

***TURKEY'S COMPLIANCE WITH ITS OBLIGATIONS  
TO THE ECUMENICAL PATRIARCHATE AND ORTHODOX CHRISTIAN MINORITY***

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**TABLE OF CONTENTS**

**1. The Turkish government interferes with the Ecumenical Patriarchate's freedom of religion and discriminates against Turkey's Orthodox minority.....1**

    a. The Patriarchate cannot freely exercise its right to train clergy and choose religious leaders .....1

    b. The Turkish government interferes with the activities of Orthodox bishops.....1

    c. The Patriarchate and other religious minorities cannot freely exercise the right to operate religious schools..... 2

    d. Turkish laws treat religious minority foundations, including Orthodox foundations, differently than other foundations..... 2

    e. Turkish law enforcement fails to protect adequately the Patriarch's residence and other Orthodox sites from attack and to investigate and prosecute such attacks.....3

**2. Turkey's treatment of the Ecumenical Patriarchate and the Orthodox minority violates its obligations under the Lausanne Treaty of 1923.....4**

**3. Turkey's treatment of the Ecumenical Patriarchate and the Orthodox minority violates its obligations under international human rights law.....5**

    a. Turkey is a party to binding human rights treaties that protect the rights of religious minorities. ...6

    b. The OSCE requires participating states to protect the rights of religious minorities, including the right to maintain educational and religious associations. ....7

    c. The European Convention on Human Rights obligates Turkey to protect freedom of religion and the property rights of individuals and religious institutions. ....7

    d. Turkey's treatment of religious minorities and institutions requires further scrutiny during the E.U. accession process..... 8

    e. The U.S. State Department has criticized Turkey's treatment of religious minorities, including the Patriarchate .....9

**Conclusion.....9**

The Ecumenical Patriarchate, located in Istanbul (formerly, Constantinople), is the spiritual center of the Eastern Orthodox Church. From this site, the Ecumenical Patriarch, the highest authority of the Church, leads the world's 250 million Orthodox Christians. This paper<sup>1</sup> reviews how Turkey's interference with the Patriarchate and Orthodox minorities violates Turkey's obligations under international human rights law, the Turkish Constitution, and Turkish national law. In particular, the Lausanne Treaty of 1923 protects the rights of non-Muslim religious minorities in Turkey, but these religious groups, including the Patriarchate, continue to be subject to discriminatory treatment.

**1. The Turkish government interferes with the Ecumenical Patriarchate's freedom of religion and discriminates against Turkey's Orthodox minority.**

*a. The Patriarchate cannot freely exercise its right to train clergy and choose religious leaders.*

Turkey's policies place the very existence of the Patriarchate in jeopardy.<sup>2</sup> In 1971, Turkey prohibited schools from teaching Orthodox theology, closing the only training facility for Orthodox clergy in Turkey, the Halki Theological Seminary. As a result, Orthodox clergy must train abroad. Turkey also requires all Patriarchate leadership to be Turkish citizens. With Turkey's dwindling Orthodox population, the pool of candidates for leadership is disappearing. Moreover, the Turkish government maintains power to decide who may or may not become the Ecumenical Patriarch. During each election of a new Ecumenical Patriarch, the Patriarchate must submit a list of candidates to the governor of Istanbul for approval. The governor may strike out any names and reject the ultimate choice of the electors, and he has done so throughout the 20th century.

*b. The Turkish government interferes with the activities of Orthodox bishops.*

The government has also restricted the activities of Orthodox bishops. Those who come from outside Turkey to work for the Patriarchate generally receive tourist visas, which must be renewed every

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<sup>1</sup> This is a summary of a longer paper, "Turkey's Compliance with Its Obligations to the Ecumenical Patriarchate and Christian Orthodox Minority: A Legal Analysis," prepared by and available from the Allard K. Lowenstein International Human Rights Clinic, Yale Law School, PO Box 208215, New Haven, CT 06520, USA, email: schell.law@yale.edu.

<sup>2</sup> Statement of Sen. Olympia Snowe, in Congressional hearings for Sen. Res. 25 – Relative to the Eastern Orthodox Ecumenical Patriarchate, August 11, 1995, page S12413.

three months; renewal requires a one-week stay outside Turkey. The Patriarchate has consistently requested that either Turkish citizenship or work permits be granted for non-Turkish personnel and non-Turkish bishops so that they may work in Istanbul and vote in Ecumenical Patriarch elections. The government has not responded.

*c. The Patriarchate and other religious minorities cannot freely exercise the right to operate religious schools.*

Although the Lausanne Treaty guarantees all non-Muslim minorities the right to operate their own schools freely, Turkish law has revoked this right by submitting *all* schools to the authority and official curriculum of the Ministry of Education, which mandates secular education. Non-Muslim religious minorities may not teach their own religion or language, Orthodox priests may not enter school premises, and Orthodox schools must have a Turkish, non-Orthodox headmaster. Children of other Christian denominations may not enroll in Orthodox schools.

*d. Turkish laws treat religious minority foundations, including Orthodox foundations, differently than other foundations.*

The Turkish government has also targeted Orthodox foundations, the principal source of funding for the Patriarchate.<sup>3</sup> All non-Muslim minority foundations are subject to the General Directorate of Foundations, which has “been unilaterally confiscating the property of foundations, and other authorities have been preventing the election of [these foundations’] boards of directors. The properties . . . are thus in a position where their future is very much in doubt.”<sup>4</sup> Although the ban on selling Orthodox property was lifted in 1989, confirming legal title is a complicated court procedure, and many of these cases are still pending. Despite recent legal reforms allowing religious minorities to acquire and dispose of property, Orthodox foundations, unlike other Turkish foundations, are still required to obtain permission to acquire real property from the General Directorate of Foundations.

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<sup>3</sup> Because the government does not allow the Patriarchate to have the status of a corporate legal entity, it must rely on foundations to acquire and manage its property.

<sup>4</sup> *Interim Report of the U.N. Special Rapporteur of the Commission on the Elimination of all forms of intolerance and of discrimination based on belief*, (hereinafter “Report of the Special Rapporteur”), Addendum I: Situation in Turkey, prepared by Abdelfattah Amor, U.N. Special Rapporteur on the Question of Religious Intolerance, dealing with his visit to Turkey from November 30 to December 9, 1999, U.N. Doc. A/55/280/Add.1, August 11, 2000, para.150.

- e. *Turkish law enforcement fails to adequately protect the Patriarch's residence and other Orthodox sites from attack and to investigate and prosecute such attacks.*

Although the Lausanne Treaty explicitly guarantees the security and protection of the Orthodox minority and its religious institutions, attacks on and threats against the Patriarchate compound and the Ecumenical Patriarch's residence have been regularly reported. In response to religious strife in Greece in 1991, a mob gathered outside the Patriarchate, threatened to storm the gates, and set up a five-day blockade. The mob damaged the exterior perimeter of the residence. A report noted that attacks and threats were "almost daily" occurrences in late 1993.<sup>5</sup> On March 30, 1994, a Molotov cocktail was thrown into the compound. On May 28, 1994, three bombs were found inside the Ecumenical Patriarch's residence but were defused before they exploded. On September 29, 1996, a hand grenade exploded inside the Patriarchate, permanently maiming a deacon. A cluster bomb thrown into the compound in December 1997 severely injured a priest and damaged buildings. On October 7, 2004, a hand grenade thrown into the compound damaged windows and a chapel.

Looters, vandals, and bombers target Orthodox churches, cemeteries, and schools across Turkey. In the summer of 2003, vandals desecrated the Greek Orthodox cemetery of Neohorion at Yenikoy several times.<sup>6</sup> In 2002, thieves stole icons and religious items from the St. Paraskevya church. The November 2003 bombing of the British consulate in Istanbul also damaged the neighboring Panagia Greek Orthodox Church; the General Directorate of Foundations has not yet granted the church permission to carry out repairs.

One of the most egregious incidents occurred many decades ago. On September 6 and 7, 1955, riots broke out in Istanbul in response to the bombing of the Turkish consulate in Greece. During these riots, 73 Orthodox churches and 23 schools were vandalized, burned, or destroyed; 1,004 houses of Orthodox citizens were looted; and 4,348 stores, 110 hotels, 27 pharmacies, and 21 factories were

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<sup>5</sup> Joanna Balaskas, *Note: The International Legal Personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople*, 2 Hofstra L. & Pol'y Symp. 135, 148 (hereinafter "Balaskas").

<sup>6</sup> Balaskas at 178.

destroyed.<sup>7</sup> Greeks who left Turkey *en masse* in the aftermath of this pogrom have never been compensated for their loss of property.

## **2. Turkey's treatment of the Ecumenical Patriarchate and the Orthodox minority violates its obligations under the Lausanne Treaty of 1923.**

The Lausanne Treaty of 1923, signed by Turkey, Greece, Great Britain, France, and Italy upon the creation of the modern Turkish state, is still binding law in Turkey. Article 37 states that the Treaty's provisions have the force of "fundamental laws" and take precedence over conflicting legislative or administrative acts.<sup>8</sup> Turkey's Constitution affirms the binding legal effect of treaties: "International agreements duly put into effect carry the force of law."<sup>9</sup>

Article 44 of the Lausanne Treaty specifies that "in so far as the [provisions of the Treaty] affect non-Muslim nationals of Turkey, these provisions constitute obligations of international concern." Nevertheless, Turkey claims that issues concerning the Patriarchate are purely a domestic matter. Moreover, although the Treaty explicitly applies to *all* "non-Muslim minorities," Turkey has interpreted its Treaty obligations to apply to three minority groups only: the Greek Orthodox, the Armenians, and the Jews.<sup>10</sup> Because the number and proportion of Orthodox adherents who are not ethnically Greek is increasing, this interpretation is particularly troubling.

These policies and actions against the Patriarchate, the Orthodox minority, and other non-Muslim minorities violate several provisions of the Lausanne Treaty. Article 38 guarantees freedom of exercise of religion in the private and public spheres, as long as that exercise is not incompatible with public order and good morals. It also obligates Turkey to provide security and protection for its inhabitants without distinction as to religion. Article 40 guarantees non-Muslim minorities the freedom to establish, manage, and control private schools. Articles 40 and 41 guarantee non-Muslim minorities (in towns and districts where the minority comprises a considerable proportion the population) schooling in their own language.

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<sup>7</sup> Marios D. Dikaiakos, *Denying Ethnic and Religious Identity to the Greeks of Turkey, 1992-1995*, at [http://www.anemos.com/Diaspora/gr\\_turkey/GRTURK.html](http://www.anemos.com/Diaspora/gr_turkey/GRTURK.html) (1995).

<sup>8</sup> Article 37 of the Lausanne Treaty states: "Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized 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."

<sup>9</sup> Article 90, Turkish Constitution.

<sup>10</sup> Report of the Special Rapporteur, para. 25.

Article 42 guarantees full protection to “churches, synagogues, cemeteries, and other religious establishments” of non-Muslim minorities. In addition, Article 38 guarantees freedom of movement to non-Muslim minorities, which should apply to bishops of the Patriarchate.

Turkey’s duty under the Lausanne Treaty to respect minority rights as an obligation of international concern is not only still in effect, but it has been affirmed in subsequent international agreements that extend this duty to all minorities, without limiting it to specific groups.

### **3. Turkey’s treatment of the Ecumenical Patriarchate and the Orthodox minority violates its obligations under international human rights law.**

As a party to several international human rights treaties, a member state of the Council of Europe, and a participating state in the Organization for Security and Cooperation in Europe,<sup>11</sup> Turkey has taken on binding obligations to protect the rights of religious minorities and to prevent discrimination on the basis of national origin, religion, or ethnicity. Turkey violates these obligations with its law and practice restricting the activities of the Ecumenical Patriarchate.

The European Union, United Nations bodies, and the United States have repeatedly criticized Turkey’s discriminatory treatment of religious minorities and, in particular, its restrictions upon the activities of the Ecumenical Patriarchate. Recent criticisms, however, have come in the context of the extensive legal reforms that Turkey has undertaken as an E.U. candidate country. The international community has not taken affirmative steps to censure Turkey for its treatment of religious minorities, perhaps, in part, because Turkey has made progress in some areas of human rights reform. At its December 17, 2004, meeting, the European Council<sup>12</sup> is expected to approve the formal opening of accession negotiations with Turkey. As Turkey enters the next phase of the E.U. accession process, the Council, as well as other states and human rights monitoring bodies, must closely scrutinize Turkey’s violations of the rights of religious minorities.

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<sup>11</sup> The OSCE refers to its members as “participating states.”

<sup>12</sup> The European Council is the committee within the European Union on which all heads of member states sit.

*a. Turkey is a party to binding human rights treaties that protect the rights of religious minorities.*

As a member state of the United Nations, Turkey has an obligation to uphold the principles enshrined in the Universal Declaration of Human Rights (UDHR). Provisions of the UDHR state the rights of religious minorities. Articles 2 and 7 of the UDHR require states to ensure equal protection without discrimination on the basis of religion, national origin, or language. Article 18 of the UDHR protects the freedom of thought, conscience, and religion, including the freedom to manifest religion or belief in teaching, practice, worship, and observance.

In recent years, Turkey ratified the two human rights treaties that, with the UDHR, make up the International Bill of Human Rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 18 of the ICCPR protects freedom of thought, conscience, and religion. The U.N. Human Rights Committee, charged by the ICCPR to interpret its provisions, has interpreted Article 18 to protect the building of places of worship, the freedom to choose religious leaders, and the freedom to establish seminaries or religious schools. Article 13 of the ICESCR provides the right to education and obligates states not to interfere with the right of individuals and bodies to establish and direct educational institutions. The Convention on the Rights of the Child, which Turkey has also ratified, protects children's right to manifest and practice religious belief and their right to religious education. Notably, Turkey entered reservations to its ratification of all three of these treaties, stating that the Lausanne Treaty and relevant provisions of the Turkish Constitution govern state practice regarding religious minorities and religious education.<sup>13</sup>

The Convention on the Elimination of All Forms of Racial Discrimination (CERD), which Turkey has also ratified, and the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination (DERID) also embody rights that are violated by Turkey's treatment of religious minorities. Turkey has not yet submitted its first required Periodic Report under the CERD, but it reformed its penal code in 2004 to bring the code into compliance with its obligations under CERD. The Special Rapporteur of the Commission on Human Rights on freedom of religion or belief cited the

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<sup>13</sup> See Part 2 above.

DERID to criticize Turkey for closing a Christian church on the grounds that the church had been established without the proper “legal basis.”<sup>14</sup>

- b. *The OSCE requires participating states to protect the rights of religious minorities, including the right to maintain educational and religious associations.*

As a participating state in the Organization for Security and Cooperation in Europe (OSCE, formerly CSCE), Turkey has obligations under Article VII of the Helsinki Accords to guarantee and protect the rights of national minorities. Additionally, the Concluding Document of the 1989 Vienna meeting of the CSCE requires participating states to protect the rights of individuals and religious communities to organize their own religious structures, train and appoint personnel, and solicit voluntary contributions. The Charter of Paris, signed by participating states in 1990 to redefine the CSCE’s post-Cold War role, explicitly protects the rights of national minorities; the CSCE interpreted this protection to include national minorities’ right “to establish and maintain their own educational, cultural and religious institutions, organizations and associations.”<sup>15</sup> The OSCE High Commissioner on National Minorities made an official visit to Turkey for the first time in January 2003 but has neither reported nor issued any recommendations on the situation of religious minorities in Turkey.

- c. *The European Convention on Human Rights obligates Turkey to protect freedom of religion and the property rights of individuals and religious institutions.*

Turkey is a member state of the Council of Europe and has ratified the European Convention on Human Rights and Fundamental Freedoms. Article 9 of the Convention requires Turkey to protect freedom of religion, including freedom to manifest religion “in worship, teaching, practice, and observance.”<sup>16</sup> As interpreted by the European Court of Human Rights, Article 9 applies to religious groups and organizations as well as individuals. The European Court’s jurisprudence indicates that state practices restricting the freedom of minority religious institutions are cognizable as violations of Article 9.

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<sup>14</sup> U.N.G.A. A/58/296, 19 August 2003. “Elimination of all forms of religious intolerance.”

<sup>15</sup> Report of the CSCE Meeting of Experts on National Minorities, Geneva, July 19, 1991, *reprinted in* Frederick Quinn, ed., *Selected Human Rights Documents for the Newly Independent States and Central Europe* (2001), at 85.

<sup>16</sup> European Convention on Human Rights and Fundamental Freedoms, Article 9(1).

However, the Court applies Article 9(2)<sup>17</sup> with great deference to a state's determinations that particular limitations on religious freedom are "necessary in a democratic society." The Court's 2003 judgment upholding Turkey's ban on the wearing of headscarves in higher education reflects this deference. Article 1 of Protocol 1 to the Convention<sup>18</sup> protects the right to peaceful enjoyment of one's possessions. The Court's jurisprudence on Article 1 of Protocol 1 strongly protects individuals' and religious institutions' rights to own and "enjoy" property. Despite the Court's deference to states' decisions about necessary limitations on religious freedom, Turkey's seizure and restrictions on the use of the Ecumenical Patriarchate's real property violate Article 1 of Protocol 1 to the European Convention.

*d. Turkey's treatment of religious minorities and institutions requires further scrutiny during the E.U. accession process.*

Turkey's participation since 1997 in the E.U. enlargement process has provided the impetus for improvements in human rights and the rule of law. Before opening formal accession negotiations, the European Council must find Turkey in compliance with the Copenhagen criteria, which require "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities."<sup>19</sup> The European Commission documents Turkey's progress toward compliance in annual reports. These reports have consistently criticized Turkey's treatment of religious minorities, including the Ecumenical Patriarchate. In 2004, the Commission wrote:

[A]lthough freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities continue to encounter obstacles. They lack legal personality, face restricted property rights and interference in the management of their foundations, and are not allowed to train clergy.<sup>20</sup>

Despite the European Commission's criticism of Turkey's failure to adequately protect the rights of religious minorities, the Commission recommended in October 2004 that the December 17, 2004,

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<sup>17</sup> European Convention on Human Rights and Fundamental Freedoms, Article 9(2), reads in full: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

<sup>18</sup> Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on May 18, 1954. Article 1 is the Protection of Property.

<sup>19</sup> The European Council at Copenhagen on June 21-22, 1993, stated these conditions, which are set out in 26 E.C. Bull., no.6, at 13 (1993).

<sup>20</sup> European Commission, 2004 Regular Report on Turkey's Progress Towards Accession, COM (2004) 656.

European Council meeting affirm Turkey's compliance with the Copenhagen criteria and open formal accession negotiations. The Commission, however, termed this recommendation a "qualified yes," emphasizing that Turkey should make further human rights reforms during accession negotiations.

*e. The U.S. State Department has criticized Turkey's treatment of religious minorities, including the Patriarchate.*

The United States has also scrutinized Turkey's compliance with international obligations to respect and protect the rights of non-Muslim religious minorities. The U.S. State Department publishes annual Country Reports on Human Rights Practices and an annual International Religious Freedom Report. In these reports, the State Department has consistently criticized Turkey's failure to adequately protect the rights of non-Muslim religious minorities, focusing especially on the legal status of the Ecumenical Patriarchate, the obstacles to religious foundations' ownership and repair of real property, the closure of the Halki Seminary, and the citizenship of bishops elected to the synod.

## **Conclusion**

All religious minorities in Turkey have internationally protected rights to practice their religion, train clergy, appoint religious leaders, own and use property, operate religious schools, and associate in religiously affiliated foundations. The Turkish government also has an obligation to protect the security of non-Muslim minorities and religious institutions.

Despite these obligations, enshrined in Turkish domestic law under the Lausanne Treaty and the Turkish Constitution, the Ecumenical Patriarchate and the Orthodox minority in Turkey face numerous restrictions on their activities and attacks on their property. The Turkish government systematically proscribes lawful activities of the Patriarchate—from the election of bishops and Patriarchs to the operation of religious schools and the ownership of property.

The treatment of non-Muslim religious minorities in Turkey also violates the rights to be free of discrimination, to freedom of association and religion, to education, and to peaceful enjoyment of possessions. These rights are guaranteed by treaties that Turkey has ratified, although with reservations to key provisions affecting the rights of religious minorities. Moreover, international human rights bodies,

the European Commission, the U.S. State Department, and the international human rights community continue to find violations of international human rights law in Turkey's treatment of the Patriarchate and the Orthodox minority.

As the European Union moves toward opening accession negotiations, close international scrutiny of these violations and forceful advocacy for effective remedies becomes imperative.