

› NATIONAL MINORITIES IN THE TURKISH LAW.

Turkey's contribution submitted on the occasion of the 10th Anniversary of the Constitutional Court of Andorra.

a) The definition of “minority” in the Turkish Law

First of all, it should be focused on the constitutional principle with respect to the State's unitary structure with its territory and nation and to the provisions of Lausanne Peace Treaty, the only document regulating minority question in Turkish law, so as to evaluate the Turkish experience of “*minority question*” appropriately.

The Turkish Republic was founded on unitary basis, so Constitutions all took this view of structure as one of the fundamental principles. According to Article 3 of the Constitution 1982, The Turkish State, with its territory and nation, is an indivisible entity. This is also one of the provisions that are neither amendable nor their amendments be proposed. The background of the principle makes it impossible for the State a federative form. As a result, indivisibility is an indispensable principle for the State which was re-founded through a war of independence after being destroyed and divided by the Treaty of Sevres following World War I, and which had this principle registered by the Treaty of Lausanne.

Nevertheless, there are no doubt different ethnic, religious and linguistic elements in this unity as well. But these diversities are regarded equal components of national unity. In this regard, the word “Turk” has no ethnic or racial meaning. Article 66, paragraph 1 of the Constitution states that; “*Everyone bound to the Turkish state through the bond of citizenship is a Turk.*” This sort of wording merely emphasises the citizenship tie. Definition of “Turk” was widely broad in the 1924 Constitution stating; “*The nation of Turkey with respect of citizenship is called Turk, irrespective of religion or ethnicity.*”

Furthermore, Articles 10 and 24 provide all citizens for equal rights before the law irrespective of language, race, colour, as well as the right to freedom of conscience, religious belief and conviction. Article 10 states, inter alia, that “*All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.*” Article 24 enshrines that, “*Everyone has the right to freedom of conscience, religious belief and conviction... 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.*”

However, non-Muslim minorities mentioned in the Lausanne Treaty constitutes the only exception of minority concept in Turkish law in which it does not exist in general. The Treaty defines non-Muslim

nationals as national minorities. Accordingly, the only minority group having status privilege is that of non-Muslims', which is in fact a religious kind. Practically Turkish citizens of Greek, mostly Armenian, Bulgarian and Jewish origin have enjoyed this statute.

The treaty guarantees non-Muslim citizens' rights to enjoy the freedom of religion, worship and education in their own languages; to be treated equally before the law as Muslims; and to face no discriminations. They also have the right to found and run schools, charity organisations as well as religious foundations belonging to their own society.

b) Identification of “minority” in the Turkish Constitutional jurisprudence

As there is no statutory provision having discriminatory effects on the ground of race, religion or ethnicity, it is not possible to find any decision on minority question given by the Turkish Constitutional Court. Consequently, the Turkish Constitutional Court, in its decisions on other issues brought before itself for different reasons, frequently emphasises on “nation” and “national state” concepts. In one of its decision the Court expressed; “What may be his or her origin, everybody is included in the nation without differentiation, thus unity of the nation becomes concrete”. (Decision No: 1997/1 of 14.2.1997, in Official Gazette, 26.6.1998)

In another decision the Court stated “Article 66 of the Constitution reads ‘everyone bound to the Turkish state through the bond of citizenship is a Turk’. This principal aimed to secure the equality among citizens of the Turkish Republic, an indivisible entity with its territory and nation, in respect of individual human rights. The principle also established a unique and integrative basis for the nation to avoid any privileges to be granted to any ethnic groups who form it. In this context, ‘Turk’ has nothing to do with any racial meaning. Citizenship and national identity do not mean denial of citizens’ ethnic roots. What is prohibited is not the expression of cultural differences and richness, but their utilisation to create minorities on the territory of the Republic of Turkey for the purpose of undermining national unity and founding a new state order on that basis (Decision No:94/2 of 16.6.1994, in Official Gazette, 30 June 1994).

The Constitutional Court, while examining political party dissolution cases, mentioned Lausanne Peace Treaty, the only minority instrument. The Court observed that national minority concept included only non-Muslim Turkish citizens appeared in Chapter III of the Treaty. Accordingly, “minority” definition in the Constitutional jurisprudence, as it is in existing law, is restricted to those in the Treaty.

c) How are minorities dealt with?

Along with the constitutional provisions (as they enjoy all as a result of citizenship), a quick look at the relevant articles on minorities in the Treaty, such as right to life and enjoyment of freedoms without discrimination (Art38/1), acts of worship, whether openly or not (38/2), right to circulation or immigration

(38/3), right to using freely of their language by founding charity organisations or educational facilities as well as in transactions among themselves or in religious services (39/5,40), suggest that minorities are dealt with positive discrimination.

Statutory regulations made in 2002 and 2003 in both the Constitution and relevant Acts have enabled minorities' foundations to acquire real estates and to manage their properties easily, by eliminating obstacles to enjoyment of such rights. For example, constitutional restrictions against regional languages (practically used against kurdisch) were removed by the 2001 Constitutional Amendment. As a result of the amendments made on Articles 26 and 28, phrase of "*language prohibited by law*" was removed and a door for the conception that there might be regional or minority languages. Law no 4471 of 2002 paved the way for the use of such languages or dialects in sphere of education or media (printed media, but radio and television in essence). Presently, it is known that private courses in different languages or dialects are held. The Law no 4903 of 2003 ensured the legal basis for broadcasting in different languages or dialects by both public and private radio- television companies. More recently, last restrictions in the law (especially Law of Associations) for minority associations to acquire real estate or to dispose of their real property were removed by the Law no: 4771 of 3.8.2002 and Law no: 4778 dated 2.1.2003.

d) Effectiveness of Constitutional Law's decisions over minorities

The Turkish Constitution, as well as many other Acts, repeatedly say that the Turkish state is an indivisible entity with its territory and nation. Since there is no minority group other than those explicitly specified in the Lausanne Treaty (Chapter III), acts aimed at creating such a racial, religious or other sort of divisions are prohibited. Political parties who acted against this prohibition have faced cases of dissolution.