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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT REPORT

**ON THE VISIT
OF A VENICE COMMISSION DELEGATION TO TURKEY
TO GATHER INFORMATION
ON THE LEGAL STATUS OF RELIGIOUS COMMUNITIES**

(Istanbul / Ankara, 9-11 November 2009)

**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. By letter dated 7 April 2009, the Chairperson of the Monitoring Committee of the Parliamentary Assembly. Mr Holovaty, asked the Venice Commission to assess the compatibility with European standards of the lack of recognition of legal personality for the religious communities in Turkey and examine, in this context, in particular the question of the right of the Greek Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical".
2. Messrs Grabenwarter, Sejersted and van Dijk were appointed as rapporteurs. The rapporteurs agreed to undertake a fact-finding visit before preparing their comments. Since Mr Van Dijk was unable to participate, the visit was carried out by Messrs Grabenwarter and Sejersted together with the Deputy Secretary of the Commission, Mr Markert.
3. The delegation met representatives of non-Muslim religious communities as well as representatives of the authorities. These meetings were substantive and highly informative and the following report only covers the main points raised. The programme of the visit is appended.

Meeting with the leadership of Jehovah's Witnesses in Turkey and Mr James Andrik, General Counsel of Jehovah's Witnesses

4. The representatives of Jehovah's Witnesses informed the delegation that they had ca. 3000 members in 32 congregations in Turkey. They had opted for registration of an association since associations enjoyed broader rights than foundations. Following a change in the law, there was in principle no longer any obstacle to the creation of associations of a religious character. However, their application of 11 July 2005 for registration as an association had been rejected by the authorities as being contrary to the last paragraph of Article 24 of the Constitution¹. Following their appeal, the Supreme Court allowed on 17 May 2007 the registration of the association, based inter alia on the fact that there was an earlier court decision that the activities of Jehovah's witnesses were not in violation of Art. 24 of the Constitution.
5. The Statute of the Association for the Support of Jehovah's Witnesses provides inter alia "*The purposes of the Association are religious, informational, and charitable, including to be at the service of and to act as one of the legal entities for the body of Christian persons in Turkey known as Jehovah's Witnesses;...*" The delegation was informed that following the registration of the association property previously registered on behalf of foundations had been transferred to the association. The fact that it had been possible only to register an association for the support of Jehovah's Witnesses and not to register their church as such was no big problem since Jehovah's Witnesses were used to this situation from other countries. Harmony between their church and the association was ensured by limiting membership in the association to appointed elders in one of the congregations.
6. The main problem of Jehovah's Witnesses according to their own assessment was rather the application of zoning laws to prevent the establishment of places of worship. An amendment to the law adopted in 2003 in the framework of the EU accession process had removed a provision giving a privileged status to mosques and provided that specific areas could be set aside for places of worship in zoning plans. The consequence was, however, that local authorities tended not to provide adequately for places of worship.
7. The delegation was impressed by the professionalism with which Jehovah's Witnesses handle their affairs, using the support of American lawyers. For well-organised religious groups it is obviously easier to use the possibilities provided by Turkish law to establish legal persons.

¹ "*No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets.*"

Meeting with His All Holiness Bartholomew, Ecumenical Patriarch of Constantinople the New Rome

8. The Ecumenical Patriarch welcomed recent changes to Turkish law, in particular to the law on foundations, which make it easier to receive donations from Turkey and abroad. There was definitely a more positive attitude of the government towards religious minorities. Problems persisted, however.

9. As regards the title of Ecumenical Patriarch, he stated that this title was universally recognised, apart from the Turkish government. It was used by all other churches, including the World Council of Churches, of which the Ecumenical Patriarchate was a founding member, by international organisations and governments. The laws of several countries such as Austria, Belgium, Finland and Greece made explicit reference to this title. It was generally recognised within the Orthodox Church since the 6th century and used by all other patriarchs. As an example, the Ecumenical Patriarch showed to the delegation a letter from the Moscow Patriarchate addressed to the Ecumenical Patriarchate. The issue of the title was not regulated by the Treaty of Lausanne. This would have been inappropriate in an intergovernmental treaty since the title was religious and spiritual and did not have a political character.

10. To Him the approach of the authorities seemed somewhat contradictory. On the one hand, the Prime Minister had declared that this was an internal matter for the church. On the other hand, there was a circular letter from the Foreign Ministry asking Turkish ambassadors invited to meetings with the presence of the Ecumenical Patriarch to clarify in advance that Turkey did not recognise the title. It was also impossible for Him to co-sign letters with the Director of the Presidency of Religious Affairs (Diyanet) using His title. Despite a decision by the Court of Cassation², the Turkish authorities did not actively prevent Him from using His title.

11. Practical difficulties were due more to other rules, in particular a decision by the Governor of Istanbul of 1923 requiring that the Patriarch and the Electors had to be Turkish citizens. Due to the small number of remaining Orthodox believers in Turkey (ca. 3000) and the closure of the Halki seminar for priests, this made it difficult to find candidates. His proposal was that it should be possible to elect a non-citizen as Patriarch who would obtain citizenship following His election. This method had been used already in 1948 and was used also in Egypt for the Patriarch of Alexandria. At the moment there were negotiations with the Turkish government to make it possible for metropolitan bishops residing abroad to obtain Turkish citizenship in addition to their present citizenship.

12. The absence of legal personality was a problem for the Patriarchate. This concerned first of all property ownership. While there were still title deeds in favour of the Patriarchate, in principle all property had to be held by foundations or by private individuals. It was also a problem for access to courts. Under the new Law on Foundations, the Greek Orthodox church asked for the return of more than 700 properties. As regards the Halki seminar, the Ecumenical Patriarch expressed the hope that it could be opened again soon. He accepted control by the Ministry of Education.

13. In the view of the Ecumenical Patriarch, the appropriate status for the Ecumenical Patriarchate could not be an association but it should be recognised as a legal person under international law.

Meeting with His Eminence Archbishop Aram Atesyan, Chairman of the Armenian Religious Council

14. Archbishop Atesyan, who acts as the representative of the Patriarchate due to the illness of the Patriarch, informed the delegation that the Armenian Patriarchate was established in 1461 and that the Armenian Community, together with the Greek Orthodox and the Jewish communities, is one of the three communities recognised as religious minorities in Turkey on

² In a decision of 13 June 2007 the Court declared *obiter* that “the claim that the Patriarchate is ecumenical is deprived of any legal ground”.

the basis of the Treaty of Lausanne. Bishop Atesyan informed the delegation that there were about 70.000 Armenians left in Turkey, mainly in Istanbul. The community had 38 churches in Istanbul and 7 outside Istanbul (a church had just reopened in Kayseri with the support of the authorities). There were 16 schools, 1 hospital, 2 dailies and one weekly newspaper. These properties were mainly owned by foundations.

15. He confirmed that the current Turkish government had a more positive approach to minorities than its predecessors. Under the new law on foundations, the church could now ask for the restitution of properties which had been expropriated after 1936³.

16. The legal situation in his view remained, however, unsatisfactory. In the Ottoman period the Armenian Patriarch had exercised control over the foundations. Now, there was no longer any legal link between Patriarch and Church on the one hand and the foundations on the other nor were there legal links between the foundations. It would, therefore be important that the State officially recognise the Patriarchate and that the Patriarchate should be able to own property.

17. In the opinion of Archbishop Atesyan, neither the status of foundation nor the status of association was appropriate for the Patriarchate. It should receive a *sui generis* status.

Meeting with Ms Dilek Kurban, Programme Officer at the Turkish Economic and Social Studies Foundation (TESEV)

18. The delegation was received by Ms Kurban, who is one of the authors of a study on real estate ownership problems of non-Muslim communities⁴. The study shows in great detail the problems encountered by these communities. For Muslims the situation is different due to the existence of the Diyanet. However, it has to be taken into account that many Alevis and some Sunnis are also not satisfied with the role played by this body.

Meeting with Ms Mine Yildirim from the Association of Protestant Churches

19. Ms Yildirim underlined that Protestants were a new and small minority in Turkey. There were about 3500 Protestants in ca. 70 congregations. Under the new law of associations it had become possible to establish 7 associations to support specific church buildings. This year the umbrella association of Protestants had been formed by using the (artificial) means of including two members of each Protestant church. It was impossible to establish new religious foundations due to the case-law of the Constitutional Court. The Protestant did not have foundations established before 1936 which had privileged status. The Özbek decision of the ECtHR showed the problems Protestants had when trying to establish foundations⁵.

20. In her view, the fact that it was impossible for Protestant churches to establish themselves as associations (as opposed to the establishment of associations to support a church) hampered these churches and their members in the exercise of their religious freedom. Generally, the Law on Associations placed too many bureaucratic burdens on small communities. If at present the Government was relatively well disposed, these communities did not feel secure in their status. It could again become more difficult in the future to establish and run such associations.

21. Turkish schoolbooks tended to portray Protestants in a negative light. There was also a problem to obtain places of worship, due to zoning regulations.

³ According to statistics provided by the European Commission, Armenian foundations ask for the return of 321 properties.

⁴ Dilek Kurban/ Kezban Hatemi: The story of an alien(ation): Real estate ownership problems of non-Muslim foundations and communities in Turkey. TESEV publications. Istanbul 2009

⁵ The registration of a foundation was refused since the proposed charter provided that the foundation would support the members of the Protestant Community. The applicants were willing to modify the Charter in this respect but this was not taken into account by the courts.

Meeting with the leadership of the Jewish Community

22. The members of the leadership of the Jewish Community of Turkey regretted that Turkish Law did not recognise a secular Jewish Community as was the case in other countries. On the basis of the Treaty of Lausanne only the Chief Rabbi was recognised⁶. He was elected in the community and then appointed by the government. While it would also be useful for the Chief Rabbinate to get legal personality, this was a lesser concern. It should not be the Chief Rabbi going to Court on behalf of the Community but a representative association. There were about 20 Jewish foundations owning property

23. There were about 20.000-22.000 Jews in Turkey. They were free to exercise their religion and enjoyed government protection. Stronger protection against hate speech would, however, in their view be desirable.

Meeting in the Foreign Ministry

24. The representatives of the Foreign Ministry underlined that Turkey was a secular state based on the equality of all citizens. Minority rights were granted in full compliance with the Treaty of Lausanne. The *travaux préparatoires*⁷ of this Treaty made it clear that, based on a proposal of then Greek Prime Minister Venizelos, the Orthodox Patriarch could no longer use the title "Ecumenical". He was, however, not prevented by the authorities from using this title.

25. In their view Art. 101.4 of the Civil Code⁸ should not be an obstacle to the establishment of new foundations of a religious character. The new Law on Associations permits the establishment of religious associations. Religious communities should actively use the possibilities provided by the legislation. If it should become clear that the new rules are still not sufficient, additional reforms could be envisaged.

Meeting with Monsignore Padovesi, Chairman of the Conference of Catholic Bishops of Turkey

26. Monsignore Padovesi informed the delegation that there were about 35.000 Catholics in Turkey, belonging to different churches (Assyrian, Chaldaean, Armenian-Catholic, Melchite, Latin). Due to the lack of a seminar, no priests could be formed. It would make things easier if the legal personality of the church were recognised. Some property was registered for foundations, other property for private persons, some churches seemed to belong to nobody.

Meeting at the European Commission delegation

27. The Commission representatives confirmed the more positive approach of the current government to religious communities. The government had also a more open attitude with respect to the Ecumenical Patriarch. The status of religious minorities differed from the status of the Muslim majority where a public body, the Presidency of Religious Affairs (Diyanet), had wide administrative powers.

Meeting at the Ministry of the Interior

28. The representatives of the Ministry confirmed Turkey's attachment to the reform process and continued democratisation, as well as the importance of equality of all citizens. In addition to the reforms of the laws on foundations and associations, practical steps had been undertaken. As an example, responsibility for accepting charters of religious foundations had been moved from the security (police) directorates to the general directorate of foundations. As regards associations, the authorities had to review compliance with Art. 30 of the Law on

⁶ According to other information, Turkish courts have recognised the legal personality of the Chief Rabbinate.

⁷ The relevant part of the records of the Peace Conference was sent to the rapporteurs after the visit.

⁸ *Formation of a foundation contrary to the characteristics of the Republic defined by the Constitution, constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community, is prohibited.*

Associations⁹. When assessing the Turkish system, it had to be taken into account that the concept of a congregation of a mosque having legal personality was alien to Islam.

Meeting at the Ministry of Justice

29. The representatives of the Ministry referred to recent legal reforms and to the recent granting of legal personality to religious foundations and associations (Jehovah's witnesses, Midyat Syrian Cultural Association, Protestant association in Diyarbakir). Associations could, however, not practice discrimination. It was difficult to grant legal personality to religious communities as such. Diyanet also did not have independent legal personality. But the French approach of "association culturelle" could be interesting. They underlined that the practice of religion is free in Turkey.

Meeting with Professor Zafer Üskül, Chairperson of the Human Rights Inquiry Committee of the Grand National Assembly of Turkey

30. Professor Üskül underlined that religion should not be regulated by the state and referred to the important reforms already carried out. Mentalities might not change always as quickly as legislation. Specific characteristics of religious communities might prevent the granting of legal personality. If it became apparent during their implementation that the reforms already carried out were not sufficient, more could be done. In any case, Turkey would always respect and implement the decisions of the ECtHR.

Meeting with Mr Mevlüt Çavuşoğlu, Chairperson of the delegation of the Grand National Assembly of Turkey to the Parliamentary Assembly of the Council of Europe

31. Mr Çavuşoğlu underlined the positive approach of the current government and the reforms already undertaken. It was important for Turkey to have the Orthodox Patriarch on her soil. The issue of the seminar in Halki seemed of more practical importance than the title and the government would put emphasis on achieving progress in this respect. The issue of the citizenship of the Patriarch also seemed solvable. The government was also determined to improve the situation of Alevis. Many laws had been adopted, there was political will but mentalities did not always evolve that quickly. Many problems were also linked to the Constitution. He agreed with the Venice Commission opinion that the Constitution should be amended or replaced by a new Constitution.

⁹ The Associations: a) May not carry out activities other than those indicated in the Statute as the objective of the association; b) May not be founded to serve a purpose expressly restricted by the Constitution or the laws, or to execute acts which may constitute an offense according to the laws....

A P P E N D I X

VENICE COMMISSION DELEGATION VISIT TO TURKEY

9-11 NOVEMBER 2009

P R O G R A M M E

Sunday, 8 November 2009

Arrival in Istanbul as follows:

- Ch. Grabenwarter – at 4.30 pm flight TK 9283 from Vienna
- T. Markert – at 4.30 pm, flight LH 3342 from Frankfurt
- F. Sejersted – already in Istanbul, staying at hotel Empress Zoe, Sultanahmet, until Sunday included

Hotel accommodation for 8 and 9 November

hotel **Richmond**, İstiklal Caddesi No. 227 Tünel, 80670 Beyoğlu (near Taksim square)

Monday, 9 November 2009

A driver will pick you up at Richmond hotel around 8:15 am and will drive you back to Richmond hotel at 6.30 pm

9 am

Meeting with Mr Jim Andrik, Associate General Counsel for Jehovah's Witnesses
address: Kuyulubag Sokak No. 96, Kurtulus – Sisli, Istanbul

11 am

Meeting with His All Holiness, Bartholomew, Archbishop of Constantinople, New Rome and Ecumenical Patriarch
address: Rum Patrikhanesi, 342 20 Fener- Halic

2.30 pm

Meeting with His Eminence, Armenian Archbishop Aram Atesyan, Chairman of Religious Council
address: Turkiye Ermenileri Patrikligi, Sevgi Sok. No.20, Kumkapi

4 pm

Meeting with Ms Dilek Kurban, Programme Officer at the Turkish Economic and Social Studies Foundation (TESEV)
address: Bankalar Cad. Minerva Han No.2, Kat. 4 Karakoy, 34420 Istanbul

6.30 pm

Meeting with Ms Mine Yildirim, Turkish Alliance of Protestant Churches
at Richmond hotel

Tuesday, 10 November 2009

The driver will pick you up at Richmond hotel around 8:45 am and will drive you to the different meeting places in the morning and then to the airport

9.30 am

Meeting with the leadership of the Jewish Community of Turkey
address: Chief Rabbinate, Yemenici Sokak No. 21 Tunel, Beyoglu

1 pm

Departure for Ankara, flight TK 124 (arrival at 2.05 pm)

You will be picked up at the airport by an official car of the MFA which will take you to the hotel.

Hotel accommodation for 10 November

hotel **Limak Ambassador**, Boğaz Sokak No. 19, Kavaklıdere, Ankara

4 pm

Meeting with Ambassador Binnur FERTEKLİGİL, Director General for Multilateral Political Affairs of the Ministry of Foreign Affairs
Ministry of Foreign Affairs

5 pm

Meeting with Mgr Padovesi, President of Catholic Bishops in Turkey
at Limak Ambassador hotel

6 pm

Meeting with Mr Diego Mellado, Political Councillor & Ms Sema Kılıçer, Political Officer, Human Rights Delegation of the European Commission to Turkey
address: Uğur Mumcu Street, No. 88, floor 4, Gaziosmanpaşa (MNG building)

8 pm

Mr Ergun Özbudun will meet the delegation at the hotel for dinner.

Wednesday, 11 November 2009

An official car with a driver will pick you up at the hotel around 8:30 am to take you to the different Ministries during the morning and eventually to the airport.

9 am

Meeting with Mr Bahrettin DEMİRER, Deputy Undersecretary of the Ministry of Interior
address: Ministry of Interior, Recep Yazıcıoğlu meeting room, East Entrance 1st floor

10 am

Meeting with Mr Bilal ÇALIŞKAN, Deputy Director General for International Law and Foreign Relations of the Ministry of Justice
Ministry of Justice

11 am

Meeting with Professor Zafer ÜSKÜL, Chairperson of the Human Rights Inquiry Committee of the Grand National Assembly of Turkey, Grand National Assembly of Turkey

12 pm

Meeting with Mr Mevlüt Çavuşoğlu, Chairperson of the PACE National Delegation of the Grand National Assembly of Turkey

1 pm

Ch. Grabenwarter departs for Istanbul, flight TK 127 (arrival at 2.05 pm)

4.05 pm

F. Sejersted & T. Markert depart for Munich, flight LH 3361 (arrival at 6.10 pm)