

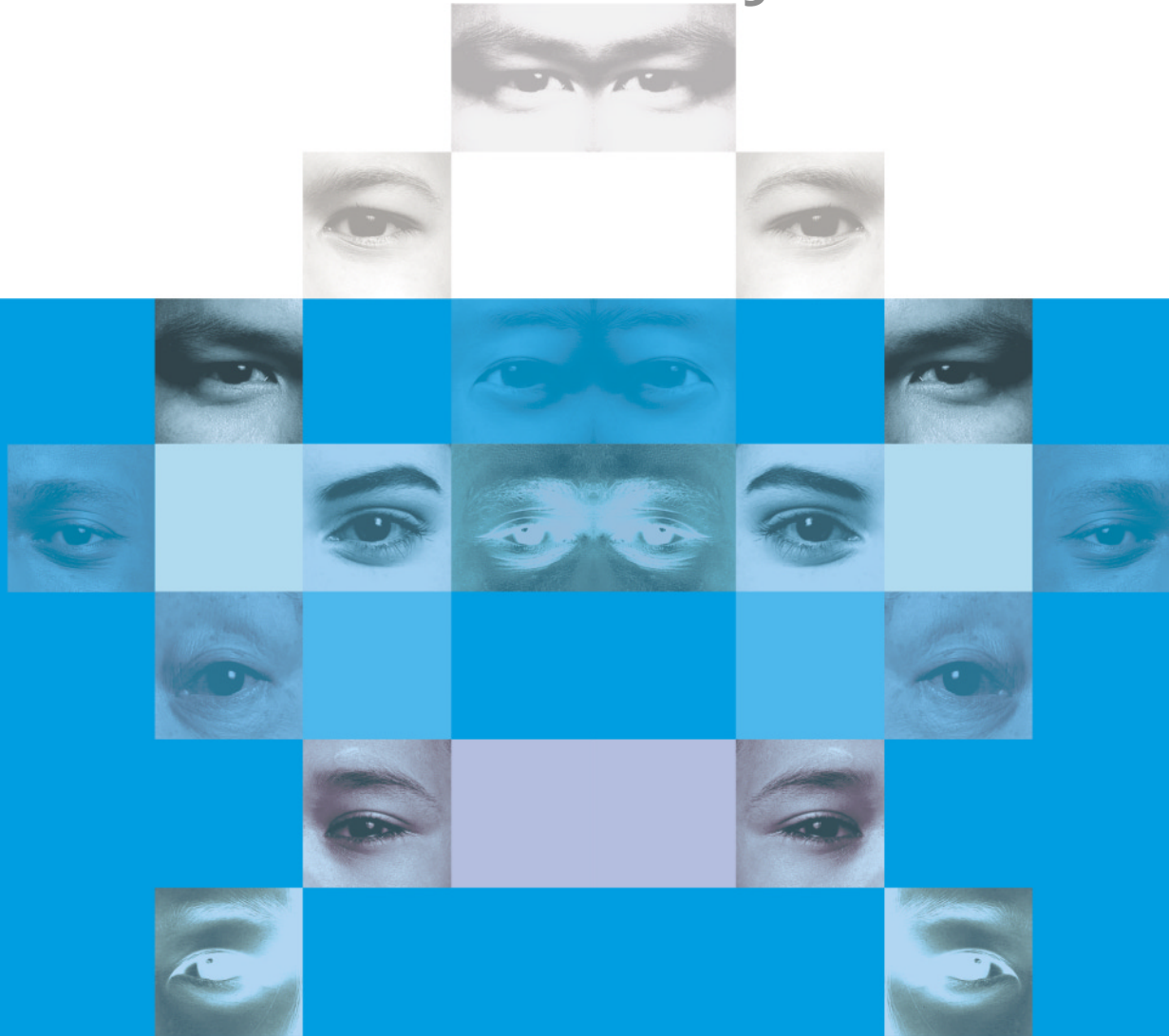
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**Human Rights
in Turkey –
Secularism =
Religious Freedom?**



The Human Rights Office aims to promote awareness of the human rights situation in Africa, Asia and Oceania. In pursuit of this objective we are actively involved in human rights networking and foster exchanges between missio's church partners in Africa, Asia and Oceania and church and political decision-makers in the Federal Republic of Germany. This Human Rights series comprises country-by-country studies, thematic studies and the proceedings of specialist conferences.

In the 1923 Treaty of Lausanne – sections are quoted here with specific reference to the non-Muslim minorities – and in all subsequent constitutions, the Republic of Turkey undertook to give equal treatment to all citizens irrespective of their religious affiliation. With this in mind, the present study of **Human Rights in Turkey – Secularism = Religious Freedom?** attempts to answer the question of whether Turkish secularism really means freedom of religion for all Turkish nationals. A central point of the debate will be the legal position of individual religious communities or religious groupings and the effects this legal position has on the development of the groups.

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General information about Turkey

| | |
|-------------------------------------|---|
| Name of country: | Republic of Turkey (Türkiye Cumhuriyeti) |
| Area: | 769,630 sq km, of which 23,764 sq km are in Europe (Eastern Thrace) and 755,688 sq km in Asia Minor (Anatolia) |
| Inhabitants: | 66,493,000 |
| Population: | (1990 figures) 70% Turks, 20% Kurds, 2% Arabs, 0.5% Cherkassians, 0.5% Muslim Georgians, among others ¹ |
| Ethnic groups: | Turks (Sunni), Turks (Alevi), Turks (Yuruks (Sunni)), Turkmen (Sunni), Turkmen (Alevi) including Tahtacı, Abdal; Turks (Azerbaijani (Shiite)), including Karapapachi (Sunni); Uigurs (Sunni, Hanefite); Kyrgyz (Sunni/Hanefite); Kazakhs (Sunni/Hanefite); Uzbeks (Sunni/Hanefite); Uzbek Tatars (Sunni/Hanefite); Crimean Turks/Crimean Tatars (Sunni/Hanefite); Nogai Tatars (Sunni/Hanefite); Balkarians/Karachais (Sunni/Hanefite); Bulgarian immigrants (Sunni/Hanefite; Alevi; among the Gagausians some Bulgarian Orthodox Christians); immigrants from other Balkan countries (Sunni/Hanefite; Alevi; Serbian Orthodox Christians); Dagestanis (Sunni Hanefite + Shafiite); Sudanese (Alevi ?); Kurds (Sunni/Shafiite (+ Hanefite)); Kurds (Alevi); Kurds (Jezidi); Zazas (Sunni/Shafiite); Zazas (Alevi); Ossetians (Sunni); Armenians (Armenian Orthodox, Armenian Catholic, Armenian Protestant Christians); Chemschinli (Sunni); gypsies/Roma (Islam?); Greeks (Greek Orthodox, Greek Catholic, Greek Protestant Christians); Greek-speaking Muslims (Sunni?); Arabs (Sunni); Arabs (Nusairian = Alevi); Arabs (Arab Christians/Melchites); Jews; Aramaeans (Syrian Orthodox and Syrian Catholic Christians, Chaldeans, Nestorians); Cherkassians (Sunni/Hanefite); Georgians (Sunni/Hanefite + Georgian Orthodox Christians?); Lasians (Sunni/Hanefite) ² |
| Population growth rate: | 1970: 2.54%; 1980: 2.23%; 1990: 2.20%; 1995: 1.75%; 1998: 1.49%; 30% aged under 15 ³ |
| Life expectancy: | 1998: 69.26 years |
| Urban population: | 1960: 29.74%; 1970: 38.40%; 1980: 43.80%; 1990: 61.20%; 1998: 72.86% |
| Languages: | Official language: Turkish; 90% have Turkish as their mother tongue or second language; 15% Kurdish languages, 2% Arabic; languages of the other minorities |
| Type of government: | Republic since 1923 – Constitution of 1982; most recent amendments 2001 |
| Supreme constitutional body: | Parliament (Grand National Assembly of Turkey) with 550 members, elections every 5 years |
| Head of state: | Ahmet Necdet Sezer (since 16 May 2000) |
| Prime minister: | Bülent Ecevit, DSP (since 1 January 1999) |
| Religions: | 1992: 99% Muslims, of whom 70% Sunni, 15-25% Alevi; Christian, Jewish and other minorities. (Reliable statistics on religious affiliation are hard to come by in the Republic of Turkey. Figures supplied by different institutions and organisations often vary considerably.) |

1. Introduction

“... It was Mustafa Kemal (“Atatürk”) in Turkey who, after the defeat and dissolution of the Ottoman Empire at the end of the First World War, abolished not only the Sultanate but also the Caliphate and made religion a private matter for each individual citizen. The external expression of this secularisation was that traditional dress, including the veil for women, became taboo and the wearing of western dress was propagated, polygamy was forbidden, Arabic script was replaced by the Latin alphabet and the Muslim calendar by the Gregorian calendar, and a modern education system was introduced – all measures that unmistakably originate from West Europe.

Kemalism, which was strongly nationalistic from the very beginning, is still the national doctrine in Turkey. The army has defended Kemalism in three coups since 1960, each time handing political control back to democratic parties, but reserving a considerable say for itself. Despite all the justified criticism that the West sometimes levels at Turkey, it is still the only state in the Middle East that has consistently maintained the separation of religion and the state and upheld democracy.

But since the 1980s the situation has been put at risk by several Islamist groups who have been able to notch up impressive electoral successes, even though they cannot be generally described as undemocratic or militant even. One thing they agree on, however, is an endeavour to bring religion out of the private sphere and the mosques and back into public life, and thus into state institutions...⁴

Is religion in modern Turkey, as described by Gernot Rotter in the weekly newspaper, Die Zeit, really a private matter for each individual citizen? Has the Turkish state really succeeded in consistently maintaining the separation of religion and state? Has it really only been Islamist groups who have put the separation of religion and state at risk?

The current study takes a critical look at the issue of *Religious Freedom in the Republic of Turkey*, starting with the 75-year history of the Republic of Turkey and concentrating on the present-day situation of its various religious communities.

Reporting on the situation of religious minorities in Turkey, and especially the non-Muslim ones, often takes place on a case-by-case basis. A particular fact is presented and labelled as discrimination, harassment or persecution even. The Republic of Turkey is consequently called upon to put a stop to activities that are directly or indirectly attributable to the state. Reference is usually made to the international conventions on human rights that Turkey has signed up to as a member of the United Nations and the Council of Europe, for instance. It is also important to note that in the 1923 Treaty of Lausanne – quoted here with specific reference to the non-Muslim minorities – and in all subsequent consti-

tutions Turkey undertook to give equal treatment to all its citizens irrespective of their religious affiliation. A central point of the debate in this study, therefore, an investigation of the legal position of the respective religions or religious groupings and the effects this legal position has on the development of the groups. The outcome of the debate will provide an answer to the question in the title, i.e. whether the principle of “secularism” enshrined in the Turkish constitution really does imply freedom of religion.

A short digression is necessary at this point to put current developments in their historical context.

Until the 19th century the Ottoman Empire was an Islamic state and the constitutive principle of the separation of powers was alien to the Islamic principle of statehood (Islam is religion and state = al-Islam din wa daula). The radical Tanzimat reforms (1839-1876) paved the way for the constitution of 1876. This constitution was not least a concession to the country’s small group of politically aware subjects, but it met with vehement opposition from Islamic orthodoxy and was not understood by the great mass of the people either. It was easy for the rulers to restrict the powers of elected parliaments and repeatedly repeal the constitution. For the non-Muslim minorities – previously protégés (dhimmi) – the reforms did represent a certain liberation, since they allowed them at least limited self-determination in the context of the newly-created “nationalities” (millet), i.e. communities defined by religious denomination. The 1923 Treaty of Lausanne, which clearly took its lead from the millet system in the regulations on non-Muslim minorities, represents the legal basis of relations between the Republic of Turkey and all “non-Muslim minorities”. The *millet* system, however, disappeared along with the Ottoman Empire.

The reform laws that were passed in the Republic of Turkey in the first few years of its existence, the highlight of which was enshrining of the principle of “secularism” in the 1937 constitution, clearly demonstrate an attempt to establish the greatest possible separation of religion and state and thus a break with the Islamic principle of statehood. Opposition from the population over the past fifty years, however, has obliged the state to repeal some of the relevant reforms and grant Islam much greater scope.

2. The legal background

The principle of secularism

According to Article 2 of the Turkish Constitution of 18 October 1982⁵ (TConst’82) “*the Republic of Turkey is a secular state founded on the rule of law*”.⁶ The ‘laiklik’ constitutional principle – generally translated as ‘secularism’ – was added to the 1924 Turkish Constitution in 1937.⁷ What is understood by ‘secularism’ in modern Turkey can be found in the preamble to the 1982 Constitution, which states that, in view of the requirements “*of the principle of secularism, ... sacred religious feelings ... are in no way to be mixed with matters of politics and the state.*” The Turkish constitutional principle of ‘secularism’ was modelled on the French model of ‘laïcité’⁸, the separation of church and state following the French Revolution.

The principle of secularism in the Turkish constitution is more broadly defined than its French model, however. “*Together with the principle of nationalism*” (milliyetçilik), *the principle of secularism takes on “the function of asserting itself ideologically against a religion – Islam – which is suspected of being out of harmony with the republican secular structure of the modern Turkish state and of demanding a return to the unity of state and religion.”*⁹ The Turkish Constitutional Court defines ‘secularism’ as “*a civilised form of life which provides the basis for an understanding of freedom and democracy, independence and national sovereignty, and constitutes the humanistic ideal which has developed with the defeat of medieval dogmatism in favour of the primacy of reason and an enlightened mentality...*” The Constitutional Court also states that “*in the secular order ... religion is freed from politicisation, displaced as an instrument of leadership and allotted its rightful and honourable place in the conscience of the people*”.¹⁰ Christian Rumpf notes “*that the Constitutional Court sees an interaction between secularism and the predominance of religion: the more forcefully religion intervenes in state affairs, the more strict and rigid the secular principle appears to be. In relation to Islam, which also wants people to be politically aware and to provide them with a state concept of their own, the secular principle leads to a pronounced rigidity; the struggle to oust religion is necessarily fiercer and more intense than in a state system in which the very concept of religion implies a renunciation of state. Turkish secularism, therefore, needs to be in a position to force the dominant religion, Islam, out of a domain to which that religion by dint of its very self-conception lays absolute claim.*”¹¹ The purpose of this study is to show whether, and to what extent, constitutional claims match constitutional reality in Turkey in relation to the constitutional principle of ‘secularism’.

The Treaty of Lausanne

The Peace Treaty of Lausanne was concluded on 24 July 1923¹² between Great Britain, France, Italy, Japan, Greece, Romania and the Serbian-Croatian-Slovenian state, on the one hand, and Turkey, on the other. Section III on the Protection of Minorities contains regulations in Articles 37 to 45 relating to the “non-Muslim minorities”. In the introductory Article 37, the Republic of Turkey “undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations”. In the concluding Article 44, the Republic of Turkey recognises the regulations in Section III on the *Protection of Minorities* as obligations of international concern placed under the guarantee of the League of Nations [and its successor organisation, the United Nations] (Art. 44, clause 1), and that these regulations “shall not be modified without the assent of the majority of the Council of the League of Nations” (Art. 44, clause 2)

With regard to the non-Muslim minorities, Articles 38 to 43 of the Treaty of Lausanne lay down the following regulations:

The Republic of Turkey

- undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion (Art. 38, para. 1)
- guarantees that all inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief (Art. 38, para. 2)
- pledges that Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems (Art. 39, para. 1)
- guarantees that all the inhabitants of Turkey, without distinction of religion, shall be equal before the law (Art. 39, para. 2)
- pledges that differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries (Art. 39, para. 3)
- promises that no restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings (Art. 39, para. 4)
- guarantees that notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts (Art. 39, para. 5)
- pledges that Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals (Art. 40, clause 1), in particular, they shall have an equal right to

establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein (Art. 40, clause 2)

- undertakes that, in addition to compulsory instruction in the Turkish language (Art. 41, para. 1, clause 2) *in public primary schools the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language* (Art. 41, para. 1, clause 1)
- ensures that *in towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes* (Art. 41, para. 2)
- pledges, as regards non-Moslem minorities, *in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities* (Art. 42, para. 1)
- undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities (Art. 42, para. 3, clause 1)
- guarantees that *all facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey* (Art. 42, para. 3, clause 2, sub-clause 1)
- ensures that the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature (Art. 42, para. 3, clause 2, sub-clause 2)
- guarantees that *Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances* (Art. 43, para. 1, sub-clause 1)
- pledges that *Turkish nationals belonging to non-Moslem minorities shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest* (Art. 43, para. 1, sub-clause 2)

The Department of Religious Affairs as a safeguard

The principle of secularism is given an institutional safeguard in the form of the Department of Religious Affairs (Article 136, Turkish Constitution 1982), which *shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity.*

By setting up a purely Sunni Department of Religious Affairs, originally in accordance with Art. 154 TConst'61 and now pursuant to Art. 136 TConst'82, the state has renounced its previous position. For instead of simply keeping a check on religion it has taken over control of Islam in Turkey and is administering it. This has breached the principle of state neutrality towards religion. Turkey has thus to some extent become an 'Islamic' or rather a 'Sunni' republic with further consequences only being prevented by the precedence given to the constitutional principle of 'secularism'.¹³ This is one of the reasons, in conjunction with the general debate about secularism in Turkey, for the present fierce debate about the Department of Religious Affairs, in which practically all social forces are involved.

It is interesting to note in passing that somewhat surprising de facto coalitions have emerged with regard to the pros and cons of allowing the Department to continue. Thus the Old Kemalites or Kemalite Fundamentalists are joined by the Islamic traditionalists – though for differing reasons – in advocating the continued existence of the Department of Religious Affairs. The Old Kemalites are in favour because they regard the Department as a guarantee of the secular statehood of Kemalite Turkey, since it has the task of monitoring the predominant religion, Sunni Islam. The Islamic traditionalists support the Department because in a sense it institutionalises Sunni Islam, which has no organised clergy and no unified institution. The Reformists on the other hand, while in favour of the continuation of the Department, support greater autonomy because of the greater degree of independence that would provide from government policy and modern state funding. The Revolutionists – a grouping that includes liberals as well as Islamic brotherhoods and associations – want the Department of Religious Affairs to be abolished. Some of them are striving for a pluralistic society in which there is genuine freedom of religion, while others want to develop freely, but are unable to do so fully because of state restrictions.

The Alevis, finally, who make up as much as 15% to 25% of the population, feel they are treated as second-class citizens by the Turkish state and the Sunni majority and so they tend to fluctuate between two positions. On the one hand, they want to abolish the Department of Religious Affairs because it

embodies Sunni absolutism – the pressure to assimilate to orthodox Sunni Islam – and promotes Islamic fundamentalism. On the other hand, they are considering setting up an Alevi committee within the Department of Religious Affairs. The ambiguous stance of the Alevis undoubtedly has to do with their unconcealed sympathy for the Kemalite ideology.¹⁴

Religious freedom enshrined in the constitution

According to Art. 10 TConst'82, *“all individuals ... are equal without any discrimination before the law ... irrespective of ... religion or faith”*. Furthermore, *everyone according to Art. 24, para. 1, TConst'82, enjoys “freedom of conscience, religious belief and conviction”*. According to Art. 24, para.2 TConst'82, *“Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14”*¹⁵. In addition to the principle of equality before the law and the guarantee of free practice of religion, Art. 24 also prohibits compulsory worship (para. 3, sub-clause 1) and of discrimination because of religious convictions (para. 3, clause 2). No one shall be *“compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions”*. Furthermore, *nobody may “be blamed or accused because of his religious beliefs and convictions”*.

At first sight, the only limitation on religious freedom comes in Art. 24, para. 5, which states that *“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.”* Art. 14 TConst'82, which states that *“none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of ... creating differences in religion or denomination or by any other means to found a national order based on these ideas and views ...”* was originally intended¹⁶ to provide constitutional support for Art. 163 of the Turkish Penal Code¹⁷, which for decades formed the basis¹⁸ for criminal prosecution of anti-secular aspirations¹⁹. After Art. 163 of the Turkish Penal Code was abolished, sanctions on religious freedom were limited by the Anti-Terror Law of 1991²⁰ to a ban on holders of religious office exploiting religious feelings for political ends (Art. 241 TPC²¹)²².

Monitoring of religious education

The state reserves the right, exercised by the Ministry for National Education (Milli Eğitim Bakanlığı), to monitor *“education and instruction in religion and ethics”*, which according to Art. 24, para. 3 TConst'82 *“shall be carried out under the supervision*

and control of the state” and “shall be compulsory in the curricula of primary and secondary schools”. While it was expressly stated in the explanatory notes to the draft constitution that non-Muslims would be exempted from the obligation to take part in these lessons²³, there is no corresponding reference in the text of the Constitution as such. With respect to the compulsory subject of *education and instruction in religion and ethics* there is no specific mention of any one denomination or any one religion, i.e. Islam. What has happened in practice, however, is that the only religious instruction to be offered by the state is in Islam, which largely consists of official courses in the Koran. Moreover, for non-Muslim pupils there is simply no alternative, unless they go to a school run by one of the recognised minorities, where of course Christian or Jewish religious instruction is provided. But that is not all. Up to the summer of 1990²⁴, non-Muslim pupils were generally compelled to take part in this de facto Islamic religious instruction.²⁵ The Alevis also feel violated by having to take part in religious instruction that to all intents and purposes gives no consideration to the traditions and rites of their own denomination and, moreover, is provided by teachers who until recently – adopting the stance taken by the Department of Religious Affairs – doubted whether the Alevis were really Muslims at all.

3. Religions

Turkey is generally considered to be an Islamic country with numerically insignificant Christian and Jewish minorities. Around 99.8% of Turkey’s 66,493,970 inhabitants²⁶ are Muslims. There are some 100,000 Christians²⁷, 0.15% of the total, and 20,000 Jews, or 0.03%. The proportion of other religious communities can be ignored, either because their previously not inconsiderable numbers have dropped so radically as make them insignificant – as in the case with the Yezidi, for example²⁸ – or because they have not yet reached significant numbers.

The Muslims, Christians and Jews are by no means homogeneous groups. Islam, Christianity and Judaism in Turkey are extremely multi-faceted, and this diversity is highly relevant to the present study.

Islam

There are no exact official data in Turkey about membership of individual religions and denominations. Nevertheless, it is a fact that the majority of the population practise Sunni Islam.

The overwhelming majority of Sunni Muslims follow Hanefite teaching, and a few ethnic groups – large sections of the Kurdish population, in particular – follow Shafi’ite teaching. The proportion of Shi’ites is between 7% and 30% of the total, of whom about 70% are Alevi²⁹. Then there are the Abdal, Ahl-i Haq, Bektaşî, Kizilbaş, Tahtacis and Nusairians. The Nusairians are Arabic speakers and are described in Turkey as Alevi. They are identical to the Alevi in Syria.

In numerical terms, the Alevi are the largest Islamic community after the Sunnis. Credible figures indicate that their proportion of the total Turkish population fluctuates between 15%³⁰ and 25%³¹. The majority of Alevi are ethnically and linguistically Turks, mainly of Turkmen descent and live in Central and Eastern Anatolia. About 20% of the Alevi are Kurds, and about 25% of Kurds – especially those who speak Kurmanci and Zaza – are Alevi^{32, 33}. According to other sources, the figure is 10% to 30% of Kurds³⁴.

Christianity

Amaniel Bağdaş, Executive Secretary of the Bible Society in Turkey, puts the proportion of “mainly orthodox” Christians in Turkey at 0.3% of the total population³⁵. Given that the country has 66,493,970³⁶ inhabitants, this would mean there are about 199,500 Christians. A delegation from the EKD (Protestant Church in Germany), which went to Turkey in spring 2001, assumes there are “about 150,000 Christians of Armenian, Syrian Orthodox and Greek Orthodox origin”.³⁷ Both figures appear inflated. It should be assumed that there are about 100,000 Christians, or 0.15% of the population, who belong to the following groups:

| | | |
|-------------------|-----------------------------------|---|
| Arab Orthodox | 10.000 | 95% in the provinces of Hatay and İçel (Mersin) |
| Armenian Catholic | 2.000 | >95% Istanbul |
| Armenian Orthodox | 50.000-60.000 ³⁸ | >95% Istanbul |
| Chaldean | 300 | >95% Istanbul |
| Greek Orthodox | 2.000-3.000 (1.500) ³⁹ | |
| Roman Catholic | 15.000 | Apostolic Vicarate of Istanbul |
| | 1.300 | Archdiocese of Izmir |
| | 4.500 | Apostolic Vicarate of Anatolia |
| Syrian Catholic | 1.250 | >95% Istanbul |
| Syrian Orthodox | 10.000 | Archdiocese of Istanbul |
| | 3.000 | Archdiocese of TurCAbdin |
| Other Christians | 10.000-15.000 ⁴⁰ | |

Judaism

The number of Turkish citizens of Jewish faith is put at between 26,000 and 27,000⁴¹. The majority (about 24,500) live in Istanbul. Another 2,300 to 2,500 live in Izmir, about 100 each in Ankara, Bursa and Adana, and smaller groups in Çanakkale, Iskenderum and Kırklareli. About 96% of the Jews living in Turkey are Sephardi⁴², the remaining 4% are Ashkenazi⁴³. There are also about 100 Karaites⁴⁴, who for the most part do not consider themselves part of the Jewish community and do not take part in its activities. The number of Sabbathians⁴⁵ or Dönme⁴⁶ may be significant, but although they are of Jewish origin they are not recognised as Jews by the Jewish communities in Turkey.⁴⁷

4. Legal status of religious communities

Unlike the Federal Republic of Germany, where Art. 140 of the Basic Law (Constitution) in conjunction with Art. 137 of the Weimar Republic Constitution stipulates that religious societies (religious communities) shall acquire legal capacity according to the general provisions of civil law, the Turkish constitution has no comparable regulations. The fact that the Department of Religious Affairs focuses on the interests of a Sunni Islam that is tolerated or influenced by the state does not mean that this state-monitored or controlled variety of Sunni Islam has achieved legal capacity as an institution or legal status as a juridical person (tüzelkişi). With this in mind, the question arises as to the conditions under which the religious communities in Turkey live.

4.1 Legal status of Islamic denominations

It should be noted that, in addition to the Sunni Islam monitored or controlled by the Department of Religious Affairs, there are a numerous other Islamic and non-Islamic religious communities in Turkey.

■ Sunni

The state-monitored variety naturally does not cover the whole spectrum of Sunni Islam in Turkey. Mention should be made here, in particular, of the Islamic brotherhoods and the new Islamic movements, which have a considerable number of Turkish Sunni Muslims as adherents.

■ Alevi

Regardless of the actual number of Alevis as a proportion of the population, they are certainly numerous enough to avoid being treated as a *quantité négligeable*. Yet this was precisely the official stance of the Turkish authorities right up to the 1980s. The fact that the Alevis emphasise the introspectiveness of religion and usually conduct religious services at home has exposed them to all manner of suspicions – not least the accusation of sexual dissipation – that are bound up with the tradition of secrecy surrounding their doctrine and rites and the involvement of women in the cult. Many non-Alevis think the Alevis hold their religious services, the Cem ceremonies, in the evening and then turn off all the lights and engage in sexual orgies.

From the ranks of Sunni Islam, and thus from the Department of Religious Affairs, doubts have even been raised, directly or indirectly, as to whether Alevis are Muslims at all. Alevi schoolchildren are often confronted with slanderous comments by teachers in state schools and not only in Sunni religious education classes.

On 22 February 1995, for example, a history teacher at the Yüzüncü Yıl Kılıçaslan Secondary School in Ankara sent the Alevi pupils out of the room, saying “Alevism is not a lawful religion, it’s a nonsensical one. Alevis don’t believe in God or Islamic tradition”⁴⁸.

The Alevis also appear suspect because they defend the ideals of the founder of the state, Kemal Atatürk – an attitude in keeping with their individualistic view of religion. The Alevis have traditionally supported the Turkish left wing. In the 1960s, a very high proportion of Alevis joined the (extreme) left wing Workers’ and Students’ Movement. In elections they have always supported democratic parties of the left that follow in the tradition of Atatürk’s Republican People’s Party (CHP), apart from a short period after 1966 when the Alevi-dominated but unsuccessful Turkish Union Party (TBP) competed for the Alevi vote. The Alevis then made a conscious effort to help prevent the dreaded power-sharing or takeover by hostile parties such as the Islamic fundamentalist National Order Party (MNP) and its successors⁴⁹ or the Turkish chauvinist Republican Peasants Nation Party (CKMP) and the successor to it⁵⁰.

The strengthening of Islamic fundamentalist and Turkish chauvinist circles from the 1960s onwards, and especially in the 1970s, soon led to violent attacks by groups of their members on the supposedly non-Turkish or non-Muslim Alevis, for example in Çorum and Kahramanmaraş in late 1978.

The military coup of 12 September 1980 was not least a reaction to the barely controllable – and violent – intrigues of Islamic fundamentalist groupings and their Turkish chauvinist counterparts, who to a certain extent shared their ideas. These groupings were represented in parliament by the Islamic fundamentalist National Salvation Party (MSP) and the Turkish chauvinist Nationalist Action Party (MHP). They could also be sure of support from MPs of the conservative Justice Party (AP). Developments after the 1980 military coup, however, were accompanied by a ‘religionisation’ or rather a ‘Sunniisation’ of politics. In the battle against largely uncontrollable private Koran courses, religious education was introduced as a compulsory subject from year 4 to the end of secondary school. There was a steep rise in the number of Islamic training colleges, which were supposed to train imams and preachers who would be loyal to the state, though in fact they provided fertile ground for Sunni Islamic fundamentalism. At the same time the state began building mosques in Alevi villages and manning them with Sunni preachers in a clear attempt to monopolise the Alevis and force them into line.

Since the late 1980s, the Alevis have been described as part of Islam, and Sunnis and Alevis as ‘brothers in faith’. It is quite obvious that the state was not only pursuing religious policy goals, but also trying to make use of the Alevis for its own purposes. Promoting an interest in the culture and spirituality of their own religion was intended to alienate young Alevis from the left-wing radicalism some of them had sympathised with in the 1960s and 70s. At the same time, the Alevis were supposed to form a counterbalance to Sunni Islamic fundamentalism, which was getting out of hand, and to separatist Kurdish nationalism. The Alevis themselves began to organise systematically at this time. Alevi convents (*dergahlar*), foundations (*dernekler*), associations (*vakıflar*) and prayer centres (*cemevler*) were founded, though to this day “*support for the founding of Alevi-Bektashi cultural centres and Alevi prayer centres*” may not be quoted in statutes as the aim of such associations. This would constitute an infringement of Art. 5 of the law on associations, which prohibits activities that support any single religion or denomination⁵¹. The relevant institutions, associations and foundations, which officially only pursue a general cultural purpose, have ‘harmless’ names like “Hacı Bektaş Veli Association”, “Pir Sultan Abdal Cultural Association” or “Pir Sultan Abdal Brotherhood”, which are recognised in Turkey as being named after Alevi saints. The state, which had initially welcomed the Alevis’ activities, soon noticed the unexpectedly rapid development of institutionalised Alevi life, which in its view was threatening to drift out of control, and tried to take a regulating hand by countering the independent “Alevi-Bektaş Kurumlar Birliği” (Association of Alevi-Bektashi Institutions) with something of its own.

This was why the state-sponsored “Republican Educational and Cultural Centre” (CEM⁵²), under the direction of İzzetin Doğan⁵³, was founded as an umbrella organisation for state-approved Alevi institutions⁵⁴.

The state has also spent money on supporting the Alevis, or at least those who are organised under the umbrella of the CEM Foundation. A report in the daily newspaper *Milliyet* of a conversation with İzzetin Doğan claimed that the state intended to provide 5 trillion TL (14,823,757 €) to support the Alevi associations⁵⁵. According to Doğan, the funding only amounted to about 700 million TL (2,075,333 €) which in any case did not come out of the budget of the Department of Religious Affairs, but from different sources. The Department, which maintains 72,000 mosques with a staff of 93,000, is doggedly defending its vested interests.

In response to Doğan’s request to grant the Alevis a committee of their own in the Department with 2,000 positions – a demand that is hotly disputed amongst the various Alevi groupings – Prime Minister Ecevit is quoted as saying, “*Professor, we can’t get anything from the Department, we can’t touch them.*” Ecevit also admitted “*Yes, there’s an injustice which we must clear up*” and his Deputy Prime Minister, Mesut Yılmaz, apparently added, “*That will take a while, we aren’t ready yet.*” A quick solution with reference to Doğan’s request only appeared possible to the Prime Minister and his deputy if the positions requested were established in a different body, e.g. the Ministry of Culture. This is of course unacceptable to Doğan, since it is not a question of positions but of equal treatment for denominations and religions in Turkey.⁵⁶

Although the situation of the Alevis in Turkey is now much more relaxed than it was in the 1980s and 90s, many questions remain unanswered. These relate not only to the continuing fear of fresh outbreaks of anti-Alevi violence, such as the events in Sivas in 1993, when Islamic fundamentalist and Turkish chauvinist mobs besieged the hotel where the Alevi “Pir Sultan Abdal Association” was holding a conference, set fire to it and murdered 37 conference delegates, all under the noses of the police who were Turkish chauvinist sympathisers. Nor is it simply that the violence was repeated later, e.g. in 1995 in the Istanbul suburbs of Gaziosmanpaşa and Ümraniye, when Islamic fundamentalist gangs carried out bloody attacks on Alevis.

What is more significant is that to date none of the Alevis’ requests have been met, e.g.

- for official state recognition,
- for an Alevi Committee to be set up in the Department of Religious Affairs,

- for official consideration of the Alevi in the distribution of state funding through the Department or other bodies,
- for the provision of Alevi religious education in schools,
- for broadcasting time on radio and TV in order to disseminate Alevi culture.⁵⁷

Some of these demands are disputed among the Alevi themselves. Supporters of a rigorous separation of religion and state naturally reject the continued existence of the Department of Religious Affairs and funding by the state. Irrespective of this, even the less far-reaching demands would require a basic rethinking and, in particular, a renunciation of the ideal of Turkish nationalism (Milliyetçilik) which speaks of citizens as 'Turks', meaning people who speak Turkish as their mother tongue and are Sunni Muslims.

In February 2002, however, the Supreme Court again banned all Alevi associations, foundations and other institutions on the grounds that they constituted a threat to national unity.

Islamic brotherhoods, e.g. the Nakchibendi

The most important Islamic brotherhoods (tarikats in Turkish), who traditionally live partly in monastic communities and partly as lay brothers, are the Sunni Nakchibendis, Mevlevis, Kadiris and Halvetis with their offshoot, the Cerahiye, Rufais and Rifais, and the Shi'ite Bektāşis. Although these brotherhoods were closed down, i.e. banned, by Law No. 677 of 30 November 1935⁵⁸, they are tolerated by the state as long as they keep out of public affairs. State tolerance is not surprising, since from the very beginning members of these brotherhoods were active in the conservative and religiously-oriented parties. These parties have always perceived the brotherhoods, whose members are estimated to number between several hundred thousand and several million, as a reservoir of potential voters, which naturally qualifies the notion that they are tolerated by the state as long as they keep out of public affairs. In view of the legal ban, none of the brotherhoods has achieved legal status as a juridical person (tüzelkişi). But this does not mean that the brotherhoods have no institutionalised presence in Turkey. There is a large number of associations, foundations and business enterprises that mostly have harmless names – usually ones that bear no direct reference to one of the brotherhoods – and which are undoubtedly active on behalf of the relevant brotherhood with the full knowledge of the authorities.

The Nakchibendi Brotherhood provides a good example of how extensive these activities can be. Following the death of Prof. Dr. Mahmut Esat Coşan⁵⁹, the leader of the Turkish Nakchibendis, on 4 February 2001, the Islamist *Zaman*

*Gazetes*⁶⁰ published an obituary, which stated that he had founded numerous associations and foundations as well as health care centres.⁶¹ From 1983 onwards he had worked as a publisher and editor of journals⁶² and, following the lifting of the state broadcasting monopoly, had set up "Ak-Radyo (AKRA)"⁶³.

In addition to his media activities Coşan was involved in setting up the "İskenderpaşa Turizm (ISPA)" tourist business, which arranges pilgrimages among other things. But the Nakchibendis under Coşan's leadership were also visibly active in the finance sector. The English-language *Turkish Daily News* carried a reported on 26 December 1997 on relations between the finance business, Al Baraka Türk, and the Nakchibendi Brotherhood. The Nakchibendis were also reported to have applied to the Ministry of Finance for an operating licence for Coşan to run another finance business, Kent Özel Finans⁶⁴.

Coşan also set up private teaching institutes in several provinces to prepare pupils for entry to primary and middle schools. In Istanbul, Ankara, Konya and Bursa he founded "Institutes for Islamic Tradition and Jurisprudence" (Hadise ve fıkıh enstitüleri), where private teachers taught students and graduates of state faculties of theology.

Mention should also be made of the fact that, in addition to his numerous activities as leader of the Turkish Nakchibendis from 13 November 1980 until his death on 4 February 2001, Prof. Dr. Mahmut Esat Coşan worked as a university lecturer at state universities in Turkey. After qualifying as a lecturer in 1973 with a professorial thesis on the works of Hacı Bektaş-i Veli, founder of the Bektāşi Brotherhood, he became a lecturer in Turkish Islamic Literature at the Faculty of Theology of Ankara University. He held the same position from 1977 at the Sakarya State Academy of Architecture and Engineering, where he was appointed professor in 1982 and taught until his voluntary resignation in 1987.⁶⁵

When Mahmut Esat Coşan died, his son applied to the Council of Ministers for permission to bury the body in the closed cemetery of the Süleymaniye Mosque, and the Council agreed.⁶⁶ This cabinet decision produced vehement reactions in some quarters. Minister of State Şükrü Sina Gürel from the Party of the Democratic Left (DSP) and several other DSP members of parliament criticised the Council of Ministers' decision as an infringement of the principle of equality laid down in the constitution.⁶⁷ State President Necdet Sezer, well known as a strict secularist, overturned the cabinet decision⁶⁸ and Coşan was eventually buried in the Eyüp Sultan cemetery. Among those who attended his funeral were Necmettin Erbakan, a former Prime Minister and Chairman of the Islamic fundamentalist National Salvation Party

(MSP), which has been banned by the constitutional court; Recai Kutan⁶⁹, Chairman of the Islamic fundamentalist Virtue Party, successor to the MSP and likewise banned by the constitutional court; and the former Mayor of Istanbul, Recep Tayyip Erdoğan⁷⁰, a member of the Executive Committee of the banned Virtue Party, along with several members of parliament.⁷¹

As was pointed out earlier, the Islamic brotherhoods are banned in Turkey. In the past there have been repeated reports in the media about the imprisonment of members of the Nakchibendi Brotherhood, for example.⁷² Following the annulment of Art. 163 of the Turkish Penal Code, which for decades formed the basis for the criminal prosecution of anti-secular aspirations, there is no longer any penal sanction for religious propaganda. In practice the criminal prosecution authorities fall back on Articles 159 and 312 of the Penal Code in such cases. Nevertheless, it does seem as if the Nakchibendi Brotherhood has considerable freedom to evolve in modern Turkey.

■ Islamic movements, e.g. the Nurculuk

New Islamic movements – including the Ticanis⁷³, Nurcus and Süleymancis – first emerged in public in about 1950. Common to all of them is their objection to secularism and their support for an Islamic theocratic state. Even though the specific development of these movements may vary considerably, it is sufficient for the purposes of this study to provide a detailed presentation of just one of them, the Nurcus.

The Nurcus movement can be traced back to Bediüzzaman Said Nursi (1873-1960), a Kurd by birth, who as a lecturer at the Islamic College in Istanbul opposed Atatürk's reforms from the early 1920s on, particularly the separation of state and religion. In 1925, Said Nursi was banished for eight years to Barla (province Isparta), where he wrote part of his major work, *Risale-i Nur* (Treatise on Divine Light) – as, indeed, he continued to do later in other periods of banishment in other places. Repeated trials in 1944, 1948, 1952, 1956 and 1958 and repeated years of banishment failed to prevent the spread of his writings and the rise of the Nurculuk movement. From the 1950s onwards, the writings of Said Nursi were finally publicly printed and distributed in Turkey, which contributed decisively to the growth of the movement to over a million members by the early 1980s⁷⁴. The real aim of the Nurcus, as of the Ticanis, Süleymancis, Aczmendiler and other Islamic movements and brotherhoods in Turkey, is overthrow the existing secular system and create an Islamic theocratic state. By the 1980s this had led to numerous court cases against members of the Nurculuk movement⁷⁵. In their public relations work they attach great importance to the presentation

of a new interpretation of the Koran in keeping with the times. The *Risale-i Nur* is described as a logical and scientifically based concept for dealing with the problems and challenges that increasingly face Muslims in the modern world.⁷⁶

A considerable contribution to the spread of Said Nursi's ideas has been made by the Yeni Asya publishing house in Istanbul, which also used to function as the Nurculuk movement's headquarters, publishing the daily papers *Yeni Nesil* and *Yeni Asya*⁷⁷, the magazine *Köprü* (The Bridge), the women's magazine *Bizim Aile* (Our Family), the children's magazine *Can Kardeş* (Brother Life) and numerous books. Since 1993, the Nurcus have been carrying on their activities under the umbrella of the Yeni Asya Foundation (Yeni Asya Vakıfı)⁷⁸, which has many branches and representations in Turkey. The main purpose of the foundation is to disseminate Said Nursi's ideas. The aims of the Yeni Asya Foundation are served by an archive, library and research institute (*Risale-i Nur Enstitüsü*)⁷⁹, an academic degree programme in social sciences⁸⁰, funding programmes for school and university students and specialist academic researchers, the company's journalistic and publishing activities, special children's and youth programmes⁸¹ and, finally, the establishment of cultural centres. To date, the Yeni Asya Foundation maintains two young people's cultural centres in Ankara and Izmir, a women's cultural centre in Istanbul and convalescent homes in Barla, one of the places where Said Nursi lived in internal exile.⁸²

Just as it did until the 1990s – when it was the *de facto* headquarters of the Nurculuk movement – the Yeni Asya publishing house continues to avoid any hint of open political confrontation with the state, even though the real aim of the movement is still to overthrow the existing secular system and set up an Islamic theocratic state. Despite its opposition to the prevailing political system, the Nurculuk movement has been able to take on an increasingly legal character thanks to the changing political situation since the Second World War and to become a significant religious force. It has not developed along the lines of a political party, preferring to exert its influence through the support of certain political circles: in the 1950s this was the Democratic Party (DP) of Prime Minister Adnan Menderes, in the 1960s it was the Justice Party (AP) of Süleyman Demirel, who was Prime minister at the time and later became President, in the 1970s it was the National Salvation Party (MSP) of the then Vice-Premier, later Premier, Necmettin Erbakan⁸³, and finally, from the 1980s onwards, the True Path Party (DYP) and the Motherland Party (ANAP).

Radical sub-groups of the Nurcus in Turkey are the small Med Zehra Group – also known as Hizb-i Kuran (Party of the Koran) – and the Aczmendiler, who are principally organised in the province of Elazig and stand out on account of their anti-state and anti-western rhetoric. Another splinter group of the Nurculuk movement has recently become very influential in Turkey, the “Disciples of Fethullah Gülen” (Fethullah Gülen Talebeleri). Their ideology is a blend of neo-nationalism, neo-Ottomanism and the ideas of the Nurcus, and they are now regarded as the most influential moderate Islamist group in Turkey, where they have an extensive network of foundations, private schools and institutes of further education, and student hostels.⁸⁴

4.2 Legal status of non-Muslim minorities

The situation of non-Muslim minorities in Turkey is extremely complex in respect of the prevailing legal framework. The official view, i.e. that of the state, is that different regulations apply to the various non-Muslim religious communities.

- Firstly there are the groups that count as non-Muslim minorities within the meaning of the Treaty of Lausanne. In the view of the state, these are exclusively the Armenians, Bulgarians, Greeks and Jews.
- A second group are the non-Muslim minorities who were present in Turkey at the time of the Treaty of Lausanne but were not recognised by the state as minorities within the meaning of the Treaty. These are, for example, the Syrian Orthodox Church, the Catholic United churches – such as the Chaldean Church and the Syrian Catholic Church – and the Roman Catholic Church.
- The third group are the non-Muslim religious communities (churches, sects, groupings) that only became active in Turkey after the conclusion of the Treaty of Lausanne. Examples are the Protestant free churches and Jehovah’s Witnesses.

4.2.1 Minorities within the meaning of the Treaty of Lausanne – recognised as such by the state: Armenians, Bulgarians, Greeks, Jews

Nowhere in Section III of the Peace Treaty of Lausanne on the Protection of Minorities is there any mention of specific non-Muslim minorities. In the French, English and Turkish versions of the Treaty the non-Muslim minorities are no more closely defined than ‘*minorités non-musulmanes*’, ‘non-Moslem minorities’ or ‘*Müs-*

lüman olmayan azinliklar’⁸⁵. Hence the Republic of Turkey’s restrictive application of the relevant regulations in the Treaty of Lausanne represents a clear breach of the wording of the Treaty.

The Republic of Turkey makes very varied use of the term “non-Muslim minorities” depending on the situation.

On the one hand, the website of the Turkish Ministry of Foreign Affairs states that the Treaty of Lausanne never once mentions the Armenians. This can only mean that the authors are aware that the ‘non-Muslim minorities’ are not mentioned by name in the text of the Treaty of Lausanne.⁸⁶ On the other hand, it is clearly stated in official announcements that the only officially recognised minorities according to the Treaty of Lausanne are the religious minorities of the Armenians, Greeks and Jews.⁸⁷ But that is not all. A protocol appended to the Bulgarian-Turkish Treaty of Friendship of 18 October 1925, which thereby became part of the Treaty, states that Bulgaria will apply all the relevant regulations (religious matters, language, education, etc.) in the Treaty of Neuilly to Turks living in Bulgaria, and that Turkey will apply all the relevant regulations (religious matters, language, education, etc.) in the Treaty of Lausanne to Bulgarians living in Turkey.⁸⁸

Whether the modern Republic of Turkey recognises the Bulgarians alongside the Armenians, Greeks and Jews as a minority within the meaning of the Treaty of Lausanne is of minor importance. Far more significant is that the Republic of Turkey is infringing the Treaty by applying the regulations in Section III only to named ethnic groups – Armenians, Bulgarians, Greeks and Jews – and is thus discriminating against a large number of religious communities that are not mentioned by name. The decisive issue is whether, and to what extent, the Republic of Turkey actually applies the regulations contained in Articles 37 to 45 TL to the non-Muslim minorities who were resident in Turkey at the time the Treaty was signed.

The Armenian Patriarchate of Constantinople, the Greek Orthodox Ecumenical Patriarchate of Constantinople and the Chief Rabbinate of Turkey were in existence long before the Republic of Turkey was founded. They survived the turmoil of the First World War and they still exist *de facto* to this very day. The Armenian Patriarch, the Ecumenical Patriarch and the Chief Rabbi are treated from the point of view of protocol as leaders of their respective religious communities by official departments, e.g. the office of the Governor of the District of Istanbul and the Office of the President in Ankara⁸⁹. Yet according to state law these leaders do not exist and nor do their positions. In republican Turkey the

two Patriarchs and the Chief Rabbi have never been granted official status as juridical persons nor have the positions of the Patriarchs and the Chief Rabbi been recognised as legally valid. All related state business is conducted by the responsible departments of the Ministry of the Interior, based on resolutions passed by the “Minorities Committee” (Azınlıklar Tali Komisyonu) in accordance with its own interpretation of the traditions of the religious communities in question.

The Minorities Committee is allegedly the state body with the greatest authority that works most effectively in respect of the minorities. This committee, whose existence has only been known about for the past two years, was apparently set up in 1972 at the request of the Prime Minister’s office. It is still unclear what it was set up for and what exactly its authority is. There are thought to be five members, including one representative each from the National Security Council (Milli Güvenlik Konseyi), the National Intelligence Service (Milli İstihbarat Teşkilatı), the Ministries of the Interior and Foreign Affairs, and from the state ministry with responsibility for foundations that is subordinate to the Prime Minister’s office. A representative from the Ministry of Health or the Ministry for National Education is called in on issues concerning hospitals or schools for the minorities. The decisions of the Committee, which cannot be appealed by the minorities, are final and cannot be challenged by a court decision.

4.2.1.1 Problems of the recognised non-Muslim minorities

The fact that the Patriarchates and the Chief Rabbinate have not been granted status as legal persons in republican Turkey and that their positions have not been recognised inevitably gives rise to legal and practical problems relating to

- the office of the Patriarchs and the Chief Rabbi,
- the functioning of the Patriarchate and the Chief Rabbinate, and
- the interaction between Patriarchate and Patriarch, or Chief Rabbinate and Chief Rabbi, on the one hand, and the parish and synagogue communities or ecclesiastical and Jewish institutions, on the other.

Some of these problems, which affect the recognised non-Muslim minorities in different ways, will now be discussed.

■ Lay advisory committee

The Chief Rabbi of Turkey – elected in 1961 – is supported in his work by a religious⁹⁰ and secular advisory committee consisting of 35 lay members. This advisory committee elects an executive committee and a chairman, who acts as the secretary representing the Chief Rabbinate in all worldly matters.⁹¹

The Central Administrative Council (Merkez Yönetim Kurulu) of the Armenian Patriarchate, which used to exist alongside the Spiritual Council (Ruhani Kurul) responsible for religious affairs and administered all associate foundations (ortak cemaat vakıflar), was abolished by the government in 1961. It was replaced by an Advisory Committee of the Patriarchate (Patriklik Danışma kurulu) appointed with the approval of government representatives at the time, but it has also recently had to stop its activities on the instructions of the provincial administration. As a result, the Patriarchate currently has no advisory committee on civil matters. In this situation the Patriarch is of necessity involved in a dialogue on all issues affecting the community with the very state that regards him as the de facto representative of the community, although it does not recognise him as its representative in legal terms.⁹²

■ Lack of an electoral procedure

The Armenian Patriarchate was established in 1461 by Sultan Mehmet the Conqueror by a firman (Sultan’s decree). Up to 1863, the existence of the Patriarchate was based on firmans, which were given to each new Patriarch and regulated his rights and duties. In 1863, all relevant issues were regulated in the Statute of the Armenian Nation (Nizamname-i Milleti Ermeniyani). In republican Turkey there have been problems over every patriarchal election because there is no electoral procedure. This could easily be resolved if the relevant Council of Ministers decision taken in 1961, and applied since at three patriarchal elections, were to be updated and made statutory. The Republic of Turkey would then be doing justice to its undertaking in Art. 42, para.3 of the Treaty of Lausanne to guarantee that “*all facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey*”.

■ Lack of a regular income

The Patriarchates and the Chief Rabbinate have no regular income either from the community or from the state. This problem can hardly be solved internally by the communities so long as there is no de jure legal connection between the parish communities and institutions, on the one hand, and the Patriarchates or Chief Rabbinate, on the other. A solution can only be hoped for if the Republic of Turkey grants its recognised non-Muslim minorities the right to self-determination and self-government in accordance with the relevant regulations in the Treaty of Lausanne. The lack of a regular income from the state also constitutes a breach of the Treaty of Lausanne, in which the Republic of Turkey pledged that “*in towns and districts where there is a considerable proportion of Turkish*

nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.” (Art.41, para. 2 TL).

■ Training of clergy

One of the biggest problems the Patriarchates have is caused by the limitations on who can be appointed to the clergy in Turkey. Only Turkish nationals can act as clergy in Turkey or be appointed bishops or patriarchs. The only exceptions are the Roman Catholic Church and congregations attached to diplomatic missions. For this reason a Greek Orthodox priest of French nationality was obliged to leave Turkey in 1995 in somewhat humiliating circumstances. The clergy training institutions of the Armenian Patriarchate and the Ecumenical Patriarchate have also been closed since the early 1970s. The Armenian Patriarchate’s training college was closed in 1970 and, when non-Turkish universities were nationalised in 1971⁹³, the Ecumenical Patriarchate was obliged to close the Halki Theological College on the island of Heybeliada, which had been there since 1844. The Patriarchate had no guarantee that it would be able to maintain control over the seminary when it became a Turkish educational establishment. Nevertheless the Ecumenical Patriarch, Bartholomew I, has repeatedly petitioned the Turkish authorities to reopen the Halki Theological College.⁹⁴ The Turkish authorities are reported to be considering whether the seminary should be allowed to function as a department of the Theological Faculty of Istanbul University. The Ecumenical Patriarchate is reacting cautiously to these suggestions and has called for clarification of the administration, admission procedures and curriculum of the proposed new educational establishment. The possibility cannot be ruled out that these official deliberations might simply be a first step towards taking over the seminary and, in particular, the valuable land that belongs to it.⁹⁵

Problems of the pious foundations

In Turkish law there is no legal connection between the church and synagogue congregations or educational and charitable institutions, on the one hand, and the Patriarchates or Chief Rabbinate, on the other, since these communities or institutions are maintained by community foundations (*cemaat vakıflar*)⁹⁶, which act as the owners of the furnishings or property in question and are only accountable to the state administration of foundations.

■ Lack of clear regulations

A statutory instrument concerning the community foundations that are named in Article 1 of the Law on Foundations⁹⁷ has never been enacted. The law simply defined the community foundations in the abstract. The state regulates community foundation matters according to the statutory instrument on pious foundations administered by the state (*mulhak vakıflar*, *mazbut vakıflar*) – though these have nothing in common with the community foundations – or by means of police orders.

There are two categories of Armenian community foundations in Turkey which differ in the way they elect their administration. There are the associate foundations (*ortak vakıflar*) administered by the Central Administrative Council (*Merkez Yönetim Kurulu*) of the Patriarchate up to 1961 and the church (district) foundations (*kilise (semt) vakıflar*). The associate foundations are the five foundations whose administrators are elected from among their number by all the eligible members of the entire Armenian Orthodox community of Istanbul. Church (district) foundations are those whose administrators are elected from among their number by all the eligible members of the community living in that particular district of the city. The requirement that the voters and the administrators they elect must live in the same district is indispensable in respect of the church (district) foundations. In many districts where Armenians traditionally live the proportion of Armenians in the population has dropped sharply. It is, therefore, often difficult to find suitable candidates to administer these foundations and there is a danger that the church (district) foundations will be administered by incompetent people, which would put their future at risk. Theoretically, there are two possible ways of averting this danger. One solution that has been proposed is that all the church (district) foundations should be turned into Associate Foundations. The active and passive right to vote would then apply to all members of the Istanbul communities irrespective of their district of residence. An alternative solution is being pursued by the Greek Orthodox community. They have subdivided Istanbul into regions⁹⁸ and gathered their church (district) foundations into regional Foundations (*bölge vakıflar*). The active and passive right to vote applies to all members of the community living in one of the regions concerned. The foundations in Anatolia, where there are hardly any Armenians left, should be turned into associate foundations as a matter of principle.

■ Liability to corporation tax

Although the community foundations are charitable institutions, they are liable to pay corporation tax. The tax is levied in advance on bank interest and ren-

tal income. In practice this means that community foundations whose purpose is to run a hospital, for example, are treated by the tax authorities as if the hospital were a business and accordingly liable to corporation tax.⁹⁹ Liability of the community foundations to corporation tax undoubtedly contravenes the spirit of the Treaty of Lausanne (Art. 41, para. 2).

■ 1936 regulatory statute on implementation

In 1936¹⁰⁰, a basically harmless regulatory statute on implementation of the law on foundations provided for drawing up an inventory of the foundations' property.¹⁰¹ In a controversial decision in 1974, the Court of Appeal ruled that all property acquired by the community foundations since 1936 through purchase, gift or inheritance could be confiscated by the state, as it had not been declared by the non-Muslim minorities in the inventory of 1936 and hence had been acquired illegally, because the non-Muslim minorities were foreign and, therefore, had no right to purchase land in Turkey. In accordance with this ruling, the Armenian community foundations alone have had more than 40 buildings taken away from them and given back to their previous owners or – if the previous owners could not be found¹⁰² – transferred to the national treasury. Hundreds of similar cases have been pending in the courts since 1974 and the buildings concerned are regularly confiscated by the state.¹⁰³ The Armenian primary school in Bomonti, Istanbul, which was founded in 1808 and had been located since 1963 in a building made over to the community, was forced to move out of the building in February 1999 without prior warning and all the furniture and teaching materials were simply thrown into the school yard.¹⁰⁴ It is obvious that this kind of behaviour, and the ruling of the Court of Appeal, are in contravention of the Treaty of Lausanne, and this is confirmed by Turkish lawyers.¹⁰⁵ Comparable foundations that do not belong to non-Muslim minorities do not face this kind of problem.¹⁰⁶

■ Permits for renovation work

For renovation works undertaken by community foundations that exceed a certain cost limit a permit has to be sought from the Directorate-General for Pious Foundations. Recently an additional permit has been required from the Ministry of Foreign Affairs. The required procedure has to be gone through. This procedure, which has never been agreed, is also in contravention of the relevant provisions in the Treaty of Lausanne (Art. 40, para. 2), particularly since in practice it is not a case of larger contributions being expected from the state – e.g. in compliance with Art. 41, para. 2 TL – but simply that the community foundation has to spend more of its own funds on the renovation works in question. It is

totally incomprehensible why community foundations of the non-Muslim minorities that are recognised by the Republic of Turkey should have to apply for permits to the Ministry of Foreign Affairs. After all, every single one of their members is a Turkish citizen. In practice, these permit requirements only lead to estimates being deliberately matched to the prescribed price limits and split up if necessary.

■ Freezing of income from property transactions

Income accruing to the community foundations that stems from the sale of buildings or from compensation for confiscated property has to be paid into accounts at the state foundations bank and remains frozen there. The foundations are only accorded the right to use the interest on these deposits, but forbidden to buy other buildings of the same value. Quite apart from the fact that these regulations positively encourage false information, the freezing of major sums of money in the context of the extremely high average rate of inflation in Turkey – up to 100% p.a. in recent years – even at a rate of interest of 80% on invested capital, amounts to nothing less than the wiping out of the foundations' reserves, which puts the continued existence of the foundations at risk. In any case, these regulations represent a clear infringement of Art. 43, para. 3 of the Treaty of Lausanne.

■ Ban on transfer of surplus income

While a few of the foundations report considerable income surpluses, others are in serious material difficulties. The state does not allow the foundations to transfer surpluses to each other, however. Since the individual religious communities do not have a central administration for their community foundations, it is impossible in practice to ascertain the budgets and needs of the individual foundations. Many foundations are obliged to try and get by on the proceeds from 'fund-raising dinners' (*sevgi yemekleri*). This would not be necessary if the state were to allow the transfer of surpluses between the foundations and to authorise a Patriarch's advisory committee on temporal issues – e.g. a council for civil affairs – to deal with transfers of income between related foundations (schools, churches and hospitals). Here again the Republic of Turkey is breaching the spirit and the letter of the Treaty of Lausanne, particularly Art. 41, para. 2.

Schools

In the academic year 1994/1995, there were altogether 15 Armenian Orthodox and four Armenian Catholic educational establishments in Istanbul (kindergartens and schools)¹⁰⁷. In 1994/1995, 3,738 children were attending Armenian Orthodox educational establishments, 599 at secondary school, 958 at middle school, 1,809 at primary school and 372 at kindergarten.¹⁰⁸ The Greek schools currently have about 260 pupils in 12 grades. About a third of these pupils are so-called Arab Orthodox Christians.¹⁰⁹ Their ancestors came from Hatay province, but they are defined by the Turkish authorities in the same way as the Greek Orthodox Christians as “Rum” (i.e. Greek Orthodox).¹¹⁰ The majority of Jewish schoolchildren attend state or private foreign-language schools. In addition, the Jewish community in Istanbul maintains a primary school for 300 pupils and a secondary school for 250 plus a primary school in Izmir for 140.¹¹¹

The Roman Catholic Church maintains state-supervised educational establishments (kindergartens and schools) in Istanbul and Izmir, for which the state appoints the deputy principals. Unlike the Armenian, Greek and Jewish establishments, they are run not by community foundations but by religious orders or congregations. Admission to these schools is regulated by a state allocation centre, which represents a threat to the free admission of Christian pupils. Extending the duration of primary school from five years to eight years and doing away with middle schools – the aim being to get rid of state middle schools for imams and preachers – has had a knock-on effect on Catholic schools. The operating permit for middle schools has expired. Permission to use the building for a different type of school, for instance, cannot necessarily be expected. It is granted at the discretion of the authorities.

■ Admission only according to certain criteria

Until the 1960s, any Christian family could have their children educated in an Armenian or Greek school. For the child to be enrolled at the school it was sufficient for either the father or the mother to be Christian and the word ‘Christian’ appeared on the child’s identity card in the box for religious affiliation. This regulation was changed in the 1980s. School registration now has to be carried out in the presence of inspectors from the Ministry of National Education. Problems arise because the new-style identity cards show only the religious affiliation, i.e. ‘Christian’, but no longer the denomination, e.g. ‘Armenian Orthodox’ or ‘Armenian Gregorian’, whilst the authorities insist on knowing the denomination of the child’s father. If the father’s identity card specifies ‘Armenian Orthodox’ or ‘Armenian Gregorian’¹¹² the child can be enrolled; if not, it has to go on a waiting list and can only be enrolled as a pupil after the information

has been checked. In cases where the denomination is not specified and only the word ‘Christian’ appears on the identity card, Ministry of National Education inspectors check the old registers to find out whether the child’s father really is ‘Armenian Orthodox’ or ‘Armenian Gregorian’.

As the mother’s denomination is completely ignored in this situation, a child cannot attend an Armenian school if the mother is Armenian but the father is not. An Armenian man married to a non-Armenian woman can send his children to an Armenian school. If the man dies, however, the children are no longer regarded as Armenian and so they are no longer allowed to go to an Armenian school. Turkish citizens of Armenian descent living in Anatolia, whose ancestors converted to Islam to survive the pogroms but have now become Armenians again, have no chance of enrolling their children in an Armenian school, because children of people who have once converted to Islam are not allowed into Armenian schools. Finally, an Armenian family who, for whatever reason, have initially sent their child to a state or private school, cannot later send the child to an Armenian school. If the authorities point out in this situation that the child cannot speak Armenian, it is surely reasonable to ask how a child who has first been to a school that teaches in English can then be allowed to change to one that teaches in French.

■ State monitoring of school principals

The senior deputy principals of minority schools are appointed by the state and they are the responsible superiors for the teachers of Turkish, geography, civics and sociology, who are likewise state appointees. The principal belongs to the minority that runs the school, but neither the deputy principal nor the teachers of the subjects mentioned above are answerable to him. De facto there are, therefore, two parallel hierarchies in minority schools. The relevant state authorities expect the state-appointed deputy principals and teachers to provide regular detailed information about developments in the schools, which naturally includes reporting on the non-Muslim principals and teachers. It is obvious that this does not make for a good working relationship among the teaching staff. Moreover, the arrangement infringes Article 40 of the Treaty of Lausanne, which gives “*Turkish nationals belonging to non-Moslem minorities ... in particular ... an equal right to establish, manage and control ... any schools and other establishments for instruction and education*”.

■ Alternative uses for school buildings that are no longer required

Due to the steep drop in numbers of the non-Muslim minorities, more and more schools belonging to associate or community foundations have had to be closed, which leaves the buildings standing empty. According to Art. 10 of the Law on Foundations, it is possible to transfer such buildings to another foundation with the same charitable purpose, for which a decision by the Council of Ministers is required. Apart from the fact that every individual building owned by a foundation would require a Council of Ministers decision in its own right – which, intentionally or otherwise, often takes a long time to come through – this procedure likewise infringes Art. 40, clause 2 of the Treaty of Lausanne, which grants non-Muslim minorities the right to “manage... charitable, religious and social institutions ... schools.” This must also include the right to transfer school buildings to other foundations with the same or a different charitable purpose without having to apply for a decision from the Council of Ministers.¹¹³

Other problems – prejudices and propaganda based on ignorance

A latent problem for the non-Muslim minorities in Turkey – recognised and unrecognised – is the attitude of the majority population towards them, which is essentially based on prejudice and ignorance about Christians and Jews. These prejudices come not just from school books that portray Christianity exclusively from an Islamic perspective, for example, and preach enmity towards Armenians and Greeks. They also come from statements made by people in positions of political responsibility. In the 1980s, for instance, Armenians living in Turkey were mentioned in the same breath as the Armenian terrorist group, ASALA, which was responsible for murdering Turkish diplomats abroad, and later on the Armenians were lumped together with the Kurdish separatist PKK.

Even today, statements of this kind can be expected from prominent political figures at any time. A good example is the press release issued by the vice-president of the True Path Party, Hasan Ekinçi, who declared in January 2002 that the Christian minorities in Turkey constituted a threat to the internal security of the country and that they should not be granted the same rights as Muslim citizens. These antagonistic statements, for which the president of the same party and former prime minister, Tancu Ciller, immediately apologised, were made at the time of the debate on a legal amendment concerning foundations run by minorities and the 1936 regulatory statute on implementation. For the Christian minorities and for the other minori-

ties alike this incident documented yet again how the religious minorities are seen by one part of the majority population and its leaders.^{113a}

Hence it is not surprising that the media image of non-Muslim minorities tends to be negative not only in the clearly influential media of the Islamic fundamentalist groups, but also in the mass-circulation papers.

A survey¹¹⁴ conducted among young people in 1999 about their assessment of Armenians illustrates the effects of the one-sided information provided in schools, biased comments by politicians and the reporting in some of the media. The survey showed that 44.2% of young people believe there are no good Armenians, 28.9% believe the majority of Armenians are bad but that there are also some good ones, 24% believe the majority of Armenians are good but that there are some bad ones, and 2.7% believe there are no bad Armenians. In a different survey, also carried out in 1999, about the most unpopular ethnic group the Armenians came top with 76%.

It should also be mentioned, however, that in recent years there have often been series of articles dealing with individual non-Muslim minorities, which have made people aware that, if these minorities disappear, part of Turkey’s cultural heritage will go with them.

It is still a fact that members of non-Muslim minorities are hampered and prevented from entering the public service in a variety of ways. Entry to military academies is categorically forbidden. This is not only a contravention of the equality clause in Art. 10, para. 1 TConst’82, but also of Art. 39, para. 2 TL, in which the Republic of Turkey promises that “*Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.*”

4.2.2 Minorities within the meaning of the Treaty of Lausanne – not recognised as such by the state

Non-Muslim minorities within the meaning of Section III of the Treaty of Lausanne are generally understood to be all the non-Muslim minorities that were present in Turkey at the time the Treaty was concluded. These were: Anglican, Arab Orthodox¹¹⁵, Armenian Protestant, Armenian Catholic, Armenian Orthodox, Bulgarian Catholic, Bulgarian Orthodox, Chaldean (Catholic), Protestant, Georgian Orthodox, Greek Melchite Catholic, Greek Orthodox, Maronite, Nestorian, Serbian Orthodox, Syrian Protestant, Syrian Catholic, Syrian Orthodox, Roman Catholic, Rumanian Orthodox and Russian Orthodox Christians; the Jews;

and the Yezidi, among others. It is largely unclear why the Republic of Turkey does not recognise all the religious communities mentioned here as 'non-Muslim minorities', but only the Armenians, Bulgarians, Greeks and Jews. It has not been possible to clarify whether the authorities have exploited the attestations of loyalty of individual Christian leaders, who have allegedly rejected recognition for their religious communities as 'non-Muslim minorities' on the grounds that they are Turkish citizens first and foremost, and thereafter Christians.¹¹⁶

4.2.2.1 Problems of the unrecognised non-Muslim minorities

Although this study deals with the recognised and unrecognised non-Muslim minorities in separate sections, there is no difference between the two groups in the Treaty of Lausanne.

In practice, the fact that Turkey does not abide by the Treaty of Lausanne has different effects on different people, and these effects also depend on the way interaction is organised between the jurisdictions of the individual religious communities and the official bodies assigned to deal with them. The situation for some of the 'unrecognised' non-Muslim groups is similar to that of the 'recognised' ones. The Arab Orthodox Church in Hatay and the Syrian Orthodox Church in Istanbul and the Tur^cAbdin, for example, have organised their property as community foundations in civil law. There are constantly recurring problems for the Syrian Orthodox Church because it wishes to use its monasteries in the Tur^cAbdin not only for pastoral purposes, but also to train teachers of religion and priests. Unlike the 'recognised' non-Muslim minorities, the Syrian Orthodox Church is not allowed to use its buildings for educational purposes and this has frequently led to state sanctions. Yet in both these monasteries in South-East Turkey there has never been any school-level education, but simply the provision of basic training for future teachers of religion and priests.

■ Roman Catholic Church

The Roman Catholic Church is a special case in this situation, and this has also been true latterly of the Syrian Catholic and Chaldean Churches.

The Roman Catholic Church has three areas of jurisdiction in Turkey: the Archdiocese of Izmir and the Apostolic Vicarates of Istanbul and Anatolia. They have not been recognised as juridical persons by the Republic of Turkey, however, and the bishops are not legally recognised by the state. Irrespective of this, the bishops are treated by state authorities – e.g. the Governor's office in the seat of their diocese and the Presidential Ministry in Ankara – as the leaders of their

religious communities for protocol purposes. A distinctive feature – not only in this context – is that the majority of Roman Catholic believers are not Turkish citizens but foreigners or people who hold dual nationality – Turkish and Italian, for instance. A further peculiarity of the status of the Roman Catholic Church in Turkey is the fact that the Holy See has diplomatic relations with the Republic of Turkey and is represented in Ankara by an Apostolic Nuncio. The distinction between the Holy See and the Roman Catholic Church, i.e. between the Vatican and the Church, remains a perpetual mystery to many representatives of the authorities. The legal relationship between the dioceses or the diocesan bishop and the parishes or church institutions (schools, hospitals etc) is governed by Catholic Church law. There are constant problems over church institutions in Turkey because, in the Turkish view, neither the dioceses nor the religious orders and congregations active in Turkey, which take care of almost all parishes and all church establishments, have legal status. Here is a body that does not exist in legal terms, so how can it own or dispose of property or even acquire new property? And on what legal basis can such a body be actively engaged in pastoral care, education and social work in Turkey? Since even the non-Muslim minorities that are not recognised by the Republic of Turkey are still non-Muslim minorities within the meaning of the Treaty of Lausanne, the guarantee given by Turkey also applies to them (Art. 42, para. 3): *“All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey,”* – i.e. at the time the Treaty was concluded – *“and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.”*

This means that quite apart from the issue of whether a diocese, parish or establishment, or the people who maintain it, e.g. an order or congregation, is recognised as a legal entity in Turkish law, its continued existence is guaranteed if it, or one of the institutions it represents, was already in existence at the time the Treaty was concluded. The fact that the Turkish authorities interpret the Treaty of Lausanne differently has been clearly demonstrated for decades by their constant questioning of the property rights of church institutions and by their confiscation of buildings.

The authorities' line of argument always follows the same pattern, i.e. the building in question is no longer being used, or no longer being used for the purpose originally intended. Furthermore, there is no mention of the owner in the deeds, or the owner recorded in the deeds (e.g. a saint!) is no longer alive and there are no heirs, or the religious congregation in the deeds has no legal status in Turkey and, therefore, cannot own property. 'Amicable' agreements in the past

led to a compensation payment, which entailed the relevant sum of money being paid into a blocked account at a state bank that could not be used. Several times in recent years – particularly in the Apostolic Vicarate of Anatolia – court cases have been brought against the state, some of which have gone all the way to the Court of Appeal and produced a positive result for the Church plaintiffs. It should be remembered, however, that even an appeal court verdict, as experience has shown, does not provide protection against the authorities looking for new ways and means of achieving their ends.

In some instances, the path through all the official channels up to the Court of Appeal has confirmed the negative verdicts of the lower courts. This was the case with a plot of land in Fenerbahçe in the Kadıköy district of Istanbul. A chapel and seminary were built there in 1859 with the Sultan's permission (firman) on a site that belonged to the Church. The relevant entry in the land registry dated 20 September 1910 names the owner as the "Institut de Prêtres Français – Augustins de l'Assomption". By the French-Turkish treaty of 18 December 1913 and a corresponding annexe to the Treaty of Lausanne, French religious establishments in Turkey, including the Institute, were recognised by the Turkish government as French religious establishments and given an assurance that they would be treated exactly the same as comparable Turkish establishments.

To safeguard the upkeep of the buildings the Assumptionists rented out parts of the building and garden to a private enterprise. Thereupon the State Treasury of the Republic of Turkey instituted legal proceedings in the Kadıköy regional court on 7 November 1988 on the grounds that the Institute did not have the right to use the building in question for economic purposes and, by letting it out, was no longer pursuing religious objectives. The aim was to cancel the land registry title and have the plot handed over. On 6 June 1989, the Kadıköy regional court dismissed the case, referring to the Turkish Republic's guarantees quoted above concerning the continued existence of the establishments. The Court of Appeal upheld a counterclaim by the Turkish Treasury on 18 May 1990, quashed the verdict of the lower court and referred the case back to the court of first instance on the grounds that "*the permission to acquire property that was granted to foreign juridical persons by the Ottoman Empire pursuant to a law of 1868 for the purpose of erecting religious, educational and social establishments such as churches, convents, schools, hospitals, dispensaries, presbyteries, was granted on condition that the buildings in question would be used in accordance with their original purpose.*" Moreover, these foreign establishments had to have been recognised in law as juridical persons before 30 October 1914 and should not pursue any economic objectives. The institute in question had no legal personality – as required

by Art. 3 of the Land Registry Law (Tapu Kanunu) of 1934 – and was not recognised by the Turkish state. In its verdict of 5 April 1993 the Kadıköy regional court followed this view, upheld the legal action taken by the State Treasury of the Republic of Turkey and ruled that the State Treasury of the Republic of Turkey was to be registered as the owner and – for a part of the building in question – the Directorate-General of Foundations (Vakıflar Genel Müdürlüğü), which had endorsed the Treasury's action. The Institute initiated proceedings for annulment against this verdict. On 12 April 1994, the Court of Appeal confirmed the contested verdict and finally turned down an appeal against it lodged by the Institute on 19 September 1994.

The Assumptionists then lodged an appeal against the Republic of Turkey with the European Court of Human Rights (ECHR) in Strasbourg on 18 January 1995. They argued that transferring ownership of their land in the land registry to the State Treasury of the Republic of Turkey and the Directorate-General of Pious Foundations infringed the property rights of the Institute and disregarded the freedom of religion guaranteed by Article 9 of the European Convention on Human Rights. At the end of 2000 a settlement was reached between the parties to the dispute, whereupon the ECHR declared the proceedings closed on 14 December 2000. The settlement provides for the entry in the land registry to remain in favour of the State Treasury of the Republic of Turkey and the Directorate-General of Pious Foundations, but that these organisations will recognise the right of the Assumptionists to complete use and usufruct of the land and buildings and to have this recorded in the land registry. The Assumptionists, for their part, had to undertake to pay out a reasonable proportion of future rental income to the other parties.

One may, of course, wonder whether the result of this dispute was really a fair settlement. The Assumptionists have lost their property and it was the property that was the original cause of the argument. The Turkish state does not yet have possession of the property, which is now recognised as its own, but it can wait. Proof of the Assumptionists' actual ownership could not really be produced, despite the fact they were listed as the owners in the land registry, and their right of ownership was obviously not challenged by the Turkish courts. They were only able to prove that they had been allowed to build a chapel and seminary, but not that the plot of land in question had come to them as a gift. The Turkish state is likely to exploit the fact that in many cases the relevant documents will not be able to be produced. In such instances it will be "willing to reach a settlement", too.

■ Catholic United Churches

In principle, everything that has been said about the legal status of other churches and their leaders is also true of the United Churches in Turkey, i.e. the Armenian Catholic, Chaldean and Syrian Catholic Churches. The parishes and establishments of the Armenian Catholic Church¹¹⁷, like those of the Armenian Orthodox Church, are without exception organised as community foundations (cemaat vakif) and have to wrestle with the same problems as comparable foundations within the Armenian Orthodox Church. The parishes and establishments of the Chaldean and Syrian Catholic Church in South-East Turkey, e.g. in Diyarbakir and Mardin, are also maintained by community foundations. Their problems are multiplying, because in both cases there are only very few believers left in South-East Turkey and it is already difficult to elect administrators. In view of these experiences both churches in Istanbul have tried to find other legal solutions in respect of the title holders of their buildings.

In 1997, the Syrian Catholic Church managed to set up a foundation that is not a community foundation yet still has the purpose of maintaining a building for use as a church and the promoting of church life. It is quite clear in the charter of the foundation that there is a direct connection between it and the Syrian Catholic Patriarchal Vicariate. The foundation uses and manages a building in Istanbul, which was built by the Jesuits in the early 20th century and recorded as theirs in the land registry at the time. When the last Jesuit left Istanbul in 1984, the Roman Catholic Apostolic Vicariate of Istanbul placed the building at the disposal of the Syrian Catholic Patriarchal Vicariate for its work. It soon became clear that the building was de facto, i.e. according to the relevant entry in the land registry, not the property of the Jesuits but of the State Treasury of the Republic of Turkey. How and when the state had the original owners, the Jesuits, replaced in the land registry by the Treasury, is unclear. The authorities let the newly-founded Syrian Catholic foundation have use of the building in question for 99 years free of charge in exchange for a small building in a different part of town. This shows that the authorities were perfectly aware in this case – as in many similar cases – that there was something shady about the way the entry in the land registry had been changed.

The Chaldeans have pursued a different route. The building they use in Istanbul has been registered for a long time as the property of the respective bishop as a private individual, which would inevitably have led to arguments between the Church and the bishop's family had the bishop died. But the Chaldeans have now set up a public limited company, the only function of which is to manage and maintain the building, and it is quite clear from the articles of association that there is a direct connection between the plc and the Chaldean Archdioce-

se of Amida. The advantage of this solution over the Syrian Catholic Foundation's solution is that the plc is the owner of the building, while in the case of the other foundation it is the Turkish Treasury that is the owner. Unfortunately the legal problems of the community foundations of the Chaldean and Syrian Catholic Churches in South-East Turkey are still far from being solved.

■ Establishing new religious and charitable institutions

In the Treaty of Lausanne the Republic of Turkey not only gives a guarantee of continued existence to establishments of the non-Muslim minorities already in place at the time of the Treaty, but also promises that “*the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature*” (Article 42, para. 3, clause 2, sub-clause 2 TL). In recent years, the Apostolic Vicariate of Anatolia, for example, has tried to set up new centres in Tarsus and Cappadocia. In both cases there have been protracted and as yet unresolved court cases over the acquisition of buildings, and Church and state have confronted each other as plaintiff and defendant. Thus the state is not only refusing help, though it promised the opposite in Article 42, para. 3, clause 2, sub-clause 2 of the Treaty of Lausanne, but is also actively working to obstruct the establishment of new religious institutions.

These problems are also faced by the non-Muslim religious communities (churches, sects, groupings) which only commenced their activities in Turkey after the Treaty of Lausanne was concluded.

5. Summary

Does secularism mean religious freedom? The point of departure is clear. The founding fathers of the Republic of Turkey – and Atatürk above all – understood secularism to mean the strict separation of state and religious affairs. The Constitutional Court later argued along the same lines that, when faced with a religion like Islam, which does not separate religion and state, the principle of secularism must inevitably lead to a marked inflexibility. The battle for supremacy would necessarily be fiercer here than it would in a system in which the predominant religion accepted the principle of separation.¹¹⁸ Is this pure theory or does it describe the current situation in Turkey? It can hardly be maintained that the battle for supremacy is being waged with particular severity against Islam – or rather against Sunni Islam. The General Staff in particular have demanded over and

over again that it should be fought with such severity, but clearly without any visible long-term result. How else could officially banned Islamic (Sunni) brotherhoods like the Nakchibendi or new Islamic groups like the Nurculuk movement, which were previously persecuted by the state, have developed and flourished in full public view to an extent that would have been almost unthinkable in the 1960s and 1970s? And how else could the Department of Religious Affairs, once intended to be a weapon against Islam or at least to exert strict control over Islam, have achieved an annual budget of 471,4 million €¹¹⁹ in the year 2000 and operate with a staff of 90,000? The state no longer monitors Islam, the state has taken over control of its own variant of Sunni'ism and is managing and supporting it. Turkey has to some extent become an "Islamic" or rather "Sunni" Republic.¹²⁰ Is freedom of religion guaranteed in this kind of environment?

Religious freedom includes freedom of belief, freedom of worship and devotional freedom, understood as meaning the right to undisturbed religious practice. The constitutional counterweight to freedom of religion is the duty of the state to observe religious and ideological neutrality. The religious neutrality of the state undoubtedly does not exist in Turkey. So the only people who are really guaranteed religious freedom are those who profess the state-supported variant of Sunni Islam.

The Alevis, on the other hand, are simply the beneficiaries of the current opportunistic state policy, which means the state authorities no longer doubt that the Alevis are part of Turkish Islam and that certain Alevi institutions are also partly funded by the state. But the Alevis still do not receive equal treatment in the true sense of the word.

In its dealings with the non-Muslim minorities, the state is not only contravening the principle of equality before the law contained in the constitution, and particularly its duty of religious neutrality, but is also in permanent contravention of the Treaty of Lausanne, in which it unmistakably pledged to give equal treatment to the non-Muslim minorities. In this context the international community as a whole, and the signatories to the Treaty of Lausanne in particular, should be asking themselves why they have tolerated this unacceptable behaviour by the Republic of Turkey for the past 79 years.

But it is not only the state's obvious negligence of its duty to observe religious neutrality that gives rise to doubts as to whether freedom of religion prevails in Turkey. The freedom of belief of Alevi schoolchildren is called into question by their having to receive compulsory Sunni Islam religious instruction. The same applies to Christian children's freedom of belief in view of the lack of Christian religious instruction at state schools. The freedom of worship of all Turkish citizens is also undermined by them having to state their religious affiliation in their identity cards.

Finally, the devotional freedom of the non-Muslim religious communities is undermined by the fact that the legal status of their institutions and establishments, as documented in the Treaty of Lausanne, is not recognised by the Republic of Turkey.

So does secularism mean religious freedom? At the moment the Turkish version of secularism certainly does not.

Appendix

Treaty of Lausanne – Section III (Protection of minorities)

Article 37 – Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

Article 38 – The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

Article 39 – Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

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

Article 41 – As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

Article 42 – The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

Article 43 – Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

Article 44 – Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

Article 45 – The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.

Footnotes

- 1 Turkey, in Fischer Weltalmanach 2001, Frankfurt 2001
- 2 Andrews, Peter Alford; Benninghaus, Rüdiger (ed): Ethnic Groups in the Republic of Turkey. Wiesbaden 1989
- 3 Statistics Division and Population Division of the United Nations Secretariat – Social Indicators Homepage = <http://www.un.org/Depts/unsd/social/youth.htm#srce>
- 4 Rotter, Gernot: The bad conscience of the Caliphs – Kemalism, Nasserism, Baath Party: Islam separates religion and state differently from the West. In DIE ZEIT No. 41 (4 October 2001)
- 5 Law No. 2709 of 18 October 1982, Reg. No. 17844 of 20 October 1982 and No. 17863bis of 9??mber 1982
- 6 Madde 2 – Türkiye Cumhuriyeti....laik...bir...devletidir.
- 7 Constitutional Amendment Act No. 3115 of 5 February 1937.
- 8 Kemal Dayınları's Dictionnaire des termes juridiques Français – Turc. Fransızca – Türkçe Hukuk Terimleri Sözlüğü, Ankara 1981, contains the following explanation under the French headword 'laïcité': "Secularism is the property of being secular. [Secularism] is the principle of not mixing religious matters and state matters."
- 9 Rumpf, Christian: The Turkish Constitutional System. Introduction with complete text of the constitution. Wiesbaden 1996, p. 106 and: Rumpf, Christian: Secularism, fundamentalism and freedom of religion in Turkey in constitution, law and practice. In: Constitution and Law Overseas (VRÜ) 32 (1999) p. 166.
- 10 Quoted from Rumpf, C. Secularism ..., (VRÜ) 32 (1999) p. 166.
- 11 Ibid, p. 167
- 12 Section III is printed here as an appendix.: <http://www.hri.org/docs/lausanne/>
- 13 Cf. also F. Spuler-Stegemann: Islam. In: South-East Europe Handbook Vol. IV – TURKEY. Göttingen 1985, p. 595.
- 14 On the debate about the future of the Department of Religious Affairs, cf. also Dirk Tröndle: The debate about Islam and its institutionalisation in Turkey – the Diyanet İşleri Başkanlığı in a clash of opinions since the restoration of democratic conditions. [Paper for the Master of Arts degree at Ludwig Maximilian University, Munich], Munich, 1999.
- 15 Abuse of constitutional rights and freedoms.
- 16 Art. 163: "[1] Whoever uses religion, religious feelings or objects held sacred by a religion in any way or for any reason to encourage the population to perform actions that endanger the security of the state, or whoever forms organisations for this purpose, will be punished with imprisonment, even if the encouragement or the attempt to form an organisation has been unsuccessful ... [3] It is prohibited to form political organisations on the basis of religious feelings and opinions. Founders, leaders and members of such organisations will be punished in accordance with the regulations in the first paragraph." (The Turkish Penal Code of 1 March 1926 – translated into German by Kurt Ziemke. Berlin, Leipzig 1927); the purpose of Art. 163 of the TPC was to prohibit anti-secularist propaganda, which originally meant propaganda in favour of the dominant religion, i.e. Islam.
- 17 Rumpf, Christian: The principle of secularism in the legal system of the Republic of Turkey. JöR 36 (1987), p. 209 ff.
- 18 Cf. e.g. Mehmet Cemal: Yüztaltmışıç. İstanbul 1974 (Critical examination of Art. 163 TPC from an orthodox Islamic standpoint – contains numerous references to sentences passed in accordance with Art. 163) and: Bekir Berk: Türkiye' de Nurculuk Davası. 3rd edition, İstanbul 1974 and: Dünya hukuk tarihinde emsalsiz bir hadise! Risale-i Nur ve T.C. Mahkemeleri. 785 Beraset kararları ve Bilirkişi raporları. İstanbul 1981 (both publications contain numerous reports of trials of the Islamic fundamentalist Nurculuk movement).
- 19 In actual fact the Turkish criminal prosecution authorities have in many cases also relied on Art. 163 to prosecute Christian sects and missionary societies. In practice, Articles 159 and 312 TPC have replaced the deleted Art. 163.
- 20 Law No. 3713 of 12 April 1991, Reg. No. 20843bis of 12 April 1991.
- 21 Art. 241: "Religious practitioners such as imams, Friday preachers, mosque preachers, priests (monks), rabbis, who in the fulfilment of their office publicly revile and disparage the government, the laws of the state and the actions of the government, will be punished with imprisonment and/or a fine." Quoted from: The Turkish Penal Code. Translated into German and with an introduction by Silvia Tellenbach, Freiburg 2001.
- 22 Rumpf, Christian: The Turkish Constitutional System. Introduction with complete text of the constitution. Wiesbaden 1996, p. 245
- 23 Gerekçeli Anayasa – M.G.K. Değişiklik gerekçeleri ile birlikte [The Constitution with explanatory notes – with the differing explanatory notes of the National Security Council], Ankara 1984
- 24 On 22 August 1990, the daily newspaper Cumhuriyet published a decision by the High Council on Education stipulating that Christian and Jewish children attending schools that were not minority schools would, in accordance with a proposal by the Ministry of National Education, no longer be required to take part in compulsory religious and ethical education classes.
- 25 Cf. my detailed expert statement of 25 May 1988 on: VG Düsseldorf A20K 11589/87
- 26 Estimate July 2001; cf. CIA-The World Fact Book 2000 = <http://www.cia.gov/cia/publications/factbook/geos/tu.html>
- 27 The "Report on a visit to Turkey by an EKD delegation", EKD Press Service, 8 May 2001 (http://www.ekd.de/presse/397_4904.html) mentions "approximately 150,000 Christians of Armenian, Syrian Orthodox and Greek Orthodox origin". In my view there is no evidence for these figures.
- 28 The number of Yezidi living in Turkey has gone down in the past 25 years from 20,000 members to 150. (<http://www.yezidi.org/>)
- 29 <http://www.hakder.nl/engels.htm>
- 30 Cf. the reference to their study "La mémoire collective du groupe alevi en Turquie et dans la diaspora: traces, usages et production des souvenirs" at: http://www.cnrs.fr/cw/en/n_omi/prix/seurat00.html
- 31 David Zeidan: THE ALEVI OF ANATOLIA in: MERIA Middle East Review of International Affairs 3.1999.4 (= <http://www.biu.ac.il/SOC/besa/meria/journal/1999/issue4/jv3n4a5.html>) or <http://www.angelfire.com/az/rescon/ALEVI.html>)
- 32 Karin Vorhoff, 1995. Between faith, nation and new community: Alevi identity in modern Turkey, pp. 32-33. Some 25 per cent of Kurds in Turkey are Alevi (Kurmanji and Zaza speakers). Quoted from Zeidan, ibid.
- 33 David Zeidan, op. cit.
- 34 <http://www.hakder.nl/engels.htm>

- 35 <http://www.biblesociety.org/bs-tur.htm> The proportion of Sunni Muslims in the population is put by Amanieli Bağdaş, Executive Secretary of the Bible Society in Turkey, at 68%; Alevi 30%, Christians (mainly Orthodox) 0.3%, and other religious communities 1.7%.
- 36 Estimate July 2001; cf. CIA-The World Factbook 2000 <http://www.cia.gov/publications/factbook/geos/tu.html>
- 37 "Report on a visit to Turkey by an EKD delegation", EKD Press Service, 8 May 2001 (http://www.ekd.de/presse/397_4904.html)
- 38 On the number of Armenians (of all denominations) living in Turkey, see Otmar Oehring: Expert statement of 5 April 1995 to VG Stuttgart, A3K 12178/94
- 39 Greek Helsinki Monitor (GHM) estimated there must be some 1,000-15,000 persons left (the community itself gives an estimate of 1,500-2,000); cf.: <http://www.aimpress.org/dyn/trae/archive/data/200002/00201-001-trae-ath.htm>
- 40 Source: Annuario Pontificio per l'Anno 2001. Città del Vaticano 2001
- 41 http://www.mersina.com/lib/turkish_jews/history/today.htm or <http://www.ataa.org/ataa/ref/jewish/turkishjews.html>
- 42 Jews of Spanish-Portuguese or Oriental origin
- 43 Jews of Eastern or Central European origin
- 44 Jewish sect that only acknowledges the Old Testament, not the Talmud and the rabbinical tradition. They do not acknowledge the authority of the Chief Rabbi.
- 45 Followers of Sabbathai Z'wi (b. 1626, Izmir – d. 1651, Albania), a Jewish pseudo-Messiah – converted to Islam to avoid the death penalty. Cf.: Ilgaz Zorlu: Unutulmuş Bir Etnik Cemaat: Türkiye'li Sabetayıcılar ([http://www.atmosphere.be/web/ercan/sabatay1\[-7\].html](http://www.atmosphere.be/web/ercan/sabatay1[-7].html))
- 46 (=apostates) Jewish-Islamic sect founded in Salonika in 1687 by Jakob Querido Z'wi, brother-in-law of the Islamic convert, Sabbathai Z'wi, from among his followers.
- 47 Referring to someone as a "Dönme" can be positive or negative, depending on the context.
- 48 T.B.M.M. Tutanak Dergisi, Dönem 19, Cilt84 Yasama Yılı 4, 19.54.1995, 453-453 – quoted from Engin, Ismail: Türkiye'de Parlamento (T.B.M.M.) Tutanaklarında Alevi Sorunu; 1989-1997 Yılları Arasında Alevilik Olgusunun Sorununa Dönüşmesi. In: YOL, 3(Ocak/Şubat 2000), p. 98
- 49 The National Order Party (Millî Nizam Partisi) was banned by the Turkish Constitutional Court on 20 May 1979; its successor, the National Salvation Party (Millî Selamet Partisi), was abolished following the military coup of 12 September 1980. With the return to democracy in 1983, the Welfare Party (Refah Partisi) was founded as a successor organisation, but was banned by the Turkish Constitutional Court on 16 January 1998. Its successor, the Virtue Party (Fazilet Partisi), was banned on 22 June 2001.
- 50 The Nationalist Action Party (Milliyetçi Hareket Partisi) was abolished after the military coup of 12 September 1980. The party was re-founded in 1987 under the same name.
- 51 Cf. the report of the Police Committee to the Government Committee in Ankara (B.05.I.EGM.4.06.00.12.02 D (T) 06-063-079/147832) of 25 June 2001 "To the Executive Committee of the Association of Alevi-Bektashi Institutions in the legal form of a Cultural Association" concerning "defects in the statutes".
- 52 Cf. <http://www.cemvakfi.org/cemvakfi.htm>
- 53 Professor of International Law at Galatasaray University, Istanbul
- 54 The Alevi, who are aligned with the Kurdish separatist PKK, are inevitably not organised in Turkey. In Germany they are organised as the "Federation of Kurdish Alevi" based in Cologne.
- 55 Converted at the rate on 23 October 1998 (www.oanda.com)
- 56 Milliyet, 23 October 1998 = <http://www.milliyet.com.tr/1998/10/23/entel/entel.html>
- 57 Özgürpolitika, 18 October 2000 = <http://www.ozgurpolitika.org/2000/10/18/allhabb.html>
- 58 The courts are forbidden to interpret the reform laws explicitly referred to in Art. 174 TConst'82, including Law No. 677, as unconstitutional. It is not ruled out that they can be amended or annulled by legislative acts, though these would have to comply with the constitution, its secular content and the sense and purpose of Art. 174 TConst'82. See Christian Rumpf: The Turkish constitutional system, op. cit. p. 112.
- 59 Of 7 February 2001 = <http://www.zaman.com.tr/2001/02/07/dizi1/dizi1.htm>
- 60 Acceded to the position of leader of the Turkish Nakchibendi Brotherhood on 13 November 1980 upon the death of the previous leader, Mehmed Zahid Kotku, and in accordance with his wishes.
- 61 Among these are "Women's associations" (Hanım Dernekleri), "Scientific, moral, cultural and environmental associations" (İlim, Ahlak, Kültür ve Çevre Dernekleri), numerous branches of the "Foundation of the Way of the One True Religion, Islam" (Hakyol Vakfı), the "Foundation for Knowledge, Culture and Art" (İlim, Kültür ve Sanat Vakfı) and the "Health Foundation" (Sağlık Vakfı) and health care institutions – polyclinics and hospitals – under the name of "Haksız Sağlık Hizmetleri" (health care institutions of the One True Religion, Islam).
- 62 Among these are the religious magazine *İslam*, the women's magazine *Kadın ve Aile* (Woman and Family), the children's magazine *Gül Çocuk* (Rose Child), the health and science magazine *Panzehir* (Antidote). Publishing activities were pooled in the *Şeha Nesriyat* publishing house (Generosity Publications).
- 63 'ak' in Turkish means white, pure, unsullied. The station can now be received terrestrially and by satellite in over a hundred places.
- 64 http://www.turkishdailynews.com/old_editions/12_26_97/dom.htm
- 65 <http://www.enfal.de/gun17.htm>
- 66 The mother and brother of late President Turgut Özal – who was at least in sympathy with the Nakchibendi Brotherhood – were buried here with written permission from the Council of Ministers, as was Muhammed Zait Kotku, Coşan's predecessor as leader of the Nakchibendi Brotherhood.
- 67 <http://www.ozgurpolitika.org/2001/02/08/hab09b.html>
- 68 Cf. the commentary by Mehmet Metiner in: *Özgürpolitika*, 12 February 2001 (<http://www.ozgurpolitika.org/2001/02/12/allkosb.html>)
- 69 Now chairman of the Islamic fundamentalist "Saadet Partisi" (SP) (Purity Party), which was founded by conservatives within the banned Virtue Party.
- 70 Now chairman of the Islamic fundamentalist "Adalet ve Kalkınma Partisi" (AKP) (Justice and Development Party), which was founded by innovators within the banned Virtue Party.

- 71 http://www.turkishdailynews.com/old_editions/02_10_01/dom.htm#d9
- 72 cf. Hamid Algar: The Nakchibendi Order in Republican Turkey. In: Yearbook of History and Society in the Near and Middle East 1984 – Subject: Islam and Politics in Turkey (ed. by Jochen Blaschke and Martin van Bruinessen) p. 186, footnote 26: "See, for example, the article in *Milliyet*, 3 June 1977, on the imprisonment of six Nakchibendi in Kozan."
- 73 Started in the 1930s; leader: Kemal Pilavoğlu; aim: overthrow of the existing secular system and establishment of an Islamic theocratic state; events: February 1949 – intoning the call to prayer (ezan) in Arabic in the plenary chamber of the Turkish parliament, also 1949 – destroying monuments to Atatürk in Çubuk/Ankara and Şabanözü/Çorum; 1951, Pilavoğlu and 74 of his followers sentenced to long terms of imprisonment; group still active underground, sale of pamphlets in the streets into the 1980s (Spuler-Stegemann: *Islam* op. cit. p. 608; own observations!); a section of the Ticanis has probably joined the Nurcus; links between the radical Acizmendiler, a breakaway group of the Nurcus and the Ticanis?! (Orhunlu, Bilge: Nurs'lu kürt Said'den, Fethullah Gülen'e! (Nurculuk, Kürtçülük, Emeryalizm) in: *Yeni Hayat Aylık Dergi – Ocak 1997 (Sayı 27)* (=http://www.yenihayat.org/dergi/1997/27/index.html); refers to Çetin Özek, Devlet ve Din. Istanbul.1982, p. 552-553; Tarık Zafer Tunaya, İslâmcılık Cereyanı. Istanbul 1962, pp. 220-223; Neşet Çağatay, Türkiye'de Gerici Eylemler. Ankara 1972, p. 42-43)
- 74 Spuler, U.: The organisational structure of the Nurculuk Movement. In: Roemer, H. R.; Noth, A. (ed.) *Study of the History and Culture of the Near East. Commemorative publication for B. Spuler, Leiden 1981*, pp. 423-442. In October 1980, during a conversation with representatives of the Yeni Asya Publishing House, I was told there were about 3 million Nurcus (Oehring, Otmar: Turkey in the Crossfire of Extreme Ideologies (1973-1980). An investigation of political relations. Berlin 1984, p. 217.)
- 75 Cf. Bekir Berk: Türkiye'de Nurculuk Davası. 3rd edition, Istanbul 1974. Also Dünya hukuk tarihinde emsalsiz bir hadise! Risale-i Nur ve T. C. Mahkemeleri, 785 Beraet kararları ve Bilirkişi raporları. Istanbul 1981 (both publications contain numerous details of the trials of the Islamic fundamentalist Nurculuk movement.)
- 76 <http://www.saidnur.com/>
- 77 Circulation of Nurcus newspapers, 2000: Yeni Asya: 5.721, Yeni Nesil: 5.710; Zaman, the daily paper of the Movement of the Disciples of Fethullah Gülen, a splinter group of the Nurculuk movement, achieved a circulation of 181.354 in 2000. Source: İlan Kurumu ve Gazetelerin Genel Merkezleri – <http://www.ibt.gov.tr/istanbultr/380/38002/2001/medya/images/t289.pdf>
- 78 <http://www.yeniasya.org.tr/html/vakif.html>
- 79 <http://www.yeniasya.org.tr/html/enstitu.html>
- 80 <http://www.yeniasya.org.tr/html/lisans.html> – I have been unable to find out whether this two-year course is recognised by a state or private Turkish college.
- 81 Of the Brother Life children's annex (Can Kardeş Çocuk Köşkü) for pre-school children, and the Brother Life children's club (Can Kardeş Çocuk Kulübü) for children at middle and secondary schools.
- 82 <http://www.yeniasya.org.tr/>
- 83 Çetin Özek: Din ve Devlet. Istanbul 1977, p. 104
- 84 http://www.turkishdailynews.com/old_editions/01_24_97/feature.htm
- 85 The Turkish text of the Treaty is quoted here from the translation by Seha L. Meray: Lozan Barış Konferansı – Tutanaklar – Belgeler. Istanbul 1993 (the text of the Treaty is printed in Volume 8)
- 86 "The Treaty of Lausanne, signed on 24 July 1923 in place of the Treaty of Sèvres, did not even mention the Armenians." (<http://www.mfa.gov.tr/grupe/eg/eg10/09.htm>)
- 87 Cf. e.g. the relevant statement on the website of the Turkish Embassy in Washington: "The only officially recognized minorities are religious (Greek Orthodox, Jewish, Armenian Orthodox), as stipulated in the 1924 Lausanne Peace Treaty." (<http://www.turkey.org/politics/hrter.htm>)
- 88 Lüttem, Ömer E. The Past and Present State of the Turkish-Bulgarian Relations. In: *Dış Politika – Foreign Policy*, Vol. XXIII (1999) (http://www.foreignpolicy.org.tr/ing/articles/olutem_v23.html)
- 89 This also applies to the spiritual leader of the small Bulgarian Orthodox community in Istanbul.
- 90 Consisting of one Rosh Bet Din and three Hahamim.
- 91 <http://www.hagalil.com/galluth/il-turk.htm#prior>
- 92 Interview with Patriarch Mesrob Mutafyan, CNN Turk, 27 September 2000 21:15; Interview with Patriarch Mesrob Mutafyan, ZAMAN, 26 November 2000
- 93 The Boğaziçi Üniversitesi evolved out of Roberts College, for example. Cf. also the article FENER RUM ORTODOKS PATRİKHANESİ VE HEYBELİADA RUHBAN OKULU (<http://www.turkatak.gen.tr/guncel/rum.htm>)
- 94 Diaspora Newsletter, Issue 14, 2 Sept. 1994 (<http://www.anemos.com/Diaspora/fanari/halki.html>)
- 95 Panayote Elias Dimitras: Dwindling, Elderly and Frightened? The Greek Minority in Turkey Revisited. In: AIM Athens, 31 January 2000 (<http://www.aimpress.org/dyn/trae/archive/data/200002/00201-001-trae-ath.htm>)
- 96 This means essentially the foundations of the non-Muslim minorities!
- 97 In the version of the amendment to Law 5404 of 31 May 1949
- 98 Istanbul Region (west bank of the Golden Horn); Beyoğlu Region (east bank of the Golden Horn and European side of the Bosphorus); Kaldıköy Region (Asiatic part of Istanbul); Prince's Islands Region.
- 99 More detailed treatment of this problem: Yuda Reyna; Yusuf Şen: Cemaat Vakıfları ve Sorunları [The Community Foundations and their Problems]. Istanbul 1994, p. 54 ff (Cemaat Vakıflarının Vergi Hukuku Bakımından Durumları [The Community Foundations in Relation to Tax Law])
- 100 Known as "1936 Beyannameyi"
- 101 Cf. Yuda Reyna; Yusuf Şen op. cit. p. 28; cf. also http://www.turkishdailynews.com/old_editions/02-10-01/features.htm
- 102 In many cases the state does not seem to have made much effort to trace possible heirs living abroad. In addition, the probate courts in Istanbul regularly refuse to issue certificates of inheritance for heirs of members of non-Muslim minorities resident abroad. In this way they obviously hope to be able to confiscate the buildings in question at some point.
- 103 Panayote Elias Dimitras: Dwindling, Elderly and Frightened? The Greek Minority in Turkey Revisited. In: AIM Athens, 31 January, 2000 (<http://www.aimpress.org/dyn/trae/archive/data/200002/00201-001-trae-ath.htm>)
- 104 <http://www.persecution.org/humanrights/turkey.html> and http://www.religiousfreedom.lib.virginia.edu/freedomalert/HRWF_Turkey/990507Turkey.html

- 105 Sungurbey, Ismet: Eski Vakıflar Temel Kitabı. İstanbul 1978
- 106 Cf. the statement of Patriarch Mesrob Mutafyan, LRAPER Church Bulletin 23 September 2000; Interview with Patriarch Mesrob Mutafyan, CNN Turk, 27 September 2000 21:15; Interview with Patriarch Mesrob Mutafyan, ZAMAN, 26 November 2000
- 107 At the end of the 1987/1988 school year there were 21 Armenian Orthodox or Armenian Catholic educational establishments operating in İstanbul; at the end of the 1992/1993 school year there were 20.
- 108 Otmar Oehring: Expert statement of 5 April 1995 to VG Stuttgart, A3K 12178/94
- 109 The so-called Arab Orthodox Christians are Greek Orthodox Christians whose mother tongue is Arabic. The head of their church is the Melchite (Greek Orthodox) Patriarch of Antioch (headquarters in Damascus). Usually these Christians are not treated as 'Greeks' by the Turkish authorities.
- 110 Panayote Elias Dimitras, op. cit.
- 111 <http://www.hagalil.com/galluth/il-turk.htm#prior>
- 112 Ermeni Doğu Ortodoks'u or Ermeni Gregoryan
- 113 <http://www.hyetert.com/yazi3.asp?s=1&AltYazi=Kaynaklar+%5C3E+Sorunlar%FDm%FDz%Id=15&Dilld=1>
- 114 Hürriyet, 10 March 1999
- 115 Patriarchate of Antioch (Antakya, TR) present-day seat: Damascus
- 116 Several people I have spoken to in Turkey have said it was reported that the Chaldean and/or Nestorian or Syrian Catholic or Syrian Orthodox Patriarch at the time of the signing of the Treaty of Lausanne spoke about this. It has not been possible to verify these reports.
- 117 In general, the Armenian Catholic Church is counted as one of the 'recognised' non-Muslim minorities.
- 118 Cf. footnote 1!
- 119 Rıza Zelyut: 5 bakanlık 1 Diyanet etmiyor. AKŞAM, 27 December 1999 = <http://www.aksam.com.tr/arsiv/aksam/1999/12/27/yazarlar/yazarlar20.html>
- 120 Cf. also U. Spuler-Stegemann: Islam. In: South-East Europe Handbook Volume IV, Turkey. Göttingen 1985, p. 595

Abbreviations

| | |
|-----------|--|
| AP | Adalet Partisi (Justice Party) |
| AKP | Adalet ve Kalkınma Partisi (Justice and Development Party) |
| ANAP | Anavatan Partisi (Motherland Party) |
| CEM | Cumhuriyetçi Eğitim ve Kültür Merkezi (Republican Educational and Cultural Centre) |
| CHP | Cumhuriyet Halk Partisi (Republican People's Party) |
| CKMP | Cumhuriyetçi Köylü Millet Partisi (Republican Peasant Nation Party) |
| DP | Demokrat Partisi (Democratic Party) |
| DYP | Doğru Yol Partisi (True Path Party) |
| FP | Fazilet Partisi (Virtue Party) |
| MGK | National Security Council |
| MHP | Milliyetçi Hareket Partisi (Nationalist Action Party) |
| MNP | Millî Nizam Partisi (National Order Party) |
| MSP | Millî Selamet Partisi (National Salvation Party) |
| RP | Refah Partisi (Welfare Party) |
| SP | Saadet Partisi (Purity Party) |
| TBP | Türkiye Birlik Partisi (Turkish Union Party) |
| TConst'61 | Turkish Constitution of 1961 |
| TConst'82 | Turkish Constitution of 1982 |
| TL | Treaty of Lausanne |
| TPC | Turkish Penal Code |