Immovable Property They Use, implementing Law No. 4778, *Official Gazette*, no. 25003, 24 January 2003.
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- 300 As of 27 March 2007, the VGM has approved all of the following applications: the acquisition through donation of 22 immovable properties belonging to six foundations, the purchase of six immovable properties belonging to five foundations, and the sale of eight immovable properties belonging to five foundations; *ibid*.
- 301 Regulation on the Substance and Procedure Concerning the Election of Community Foundations' Board of Directors, implementing Law No. 2762, *Official Gazette*, no. 25585, 16 September 2004.
- 302 *Ibid.*, Art. 4.
- 303 Metropolit Meliton, *op. cit.*, p. 4.
- 304 Council of State, 10th Chamber, 21 June 2005.
- 305 European Commission, 2006 Regular Report on Turkey's Progress towards Accession, p. 16.
- 306 Law on Foundations, No. 5555, 9 November 2006.
- 307 Provisional Art. 7(b).
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- 309 A tender organized by the Treasury for the sale to a third party of the Surp Pirgiç Hospital belonging to an Armenian foundation was cancelled by the government in 2005 when news about the tender in the national media created public outrage; 'Azınlık Mülklerine Bürokratik Talan Sürüyor', *Agos*, 18 August 2006.
- 310 Land belonging to the Aya Yorgi Kapris Monastery in Burgazada was sold by the Treasury to a third party on 1 June 2006. 'Azınlık Mülklerine Bürokratik Talan Sürüyor', *Agos*, 18 August 2006.
- 311 Vakıflar Kanunu, No. 5555, 9 November 2006, Art. 7; the law also forbids such foundations from ever holding board elections in the future.
- 312 The law was submitted to the president on 14 November 2006 and was sent back to the parliament for review on 29 November 2006.
- 313 For the full text of the grounds for presidential veto, see the official website of the Presidency at [http://www.cankaya.gov.tr/tr\\_html/ACIKLAMALAR/29.11.2006-3623.html](http://www.cankaya.gov.tr/tr_html/ACIKLAMALAR/29.11.2006-3623.html).
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## A Quest for Equality: Minorities in Turkey

Though Turkey is a land of vast ethnic, linguistic and religious diversity – home not only to Turks, Kurds and Armenians, but also, among others, Alevis, Ezidis, Assyrians, Laz, Caferis, Roma, Rum, Caucasians and Jews, the history of the state is one of severe repression of minorities in the name of nationalism.

The only protection for Turkey's minorities is that set out in the outdated 1923 Treaty of Lausanne, which acknowledges only non-Muslim minorities. Turkey has violated the Treaty since its adoption, not least by restricting its scope to Armenians, Jews and Rum (Greek Orthodox).

Excluded minorities have been banned from using their languages and from exercising their religious rights, or subjected to policies aimed at homogenizing the Turkish population and destroying minority languages, cultures and religions.

This report sets current law and practice in Turkey against the backdrop of equivalent international standards on linguistic rights of minorities; freedom of religion, thought and conscience; freedom of expression; freedom of assembly and association; political participation; property rights and anti-discrimination. It considers the impact of the EU accession process, showing that though Turkey's attitude to minorities has changed for the better over the past 6 years, much more remains to be done.

Will Turkey continue its path of reform or opt for further repression of its centuries old heritage? After hundreds of thousands of Turkish people took to the streets in January 2007 to protest the killing of Hrant Dink, a Turkish-Armenian journalist, this report highlights the importance of this moment in Turkey's history – a moment that, for the sake of equality for the country's centuries-old minority communities, must not go to waste.