



## COMMENTARIES

#7

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### Minorities in Turkey I: Law and Reform

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*Executive summary: Here I uncover the relationship between the term “Turk” (an ethno-religious term that, in some usages covertly, in some overtly, avers that Turkey is the land of ethnic Turks, and that only Muslims are considered Turk), and the concepts of race and religion. A critical period for the advancement of human rights and minority rights in Turkey occurred in the early 2000s, when the parliament adopted a series of reform packages in order to harmonize the country’s laws with those of the European Union (EU). I propose to examine a case of these most radical democratic reforms carried out since the establishment of the republic, in order to understand how these reforms have been put into practice. I also trace the deviation from these reforms after 2005, by examining the subsequent laws and practices that undo or undermine them, and discuss their implications, particularly for Kurds in case of the deterioration under the state of emergency (Olağanüstü Hal, or OHAL), declared in response to the July 15, 2016 coup attempt.*

Turkey’s policy concerning its official minorities is founded on the ethno-religious cleansing of non-Muslims; its policy concerning the non-official minorities is based on the assimilation of Muslim groups, in particular Kurds. We shall approach this matter first in terms of the legislative and executive powers, then in terms of the judiciary.

The basic source of this approach is a mentality found in Art. 3/1 of the 1982 Constitution, which was created in the wake of the September 12, 1980 military coup: “The State of Turkey, with its territory and nation, is an indivisible entity. Its language is Turkish.” The monist understanding that

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finds expression in this provision of the Constitution is a 1930s-model basic principle of the nation-state, exacerbated in form by the 1980 military coup. Such an understanding leads almost inevitably to the claim that there are no minorities in the country (aside from those compulsorily accepted in Lausanne), and thus no minority rights. Objections to this understanding are met with punishment. This understanding is repeated in countless laws, and Turkish regulations are filled with instances of such a concept of nation-state in practice.<sup>2</sup>

The concept of “state language” is contrary to democracy and, indeed, is illogical. A state cannot have a language; it can only have an “official language”, and in that state, many languages are spoken and written in addition to the official language. Accordingly, the 1961 Constitution, the most democratic constitution in Turkey to date, preferred the term “official language”. The most typical example of how the wish to preserve the “indivisibility of the nation” in linguistic terms may injure democracy, is very likely Law No. 2932, issued in 1983 by the September 12 military administration. This law (which appeared earlier in a footnote examining Lausanne) was lifted in October 2001 in the process of EU reforms, yet the mentality in question persists in the wording of many laws. (Examples of such laws that have been subsequently lifted will be specified where appropriate.)

The ban on using a language other than Turkish is found in the wording of Art. 58 of the 1961 Electoral Law (no. 298), amended, on May 17, 1979, by Law No. 2234: “It is forbidden to use, in speech or writing, a language other than Turkish in propaganda broadcasts on radio or television, or in other forms of election propaganda.”<sup>3</sup>

Tahir Elçi<sup>4</sup> and Mahmut Vefa from the Diyarbakir Bar Association were judged and sentenced on account of the fact that in certain congresses over

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<sup>2</sup> Law 3713 and Art. 1 of the 1991 Law on the Fight Against Terrorism, define terror in this way: “all manner of acts undertaken by a person or people belonging to an organization, aiming to undermine the indivisible unity of the state with its territory and nation.” The phrase “the indivisible unity of the state with its territory and nation.” is repeated word for word in Art. 8 and Additional Art. 7 of the Law on Police Powers (1934, No. 2599), in Art. 5/A of the Law on Turkish Radio and Television (no. 2954), in Art. 4 of the Law on the Establishment and Broadcast of Radios and Televisions (no. 3984), articles 44 and 55 of the Law on Associations (no.2908), and in articles 78 and 101 of the Law on Political Parties (no. 2820).

<sup>3</sup> <http://www.mevzuat.gov.tr/MevzuatMetin/5.4.298.pdf>, pp. 694-716. This article was previously softened by Law 5980, dated April 8, 2010: “It is essential that political parties and candidates use Turkish in the propaganda they carry out.” (<http://www.mevzuat.gov.tr/MevzuatMetin/5.4.298.pdf>, pp. 694-724). This was further liberalized by Law 6529, adopted on March 2, 2014: “In all manner of propaganda by political parties and candidates, in addition to Turkish, other languages and dialects may be used.”

<sup>4</sup> Elçi was killed by an armed attack in front of cameras on November 28, 2015 in Sur in Diyarbakir. As of 2021, the murder remains unsolved.

which they presided, participants spoke Kurdish. These two attorneys were saved from imprisonment only due to a prescription brought about by the new Turkish Criminal Code.<sup>5</sup> Previously, İbrahim Güçlü, Chairman of HAK-PAR (the Rights and Freedoms Party), was tried and imprisoned for the same reason.

Art. 66/1 of the 1982 Constitution states, “Everyone bound to the Turkish state through the bond of citizenship is a Turk.” The article defines citizens, and connects being a Turk to a legal relationship between state and individual—that is, to citizenship. In this sense, at first glance, it seems to be a modern provision. Yet what is understood by “Turk” here is of key importance, and in examining this term it is clear that Art. 66 is exceedingly problematic. The reason is this: because, in Turkey, “Turk” and “Muslim” cannot be thought in separation, this term refers in an ethnic sense to Turks, and in a religious sense to Sunni Muslims. In other words, when Turk is said, this refers not to the name of a nation, but to a dominant group composed of people who are Turkish in ethnicity and Muslim in religion.

In the creation of the 1924 Constitution, while draft Art. 88 stated that “The people of Turkey, regardless of religion or race, are called Turk”, in the course of meetings, it was requested that the phrase “in terms of citizenship” be added. The reason for this is that citizens of Rum and Armenian descent who were working at the time in foreign companies in Istanbul and whose termination was being planned, were thought of as outside the category of “Turk”. This reasoning was clearly pronounced by the Turkist MP Hamdullah Suphi Bey (Tanrıöver), who proposed this addition, in a speech he made in Parliament. The form of citizenship mentioned here is citizenship in name only. Art. 88, in a single sentence, turned two different definitions of Turkishness into a constitutional provision.

As for the stance related to Kurds: Whereas previously the idea that Kurds possess a different identity was voiced without hesitation, in time this began to be explicitly denied. There began an attempt to assimilate this people who, as the term “Mountain Turk” recalls, were said to be a primitive branch of Turks who had forgotten Turkish. This stance was to harden after the Kurdish uprising of 1925, and later in the fascistic atmosphere of the 1930s. One can analyze the process of Turkification in the Republic under two separate categories: “‘Turk’ and Race” and “‘Turk’ and Religion”.

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<sup>5</sup> The ban on using a language other than Turkish is found in the wording of Art. 58 of the 1961 Electoral Law (no. 298), amended, on May 17, 1979, by Law No. 2234: “It is forbidden to use, in speech or writing, a language other than Turkish in propaganda broadcasts on radio or television, or in other forms of election propaganda.” Art. 43/3 of the Law on Political Parties brought the same ban: “Candidates may use no other language than Turkish in speech and writing.”

In terms of Turkification policies, the Turkish nation-state has made use of two basic methods to render minorities invisible. The first is to interfere with people's surnames (patronyms). The Surname Act (June 21, 1934, No. 2525)<sup>6</sup> banned the taking of such surnames as "Kürdoğlu" (literally, son of a Kurd) or "Boşnak" (Bosniak), describing these as the names of a "foreign" race, people, or tribe. In so doing, it aimed to assimilate and render invisible various Muslim ethnic groups in the country, chiefly Kurds. The same policy of rendering invisible was carried out on non-Muslims, through a ban on such surname endings as "yan" or "pulos".<sup>7</sup>

The second method has been to interfere in the names of settlements and geographies (toponyms). The Republic continued a policy that began in 1913, a date announcing the dictatorship of Union and Progress. As a consequence, across the country a number of toponyms were changed. These changes included the originally Armenian, Laz, Georgian, Circassian, Bulgarian, Kurdish, Zazaki, Syriac, and Arabic names of 12,211 villages (amounting to one in every three villages), 4,000 towns, and 4,000 geographies.<sup>8</sup>

The greatest number of changes were carried out following the May 27, 1960 coup, and strict policies were followed to efface old names. Official statements that marginalized Kurds and non-Muslims existed not only in the 1930s; there are many examples from the recent past.

In the 2010s, a resurgence of Turkish nationalism, which began to be represented by a number of small parties known as *Ulusolcu* (a portmanteau, "Nationaleftists"), fostered an intense atmosphere to the detriment of Kurds and non-Muslims. Art. 301 of Turkish Criminal Code—used by the Judiciary to sentence everyone with "openly humiliating Turkishness", which has attracted much negative criticism from the public, such that it was finally subjected in 2008 to the permission of the justice minister for implementation—has become the most prominent focal point for this mentality in the Judiciary. The statements of those whose ethnicity is other than Turkish (e.g., Hrant Dink) or statements of those defending these people (e.g., Orhan Pamuk) have been charged under Art. 301.

Yet people remain free to humiliate or even insult non-Muslim or non-Turkish citizens of Turkey. For instance, on March 27, 1997, Minister of Internal Affairs Meral Akşener, in calling A. Öcalan an "Armenian Sperm", managed, by one term, to humiliate people from two different religions and ethnicities (Kurds and Armenians) that constitute Turkey's varied human geography. Yet not even an investigation was launched against her on the matter.

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<sup>6</sup> <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.2525.pdf>

<sup>7</sup> Dokuyan, "Soyadı Kanunu ve Kanunun Uygulanma Süreci", p. 129-166.

<sup>8</sup> Tunçel, "Türkiye'de İsmi Değiştirilen Köyler", p. 23-34 and İçişleri Bakanlığı İller İdaresi Genel Müdürlüğü, *Yeni Tabii Yer Adları 1977, yeni, eski ve illere göre dizileri*, Ankara, 1977.

Following the release, in 2008, of the new Foundations Law, partial recognition began of the rights in non-Muslim foundations' laws and in Lausanne. In particular, with a representative of a non-Muslim foundation beginning to have a place in the DGF's Foundations Council, and with the appointment of Adnan Ertem, whose doctoral research was on foundations, as General Director of DGF in October 2010, for the first time in nearly 90 years, one witnessed an approach that was well-intentioned and relatively respectful of the law. An unprecedented atmosphere of dialogue then existed between non-Muslim foundations and communities and such state institutions as DGF, the EU General Secretariat, the Ministry of Culture, and the Ministry of Foreign Affairs, as well as between the foundations of different non-Muslim communities. Social and academic activities began.

By mid-2013, the transition from democratic reformist AKP to oppressive AKP had begun. The Gezi Park protests, which developed spontaneously in late May 2013 as an act of protecting the environment, met with disproportionate responses by security forces. The fundamental repression, following such changes in the social atmosphere, began after the July 15, 2016 coup attempt. Oppositional groups of all sorts with no connections whatsoever to the coup, in particular leftists, Kemalists, and Kurds with no relationship to fundamentalist Islam or the Gülen community, were subjected to heavy repression. In the State of Emergency (OHAL), which was announced on July 21, 2016, lifted on July 19, 2018, and renewed seven times every three months until OHAL became a permanent state of affairs, people were arrested without even taking statements, and were subjected to serious unjust treatments.

These forms of oppression were implemented through OHAL statutory decrees or administrative decisions. Relying on these constitutional rules, CHP went to the Constitutional Court in 2016 for the cancellation of statutory decrees No. 668, 669, 670, and 671, but the Court reversed its case law.

The reason is that the Constitutional Court, after announcing that statutory decree No. 667 (which the AKP government issued immediately after the July 15, 2016 coup attempt and which called for "people evaluated as to have ties to terror" to be removed from their positions) had yielded "permanent results". Another reason is that this also applied to the Constitutional Court itself, which had removed two of its members from their positions on August 4, 2016.<sup>9</sup> Yet these members, before all else, according to Art. 88 of the Law on Judges and Prosecutors No. 2802, "except in case of red-handed situations requiring heavy penalty (...) cannot be apprehended, cannot have their persons and homes searched, and cannot be interrogated." And the Constitutional Court, after this incident of the

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<sup>9</sup> On the reasonings for the dismissal of the Constitutional Court's own members, see <http://www.memurlar.net/haber/603657/>. The last of these is particularly troubling. For the full text of this decision, see: <http://www.kararlaryeni.anayasa.gov.tr/Karar/Content/717f7c20-b696-4379-84f6-dfb568f8844a?excludeGerekce=False&wordsOnly=False>.

dismissal of its own members, in full compliance now with the State of Emergency regime, decided that it did not have the authority to oversee any document labelled as a State of Emergency statutory decree. Thus, renouncing its constitutional authorities (and duties), the Court by-passed itself (and the law), and shortly thereafter, on November 2, 2016, rejected CHP's request for the cancellation of statutory decrees.<sup>10</sup> From July 2016 onward, these forms of oppression have continued through the removal of elected mayors from office and the appointment, in their stead, of trustees.

Here is a very interesting double contradiction. There were those (Kemalist-nationalists) who wished to trip up this second wave of modernization by putting forward the idea that showing respect to Turkey's sub-identities would destroy the unity of state and nation. Yet these were the grandchildren of Kemalism, which set in motion the first modernization wave. The Kemalist-nationalist contradiction didn't just stop here. Some among them (particularly the *Aydınlık* circle) threw away the reforms after a certain point and put their support behind the Erdoğan regime's nascent Islamist-Turkist policies.

AKP, which sustained in a radical way this second modernization wave in the early 2000s, is comprised of the grandchildren of those who reacted from below to the first modernization wave. AKP's contradiction don't stop here. After 2005, and particularly in the 2010s, in a major step backwards, under Recep Tayyip Erdoğan's leadership, the party began to bring back the monist regime of the 1920s and 1930s, now only painted Islamist green.

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<sup>10</sup> On the Constitutional Court's decision to reject CHP's application, see <http://kararlaryeni.anayasa.gov.tr/Karar/Content/b4c7cb83-7168-4295-85a3-2cdedd264b38?excludeGerekce=False&wordsOnly=False>.