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# An Indivisible Turkey and the Invisible Alevi: Mandatory Religious Education and its Effect on Minority Rights and National Unity

TRISTAN OROZCO\*

## I. INTRODUCTION

In September 2014, the Alevi<sup>1</sup> community claimed their latest victory against discrimination when the European Court of Human Rights (“ECHR”) unanimously held that the Turkish education system was inadequately equipped to ensure respect for parents’ right to determine how their children are educated.<sup>2</sup> The ECHR specifically called for Turkey to introduce a system “without delay” whereby students “could be exempted from religion and ethics classes without their parents having

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\* J.D. Candidate, Loyola Law School, Los Angeles, 2016; M.Div. University of Chicago Divinity School, 2010; B.A., Arizona State University, 2005. This Article is a continuation of several conversations over the last decade, and would not have been possible without their immeasurable contributions. Thank you to Elizabeth Barre, whose expertise and passion for pedagogy and Islam sparked this project; to Natalie Anderson-Patch, for her incendiary wit; and to Jean Bethke Elshtain, for lighting the way. This Article began as, and remains, a humble attempt to keep up with the brilliant women I have been fortunate enough to call friends. Finally, thank you to the editors and staff of the Loyola of Los Angeles International and Comparative Law Review, who worked tirelessly to get this piece to print.

1. Olgun Akbulut & Zeynep Oya Usal, *Parental Religious Rights vs. Compulsory Religious Education in Turkey*, 15 INT’L J. ON MINORITY & GROUP RTS., 433, 434-35 (2008) (“As a consequence of their different versions of Islam, Sunni and Alevi rituals differ. Whereas the central ritual places of Sunnis are mosques, Alevi gather in *cem* (“worship”) houses . . . The spiritual leader of the worship is called *dede* (“grandfather”) . . . They are regarded as teachers, temporal judges and links to Alevi religious heritage. The celebration includes a sacrificial meal, poetry, a ritual alcoholic drink and dancing accompanied by music, and the ritual lighting and extinguishing of candles. Nothing similar is found in Sunni Islam.”)

2. Mansur Yalcin & Others v. Turkey, App. No. 21163/11, 23-24 Eur. Ct. H.R. (2014) [hereinafter *Yalcin*].

to disclose their own religious or philosophical convictions.”<sup>3</sup>

At issue in the *Yalcin & Others v. Turkey* case was the curriculum of compulsory religion and ethics classes taught at State-run schools.<sup>4</sup> The Alevi complainants’ successfully argued that their children were being taught religion from a Sunni understanding of Islam, treating “the Alevi faith as a tradition or culture, not as a full belief.”<sup>5</sup> Given Turkey’s position as the largest Muslim-majority State in the Council of Europe,<sup>6</sup> and its history as a secular Muslim State, the ECHR’s decision called many of the government’s assertions about Turkey’s respect for religious freedoms into question.<sup>7</sup>

### A. Government Reaction

Turkish Prime Minister Ahmet Davutoglu was quick to criticize the ruling, saying, “Religion cannot be classified as a tool of oppression. . . . If proper religion is not taught, it produces unhealthy and incorrect religious information that leads to the radicalization seen in our neighboring countries.”<sup>8</sup> Turkish President Recep Tayyip Erdogan called the ruling incorrect in a speech to the Turkish Green Crescent Society’s International Drug Policy and Public Health Symposium on September 29, 2014: “You will never see a debate over compulsory physics, mathematics or chemistry lessons, but for some reason, religion classes are always debated. If you lift compulsory religion and ethics classes, drugs, violence, and racism will fill the void.”<sup>9</sup> He elaborated, “If you are asking for compulsory religion classes to be abolished, then

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3. *Id.* at 24 (Turkey appealed this decision in Dec. 2014, but the European Court of Human Rights rejected this appeal on Feb. 17, 2015); *See European Court Rejects Turkey’s Appeal to Reverse Ruling on Compulsory Religion Classes*, TODAY’S ZAMAN, (Feb. 18, 2015, 3:14 PM), [http://www.todayszaman.com/anasayfa\\_european-court-rejects-turkeys-appeal-to-reverse-ruling-on-compulsory-religion-classes\\_372957.html](http://www.todayszaman.com/anasayfa_european-court-rejects-turkeys-appeal-to-reverse-ruling-on-compulsory-religion-classes_372957.html).

4. *See Yalcin*, *supra* note 2 at 5.

5. *Id.* at 7.

6. *See Turkey*, STRASBOURG L’EUOPÉÈNE, <http://en.strasbourg-europe.eu/turkey,18224,en.html> (last visited Feb. 3, 2015); *see also* Farzaneh Roudi-Fahimi et al., *Demographic Trends in Muslim Countries*, POPULATION REFERENCE BUREAU, (Apr. 2013), <http://www.prb.org/Publications/Articles/2013/demographics-muslims.aspx>; *but see Our Member States*, COUNCIL OF EUROPE, (2015), <http://www.coe.int/en/web/about-us/our-member-states>.

7. *See Roudi-Fahimi*, *supra* note 6, at 2, 4; *see also Our Member States*, *supra* note 6, at 2.

8. *See Tulin Daloglu*, *European Court Warns Turkey to Respect Parents’ Convictions*, AL-MONITOR, (Sept. 18, 2014), <http://www.al-monitor.com/pulse/originals/2014/09/turkey-echr-religion-classes-alevi-sunni.html>.

9. Pinar Tremblay, *Erdogan Pushes Religion in Fight Against Drugs*, AL-MONITOR, (Oct. 6, 2014), <http://www.al-monitor.com/pulse/originals/2014/10/turkey-iran-afghanistan-drugs-bonzai.html#>.

you should not be complaining about drug addiction, violence, anti-Semitism or Islamophobia.”<sup>10</sup>

### B. Recent Reforms

The ECHR previously addressed discrimination against the Alevi community in *Hasan and Eylem Zengin v. Turkey*, under remarkably similar facts as *Yalcin*.<sup>11</sup> In *Zengin*, the ECHR found the mandatory religion and ethics class gave “greater priority to knowledge of Islam than . . . to that of other religions and philosophies,”<sup>12</sup> provided specific “instruction in the major principles of the Muslim faith,”<sup>13</sup> “[did] not meet the requirements of objectivity and pluralism,” “and provide[d] no appropriate method for ensuring respect for parents’ convictions.”<sup>14</sup> Turkey was instructed to “bring [...] the Turkish educational system and domestic legislation into conformity” with the European Convention on Human Rights (Convention).<sup>15</sup> Turkey responded by developing new textbooks, adding “about thirty pages” devoted to the Alevi faith for fourth through eleventh grades.<sup>16</sup> Turkey also added electives about the life of Muhammad and the Quran,<sup>17</sup> and announced an elective in Christianity in October 2014.<sup>18</sup> None of these changes were sufficient to change the ECHR’s opinion between *Zengin* and *Yalcin*.<sup>19</sup>

### C. Thesis

The Convention’s provisions on freedom of religion in education require Committed Parties to prevent the indoctrination of youth and to protect pluralism. Recent cases in the ECHR have attempted to promote these goals by requiring States to grant parents’ exemptions from public education when the curriculum conflicts with the parents’ religious or philosophical convictions. This increased use of exemptions as solution *par excellence*, rather than focusing on the content of curricula, has the

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10. *Id.*

11. See generally *Zengin v. Turkey*, App. No. 1448/04, Eur. Ct. H.R., (2008), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82580>.

12. *Id.* at 14.

13. *Id.* at 13.

14. *Id.* at 17.

15. *Id.*

16. *Id.*

17. Daloglu, *supra*, note 8 at 2.

18. Damaris Kremida, *Turkish Public Education System to Offer Class in Christianity for First Time*, WORLDWATCH MONITOR, (Oct. 30, 2014), [https://www.worldwatchmonitor.org/2014/10/Article\\_3449406.html/](https://www.worldwatchmonitor.org/2014/10/Article_3449406.html/).

19. *Zengin*, *supra* note 11, at 17; *Yalcin*, *supra* note 2, at 23.

potential to work against the very aims of the Convention.

This article will examine the contextual background to the Convention, focusing on how the supposed dichotomy between parents' rights and children's rights developed, with respect to freedom of religion in education, in search of best practices for preventing indoctrination and protecting pluralism. In other words, is giving parents a universal trump card the most effective way of furthering the goals of the Convention? If not, what would be?

Part II of this article will lay out the philosophical underpinnings and legislative history of the Convention's right to education, examining both parent and child vantage points.

Part III will explain how the ECHR has applied the Convention's right to education in recent case law, from Norway to Poland to Turkey, paying particular attention to the rise of exemptions as the parental check over the State.

Part IV will examine the unique complications present in Turkey as a constitutional, secular, Islamic State, which employs a peculiar brand of secularism that might no longer be compatible with the Convention. What ramifications does this transition in Turkey have for the Convention?

Finally, Part V will conclude by proposing potential solutions that approximate the desired balance between the protection of pluralism and religious freedom in education policy, while taking seriously Turkey's national history and interest.

## II. WHOSE RIGHT TO EDUCATION?

The Convention lays out the right to education in Protocol 1, Article 2 of the Convention: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."<sup>20</sup> In a 2009 article in the *Journal of Human Rights*, Ninna Wahlstrom notes, "the discussions about the right to education between 1949 and 1952 were permeated from the very beginning by what can be referred to as the balance between the state and religion in light of the Second World War and Europe's expe-

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20. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol 1*, Sept. 3, 1953, E.T.S. 155 [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

rience of totalitarian states.”<sup>21</sup> The majority of the drafters thought “. . . the forced regimentation of children and young persons organized by these [totalitarian] regimes, should be absolutely prohibited.”<sup>22</sup> But the Legal Committee fiercely debated whether the right to education should be drafted positively, “every person has the right to education,” which carried potential economic obligations on behalf of states, or negatively, “no person shall be denied the right to education.”<sup>23</sup> Ultimately, the Legal Committee emphasized that “the object of the Article . . . is to meet what we all know was a terrible aspect of totalitarianism. . . We have met that point, and we do not desire . . . to go on from that into the realms of controversy about educational methods in the different countries.”<sup>24</sup> What Nazi Germany, Imperial Japan, and Fascist Italy shared was a concentration of power in the state.<sup>25</sup> As such, the nascent Council of Europe was seen as a democratic project, a check on states, *and* an entity to be feared, should it be granted too much legal authority.<sup>26</sup> Nevertheless, many states saw the freedom of religion as a “guarantee, or symbol, of a non-indoctrinating education.”<sup>27</sup> For several countries, this meant a parental right to choose a denominational, confessional, religious education for their children as a check against a hyper-national indoctrination.<sup>28</sup>

Children would not find international standing as agents unto themselves until the United Nations Convention on the Rights of the Child in 1989, passed on the thirtieth anniversary of the non-binding Declaration of the Rights of the Child in 1959.<sup>29</sup> The right to education is asserted on behalf of children, as distinct from their parents, in Articles 29 and 30. Article 29 asserts:

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21. Ninna Wahlstrom, *The Struggle for the Right to Education in the European Convention on Human Rights*, 8 J. OF HUMAN RIGHTS 150, 151 (2009).

22. *Id.* at 152.

23. Wahlstrom, *supra* note 21, at 154. France’s representative “felt that the parents’ rights were too dominant in relation to the rights of children,” while Ireland’s representative “wanted to go further to meet ‘the large sections’ of the population that desire the education to be given to their children to be much more positively religious than that which they would get in an institution which is made purely secularist.”

24. *Id.*

25. *Id.*

26. *Id.* at 157.

27. *Id.* at 158.

28. *Id.*

29. Convention of the Rights of the Child, Dec. 12, 1989, UNITED NATIONS (Nov. 20, 1989), [https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch\\_IV\\_11p.pdf](https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf). The UNCRC has been ratified by 176 countries, including Turkey. However, Turkey asserted reservations against Articles 29 and 30.

"1. States Parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, language[,] and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national[,] and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment. . . ."<sup>30</sup>

And Article 30 continues:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practi[c]e his or her own religion, or to use his or her own language.<sup>31</sup>

This historical oversight, neglecting children's rights over and against parents' and states', has potential repercussions with respect to the stated aims of protecting pluralism and preventing indoctrination.<sup>32</sup>

### III. ECHR CASE LAW

When adjudicating potential violations of Article 2 of Protocol No. 1, "a State's duty to respect parental convictions should be balanced with its duty to provide education."<sup>33</sup> In *Campbell and Cosans v. United Kingdom*, the ECHR clarified that *respect* "means more than 'acknowledge' or 'take into account'; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the

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30. *Id.* at art. 29.

31. *Id.* at art. 30.

32. See Part IV.

33. Akbulut & Usal, *supra* note 1, at 448.

State.”<sup>34</sup> Two leading cases against parental curriculum vetoes are 1976’s *Kjeldsen, Busk Madsen and Pederson v. Denmark*<sup>35</sup> and 2010’s *Grzelak v. Poland*.<sup>36</sup> In *Kjeldsen*, parents objected, on religious grounds, to their children being subjected to compulsory sex education.<sup>37</sup> The ECHR held that Article 2 of Protocol No. 1 “does not prevent States from imparting[,] through teaching or education[,] information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalized teaching would run the risk of proving impracticable.”<sup>38</sup> The Court added, “it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications.”<sup>39</sup> As it is within the State’s discretion to set curriculum standards, the ECHR ultimately demarcated the limit of this discretion:

“in fulfilling the functions assumed by [the State] in regard to education and teaching, [the State] must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. *The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded.*”<sup>40</sup>

In *Grzelak v. Poland*, at issue was Poland’s refusal to offer optional, non-religious courses in ethics to a “boy who refused to attend religious education . . . for reasons of personal conviction, with the full approval of his parents who were agnostics.”<sup>41</sup> The ECHR found that, while the boy had been discriminated against when his report cards reflected a solid line in lieu of a grade for “religion/ethics,” Poland was not in violation of Article 2 of Protocol No. 1.<sup>42</sup> “Both [religion/ethics]

34. *Campbell and Cosans v. United Kingdom*, App. No. 7511/76, 14 Eur. Ct. H.R. (1982), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57455>.

35. *Kjeldsen, Busk Madsen and Pederson v. Denmark*, App. No. 5095/71, 4 Eur. Ct. H.R. (1976), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57509>.

36. *Grzelak v. Poland*, App. No. 7710/02, 2 Eur. Ct. H.R. (2010), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99384>.

37. *Kjeldsen*, *supra* note 35, at 16.

38. *Id.* at 22.

39. *Id.*

40. *Id.* (emphasis added).

41. Antoine Buyse, *Judgment on Non-Religious Education in Poland*, ECHR BLOG, 1 (June 16, 2010), <http://echrblog.blogspot.com/2010/06/judgment-on-non-religious-education-in.html>.

42. *Grzelak*, *supra* note 36, at 25-26.



are optional and the choice depends on the wish of parents or pupils, subject to the proviso that a certain minimum number of pupils [are] interested in following any of the two subjects."<sup>43</sup> Poland's discretionary minimum of seven pupils for non-compulsory electives was "not deemed unreasonable."<sup>44</sup>

In the event of *optional* religion/ethics courses, the State has discretion over resource allocation.<sup>45</sup> In the event of philosophical concerns arising out of compulsory public policy subject material, such as sex education, the State has the obligation to allow for "pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack thereof," but may otherwise proceed with the teaching.<sup>46</sup> In summation, there are two elements to the ECHR's application of Article 2 of Protocol No. 1: (a) it sets out a specific, and wide, "area of discretion left to the State" with respect to curriculum planning, and (b) "it spells out that the underlying aim of [Article 2 of Protocol No. 1] is to safeguard pluralism and tolerance in public education and to prohibit State indoctrination."<sup>47</sup>

#### A. *When States Have Discretion: Turkey and Norway*

The ECHR grants States a wide range of discretion in setting appropriate curriculum standards.<sup>48</sup> In theory, it is not for the Court to rule on questions regarding curriculum standards, as the solutions may legitimately vary according to the country and era.<sup>49</sup> In Italy, for instance, the compulsory presence of crucifixes in all classrooms was not found to violate Article 2 of Protocol 1 with respect to non-Catholic students and their parents, in part due to the historical role of the Roman Catholic Church in Italy's education programs.<sup>50</sup>

In *Folgero and Others v. Norway*, members of the Norwegian Humanist Association attempted to have their children exempted from a combined course covering Christianity, religion, and philosophy, known as KRL.<sup>51</sup> KRL had replaced two separate courses, Christianity and Phi-

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43. *Id.* at 26.

44. Buyse, *supra* note 41, at 2.

45. Grzelak, *supra* note 36, at 17.

46. *Id.* at 23.

47. Akbulut & Usal, *supra* note **Error! Bookmark not defined.**, at 448-49.

48. Lautsi and Others v. Italy, App. No. 30814/06, 28 Eur. Ct. H.R., (2011), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104040>.

49. *Id.* at 26.

50. *Id.* at 28.

51. Folgero and Others v. Norway, App. No. 15472/02, 1-2 Eur. Ct. H.R., (2007),

losophy of Life.<sup>52</sup> For the 150 years before the combining of the courses, Norway had allowed non-Christians to exempt their children from the Christianity course.<sup>53</sup> This exemption was repealed when the classes were combined.<sup>54</sup> The ECHR reiterated that “the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education.”<sup>55</sup> Furthermore, “the fact that knowledge about Christianity represented a greater part of the [c]urriculum for primary and lower secondary schools than knowledge about other religions and philosophies cannot, in the Court’s opinion, of its own be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination.”<sup>56</sup> When taken in combination with Christianity’s historical and traditional role in Norway, Christianity’s prominence in KRL “must be regarded as falling within” Norway’s discretion as “a society with an extreme Christian predominance.”<sup>57</sup>

Norway had a state religion, a State church, with constitutional prerogatives being afforded to the Christian (Evangelical Lutheran) Faith. There was a Christian object clause for State schools and pre-schools. There were State Church priests in the armed forces, prisons, universities and hospitals. There were daily Christian devotions and services in State broadcasting. No less than 86% of the population belonged to the State Church, the Church of Norway.<sup>58</sup>

Turkey received similar discretion, in both *Zengin* and *Yalcin*. In *Zengin*, the ECHR parroted *Folgero*:

giv[ing] greater priority to knowledge of Islam than they do to that of other religions and philosophies . . . itself cannot be viewed as a departure from the principles of pluralism and objectivity which would amount to indoctrination, having regard to the fact that, notwithstanding the State’s secular nature, Islam is the majority religion practiced in Turkey.<sup>59</sup>

In *Yalcin*, the ECHR noted the changes in curriculum since *Zengin*, and again stated “the fact that this [p]rogram [p]rovides a larger share to

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<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81356>.

52. *Id.* at 8.

53. *Id.*

54. *Id.* at 28.

55. *Id.* at 38.

56. *Id.*

57. *Id.* at 28, 38.

58. *Id.* at 28.

59. *Zengin*, *supra* note 11, at 14.

Islam as practiced and interpreted by the majority of the population in Turkey as various [minority] interpretations . . . and . . . religions . . . [is not, in] itself. . . a breach of the [p]rinciples of pluralism.”<sup>60</sup>

Be it Roman Catholic, Lutheran, or Muslim, the ECHR interpretation of Article 2 of Protocol No. 1 of the Convention grants a State with historical and traditional ties to a religion the discretion to prioritize knowledge of that tradition, as compared to other minority religions and philosophies. But they are prohibited from crossing the line into “indoc-trination.”

### B. Underlying Aims: Turkey and Norway

The ECHR examined the legislative history of the curriculum changes in *Folgero*, and asserted “[the] prevailing intention behind the introduction of the KRL subject was that, by teaching Christianity, other religions, and philosophies together, it would be possible to ensure an open and inclusive school environment, irrespective of the pupil’s social background, religious creed, nationality or ethnic group.”<sup>61</sup> The intention was to transform the school into a “meeting place for different religious and philosophical convictions where pupils could gain knowledge about their respective thoughts and traditions.”<sup>62</sup> When the ECHR examined the legislative history of the Education Act of 1998 (which created KRL), the Court noted “the stated aim [of the Act] to ‘transmit *thorough* knowledge of the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith’ and the lack of a contrasting requirement of thoroughness applied to the knowledge of other religions and philosophies.”<sup>63</sup> This stated aim, when combined with an exhaustive examination of the curriculum, including analyzing field trips to local churches, Bible memorization exercises, and hymn lesson plans, suggested “not only quantitative but even qualitative differences applied to the teaching of Christianity as compared to that of other religions.”<sup>64</sup> The ECHR further found the partial-exemption policy, where a parent had to “give reasonable grounds” for requesting their child be dismissed from a particular lesson, onerous and invasive.<sup>65</sup> “Against this background, notwithstanding the many laudable legislative purposes

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60. Yalcin, *supra* note 2, at 21.

61. Folgero, *supra* note 51, at 37.

62. *Id.*

63. *Id.* at 38.

64. *Id.* at 39.

65. *Id.* at 40.

stated in connection with the introduction of the KRL subject . . . it does not appear that the respondent State took sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1.”<sup>66</sup> The ECHR told Norway to allow parents full exemptions from KRL.<sup>67</sup>

Turkey also had “laudable” legislative aims. The first time Turkey’s compulsory “religious culture and ethics” coursework came before the ECHR, the syllabus was thoroughly examined. The subject was “to be taught in compliance with respect for the principles of secularism and freedom of thought, religion and conscience,” and is intended to “foster a culture of peace and a context of tolerance.”<sup>68</sup> One of the objectives in the syllabus was “to educate people who are informed about the historical development of Judaism, Christianity, Hinduism and Buddhism.”<sup>69</sup> These stated aims were, in the ECHR’s view, “clearly compatible” with the principles of pluralism and objectivity.<sup>70</sup> However, the Turkish government asserted that the teaching of religion in schools is an appropriate means for combatting fanaticism, which the ECHR “note[d] with interest” before examining the contents of the curriculum.<sup>71</sup> The “religious culture and ethics” course aimed to explain that, “far from being a myth, Islam is a rational and universal religion,” students must “learn several *suras* from the Quran by heart and study the daily prayers.”<sup>72</sup> Despite comprising an approximated 12 million people, “no teaching was provided on the Alevi faith.”<sup>73</sup> Though Alevis reject the *sharia* and the *sunna*, do not pray Sunni prayers, do not attend *mosques*, and do not consider the *hajj*, the pilgrimage to Mecca as a religions obligation, students “receive no teaching on the confessional or ritual specificities of the Alevi faith.”<sup>74</sup> The ECHR found the “religious culture and ethics” syllabus “clearly lacking” with respect to the Alevi community, and said it “cannot be considered to meet the criteria of objectivity and pluralism.”<sup>75</sup>

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66. *Id.* at 42.

67. *Id.* at 44.

68. Zengin, *supra* note 11, at 13.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 13-14.

73. *Id.* at 14; *Alevi raporu* [Flame Report from Sabahat Akkiraz], SOL (Dec. 14, 2012, 5:25 pm) <http://haber.sol.org.tr/devlet-ve-siyaset/sabahat-akkirazdan-alevi-raporu-haberi-64266>.

74. Zengin, *supra* note 11, at 14.

75. *Id.* at 15.

## IV. TURKEY'S CONSTITUTIONAL COMPLICATIONS

The ECHR next examined if Alevi parents had a legal opportunity to exempt their children from the curriculum. This course of inquiry shines a light on an apparent contradiction between Turkey's Constitution and Turkey's treatment of minority groups. The Treaty of Lausanne (the Treaty) is the foundation of the legal status of minority groups in Turkey.<sup>76</sup> This Treaty was formed after World War I, and was signed between Turkey, as successor to the Ottoman Empire, and Britain, France, Italy, Japan, Greece, Romania, and the Kingdom of Serbs, Croats, and Slovenes on July 24, 1923.<sup>77</sup> In addition to setting the boundaries for the modern Republic of Turkey, the Treaty of Lausanne resulted in:

Approximately 1,100,000 Christians who once lived in Turkish territory [being] relocated to Greece, and roughly 380,000 Muslims who previously resided in Greece [being] transferred to Turkey. The population exchange was based wholly upon religious affiliation; neither race, nor nationality, nor language was considered relevant in deciding who would be banished from their respective homelands. This arbitrarily divisive criterion, based solely on religion, created somewhat of an anomaly, as many Greek-speaking Muslims of Greece were removed to Turkey, and Turkish-speaking Orthodox Greeks of Turkey were involuntarily forced to flee to Greece.<sup>78</sup>

Section III of the Treaty, entitled "Protection of Minorities," is often construed to convey special protections only to Greek Christians, Armenian Christians, and Jews, when in fact, only "non-Muslims" are mentioned in the French, English and Turkish text.<sup>79</sup> The Treaty reads, in relevant part:

**Article 38:**

*c1.* The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Tur-

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76. Lisa Dehuetes-Montmayuer, *Non-muslim minorities in Turkey: "some NGO reports speak of a sense of attrition"*, HYPOTHESES.ORG, (April 18, 2010) <http://ovipot.hypotheses.org/1348>.

77. Treaty of Lausanne, ENCYCLOPÆDIA BRITANNICA ONLINE, [http://www.britannica.com/event/Treaty-of-Lausanne-1923\\_\(last visited Feb. 5, 2015\)](http://www.britannica.com/event/Treaty-of-Lausanne-1923_(last%20visited%20Feb.%205,%202015)).

78. Joshua B. Gessling, *From Ankara to Strasbourg: Developing a Comprehensive Supranational Litigation Strategy for Patriarchal Preservation in Turkey*, 15 BUFF. HUM. RTS. L. REV. 109, 120-21 (2009).

79. Dehuetes-Montmayuer, *supra* note 76, at Art. 42, clause, which state that "non-Muslim minorities"; "Non-moslem minorities"; and "Müslüman olmiyan azınlıklar." Christian and Jewish exemptions can be gleaned by the mention of "churches" and "synagogues."

key without distinction of birth, nationality, language, race or religion.

c2. 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.

c3. *Non-Muslim* 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 defense, or for the maintenance of public order.

**Article 39:**

c1. Turkish nationals belonging to *Non-Moslem* minorities will enjoy the same civil and political rights as Muslims.

c2. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

c3. 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 honors, or the exercise of professions and industries. (. . .)

**Article 40:**

c1. 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 42:**

c1. 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.

c3. The Turkish Government undertakes to grant full protection to the *churches, synagogues, cemeteries, and other reli-*

gious establishments of the *above-mentioned minorities*. All facilities and authorization 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.<sup>80</sup>

The Treaty was intended to both (1) demarcate the people and territory of the modern Republic of Turkey, and (2) establish the protection of religious minorities.<sup>81</sup> Contrary to the spirit of the Treaty, Turkey has neither extended the Treaty's protections to other religious minorities, nor lived up to its obligations to the communities explicitly mentioned.<sup>82</sup> Consequently, when this exclusive focus on, and imperfect administration of, *non-Moslem* minority groups is paired with Turkey's Constitution, the implications for the Alevi community are stark.

The Turkish government is, according to their Constitution, a "democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble."<sup>83</sup> The Preamble talks of "the indivisible unity of the Sublime Turkish State," "[t]he absolute supremacy of the will of the nation," "no protection shall be accorded to an activity contrary to Turkish national interests . . . and the principle of its indivisibility with its State and territory, historical and moral values of Turkishness . . . and that sacred religious feelings shall absolutely not be involved in state affairs and politics as required by the principle of secularism."<sup>84</sup>

Tellingly, Article 3 declares the Republic of Turkey to be an "indi-

80. Treaty of Peace with Turkey signed at Lausanne, July 24, 1923, 28 L.N.T.S. 11, [http://en.wikisource.org/wiki/Treaty\\_of\\_Lausanne/Part\\_I#Section\\_III\\_Protection\\_of\\_Minorities](http://en.wikisource.org/wiki/Treaty_of_Lausanne/Part_I#Section_III_Protection_of_Minorities) (last visited Feb. 5, 2015) [hereinafter Treaty of Peace with Turkey] (emphasis added).

81. See *Id.* at section I, "Territorial Clauses," section II, "Territoriality," and section III, "Protection of Minorities."

82. See Gessling, *supra* note 78, at 122 (where a named protected minority, Greek Orthodox Christians, suffered discrimination at the hands of Turkey) ("Perhaps the most vital and necessary institution to the continued existence of the [Greek Orthodox] Patriarchate is the Theological Seminary at Halki . . . Despite the seminary's function as an integral institution of the Patriarchate, Turkey has taken multiple steps to divest the institution of the ability to train its future leadership.").

83. CONSTITUTION OF THE REPUBLIC OF TURKEY, Oct. 18, 1982, art. 2, [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf) (last visited Feb. 6, 2015).

84. *Id.* at Preamble.

visible entity,”<sup>85</sup> and Article 4 sets in stone Articles 1-3: “The provision of Article 1 regarding the form of the State being a Republic; the characteristics of the Republic in Article 2, and the provisions of Article 3 shall not be amended, nor shall their amendment be proposed.”<sup>86</sup> These three principles, (a) Republican form of government, (b) secularism, social equality, equality before the law, and (c) the indivisibility of Turkey, form the bedrock of the entire Turkish enterprise. Consequently, the Constitution recognizes freedom of religion for individuals, but is dramatically restrictive toward religious communities. The equality of citizens of the Republic of Turkey is guaranteed by Article 10 of the 1982 Constitution: “All persons are equal before the law irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or distinctions based on similar considerations.”<sup>87</sup>

Article 24 continues,

Everyone has the freedom of conscience, religious belief and conviction. Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14. No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions. Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual’s own desire, and in the case of minors, to the request of their legal representatives.<sup>88</sup>

It was imperative for Turkey, a robust country with 82 million people, to keep a focus on national unity over and against group identity politics, given potential consequences with the estimated 14 million Kurdish<sup>89</sup> and 18 million Alevi populations.<sup>90</sup> It should also be noted that, in the event Turkey is awarded membership in the European Un-

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85. *Id.* at art. 3.

86. *Id.* at art. 4.

87. *Id.* at art. 10.

88. *Id.* at art. 24 (emphasis added).

89. *The World Factbook: Turkey*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (last visited Feb. 6, 2015).

90. Flame Report from Sabahat Akkiraz, *supra* note 55.



ion, the Alevis and Kurds would become the largest minorities in the EU, “even larger than the whole Roma population within the EU’s borders.”<sup>91</sup>

One way this national unity was achieved was through a Turkish slant on *laïcité*, the system of state sponsored secularism originating in France “where the State holds the hegemonic position over religions, and, therefore, religious freedoms are enjoyed through the State but not without it.”<sup>92</sup> French *laïcité* resulted in a militant separation of church and state.<sup>93</sup> In some ways, Turkey mirrors France’s application of *laïcité*, such as with the ban on women wearing headscarves in public, which the ECHR upheld in *Sahin v. Turkey*.<sup>94</sup> This ban has also been cited as contributing to the dramatically different lives women lead in Turkey, *vis-à-vis* their Muslim and Arab neighbors.<sup>95</sup> However, while France essentially adopted secularism as its state religion,<sup>96</sup> Turkey brought religion under the aegis of the State, establishing a Presidency of Religious Affairs (“Diyanet”) “to carry out work on Islamic belief, worship and ethics, enlighten society on religion and administer places of worship . . . in line with the principle of secularism, by staying out of all political views and *thinking and aspiring to national solidarity and integration*.”<sup>97</sup>

91. Akbulut & Usal, *supra* note 1, at 438.

92. *Id.*

93. Henri Astier, *The deep roots of French secularism*, BBC NEWS (Sep. 1, 2004, 14:39 GMT) <http://news.bbc.co.uk/2/hi/europe/3325285.stm>.

94. Leyla Sahin v. Turkey, App. No. 44774/98, 27 Eur. Ct. H.R., (2004), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61863>.

95. ALI CARKOGLU, RELIGION AND POLITICS IN TURKEY 28 (2006) (“The most radical goal of the republican project of modernity targeted women: the *shari’a* was abolished, polygamy banned, a new civil code enacted that gave women equal rights, and women were given equal opportunities of education and employment. Thus, as early as the 1930’s, Turkey stood out as an anomaly among Muslim countries, with large numbers of women in hitherto male occupations, as judges, lawyers, academicians and doctors, who had few equivalents, if any, at that time even in the West.”).

96. Astier, *supra* note 93.

97. CONSTITUTION OF THE REPUBLIC OF TURKEY Oct. 18, 1982, art. 136, [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf) (last visited Feb. 6, 2015); *Basic Principles and Objectives*, REPUBLIC OF TURKEY, PRESIDENCY OF RELIGIOUS AFFAIRS (DIYANET), <http://www.diyamet.gov.tr/en/category/basic-principles-and-objectives/23> (last visited Oct. 8, 2015) (emphasis added); See also Mine Yildirim, *TURKEY: The Diyanet – the elephant in Turkey’s religious freedom room?*, FORUM 18 NEWS SERVICE (May 4, 2011), [http://www.forum18.org/archive.php?article\\_id=1567&layout\\_type=mobile](http://www.forum18.org/archive.php?article_id=1567&layout_type=mobile). “Under Law no. 633 of 1965 (‘The Presidency of Religious Affairs, Its Establishment and Obligations’)” which gives the Diyanet a mandate to “operate affairs related to the belief, worship and moral principles of the Islamic Religion, enlighten the public about religious issues and . . . administer places of worship.”

In short, the Turkish government, in the name of national unity, through the Diyanet, selects the “correct” version of Islam and teaches that version to its citizens. “State policy towards Islam can be formulated as follows: provide an official interpretation of Islam and direct the society according to it.”<sup>98</sup> In 2012, former President Abdullah Gul became the first president to visit the Diyanet in 33 years, and declared, “It is undoubtedly one of the most important duties of the Religious Affairs Directorate to teach our religion to our people in the most correct, clear and concise way and steer them away from superstition.”<sup>99</sup> This mirrors Prime Minister Davutoglu’s reaction to the ECHR’s holding in *Yalcin*: “If proper religion is not taught, it produces unhealthy and incorrect religious information that leads to the radicalization seen in our neighboring countries.”<sup>100</sup> Davutoglu posits a second argument for enforcing a homogeneous Turkish religious experience that involves combating radical Islam.

When the government was challenged regarding the closing of the Greek Orthodox seminary at Halki, their “public argument typically center[ed] on state concern with creating an appearance of preferential treatment on behalf of the Patriarchate and Greek minority Christians in Turkey, as well as the need to keep extremist Islamic centers closed.”<sup>101</sup> Turkish officials have expressed concern that should the theological school of Halki be allowed to train Greek Orthodox clergy in Turkey, fundamentalist Islamic schools might “seek[] the same privilege[.]”<sup>102</sup> “Deputy Parliament Speaker Sadik Yakut bluntly reaffirmed the government’s position . . . stating . . . [.] ‘[a]s long as there are no faculties affiliated to Suleymaniye or Sultanahmet Mosques, there won’t be a seminary affiliated to the Patriarchate.’”<sup>103</sup> It bears repeating: Turkey has not met its obligations to non-Muslim religious minorities, as Article 10 of the Turkish Constitution, “No privilege shall be granted to any individual, family, group, or class,” expressly prohibits Muslim minority groups from making claims to any special protections.<sup>104</sup> Turkey’s

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98. Akbulut & Usal, *supra* note 1, at 439.

99. *Gül first Turkish president to visit Diyanet in 33 years*, WORLD BULLETIN (Feb. 3, 2012, 17:59), <http://www.worldbulletin.net/?aType=haber&ArticleID=85313>.

100. Daloglu, *supra* note 8.

101. Gessling, *supra* note 78, at 144.

102. See Sinem Tasseven, Hatemi: Opening the Halki seminary will bring peace, HURRIYET DAILY NEWS (July 4, 2004, 12:00 AM), <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=hatemi-opening-the-halki-seminary-will-bring-peace-2004-07-04>.

103. Gessling, *supra* note 78, at 145.

104. CONSTITUTION OF THE REPUBLIC OF TURKEY Oct. 18, 1982, art. 10,

constitutionally founded national interest in unity and indivisibility remains at the forefront of its policy toward Muslim minority groups.<sup>105</sup>

Under the Turkish Constitution and Treaty of Lausanne, “only children ‘of Turkish nationality who belong to the Christian or Jewish religion’ have the option of exemption [from mandatory, state-run religion courses], ‘provided they affirm their adherence to those religions.’”<sup>106</sup> The ECHR held, “this necessarily suggests that the instruction provided in this subject is likely to lead these categories of pupils to face conflicts between the religious instruction given by the school and their parents’ religious or philosophical convictions.”<sup>107</sup> If this is a course on “‘different religious cultures,’” the court reasoned, there was no need to make it mandatory for Muslims alone; if it was a course “‘designed to teach’” confessional Islam, it “‘should not be compulsory.’”<sup>108</sup>

Further complicating matters is a concern, both domestic and abroad, that President Erdogan and his party, the Justice and Development Party (AKP), have pursued an increasingly Islamist agenda.<sup>109</sup> Erdogan sharply criticized the West for its reaction to the Charlie Hebdo bombing in Paris, claiming, “The West’s hypocrisy is obvious. As Muslims, we’ve never taken part in terrorist massacres. Behind these lie racism, hate speech and Islamophobia.”<sup>110</sup> Erdogan has also dramatically altered the education landscape in Turkey, vowing to make Arabic-alphabet Ottoman language lessons compulsory, almost a century after Kemal Ataturk replaced it with the Latin alphabet, asserting: “This religion has a guardian. And this guardian will protect this religion till the end.”<sup>111</sup> “There are those who do not want [the Ottoman language] to be taught . . . Whether they like it or not, the Ottoman language will be

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[http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf) (last visited Feb. 6, 2015).

105. See Akbulut & Usal, *supra* note 1, at 439.

106. Zengin, *supra* note 11, at 15.

107. *Id.*

108. *Id.*

109. Alexander Christie-Miller, *Erdogan Launches Sunni Islamist Revival in Turkish Schools*, NEWSWEEK (Dec. 16, 2014, 9:14 AM), <http://www.newsweek.com/2014/12/26/erdogan-launches-sunni-islamist-revival-turkish-schools-292237.html>.

110. Ayla Jean Yackley, *Turkey’s Erdogan accuses West of hypocrisy over Paris attacks*, REUTERS (Jan. 12, 2015, 4:45 PM), <http://www.reuters.com/article/2015/01/12/us-france-shooting-erdogan-idUSKBN0KL23M20150112>

111. *Recep Tayyip Erdogan vows to impose ‘Arabic’ Ottoman lessons in schools*, THE TELEGRAPH (Dec. 8, 2014, 4:38 PM), <http://www.telegraph.co.uk/news/worldnews/europe/turkey/11280577/Recep-Tayyip-Erdogan-vows-to-impose-Arabic-Ottoman-lessons-in-schools.html>.

learned and taught in this country,” Erdogan told a religious council meeting in Ankara in December 2014.<sup>112</sup> Erdogan has also been a staunch advocate for expediting the proliferation of *imam-hatip* schools, “religious schools in which 20% to one-third of hours are dedicated to Sunni Islamic study” in lieu of traditional public schools.<sup>113</sup> “We want to raise pious generations,” Erdogan told an assembly of AKP youth members in 2012.<sup>114</sup> Many recent government initiatives are evidence of religious incursions into Turkey’s nominally secular education system.<sup>115</sup> Mehmet Gormez, the head of the Diyanet, announced “Mosques are under construction in over 80 universities . . . There are 20 million young people in our country and we would like to reach out to each one of them.”<sup>116</sup> The Diyanet also plans to convert a university, 29 Mayis University in Istanbul, into an “international Islamic university.”<sup>117</sup> The National Education Council recommended that mandatory religious instruction, which is already compulsory from age nine, be extended to children as young as six years old, that “religious lessons for older children should be increased from one hour to two hours a week,” and that “students from the fourth grade onwards [to] take two years off from school to allow them to memorise the Koran.”<sup>118</sup> The National Education Council also abolished a class that teaches high school tourism students how to serve alcohol.<sup>119</sup> As Alexander Christie-Miller reported, these decisions have come “in spite of” the *Yalcin* decision.<sup>120</sup> Christie-Miller continued,

Nowhere is the spread of Islamic education seen more clearly,

112. David Lepeska, *New Turkey turns to old Ottoman*, AL JAZEERA AMERICA (Dec. 23, 2014, 2:00 AM), <http://america.aljazeera.com/opinions/2014/12/erdogan-turkey-ottomanlanguage.html>.

113. Christie-Miller, *supra* note 109.

114. *Id.*

115. *Id.*

116. *Turkey to open mosques ‘in every university,’* AL ARABIYA NEWS (Nov. 21, 2014, 3:24 PM), <http://english.alarabiya.net/en/life-style/art-and-culture/2014/11/21/Turkey-to-open-mosques-in-every-university-.html>.

117. Michael Kaplan, *Turkey plans to establish an Islamic university with a broader Muslim curriculum*, RELIGION NEWS SERVICE (Dec. 23, 2014), <http://www.religionnews.com/2014/12/23/turkey-plans-establish-islamic-university-broader-muslim-curriculum/>.

118. *Anger at plans to boost religious teaching in Turkey*, BBC NEWS (Dec. 8, 2014), <http://www.bbc.com/news/world-europe-30375569>.

119. *No alcohol service class for Turkey’s tourism students*, HURRIYET DAILY NEWS (Dec. 5, 2014), <http://www.hurriyetdailynews.com/no-alcohol-service-class-for-turkeys-tourism-students.aspx?PageID=238&NID=75275&NewsCatID=341>.

120. Christie-Miller, *supra* note 109.

however, than in the steady expansion of *imam-hatip* schools. When AKP took power in 2002, around 65,000 pupils were enrolled in them; today, the figure is nearly one million, or 9% of all school children aged between 10 and 18. Most of this increase has occurred since 2010, when AKP legislated to transform general high schools into vocational schools, including *imam-hatips*. Since then, their number has increased by 90%, from 493 to 936. In 2012, it legislated to allow middle schools to also operate as *imam-hatips* as well, meaning children as young as 10 can now attend them.<sup>121</sup>

The *New York Times* recently labeled this “the latest front in Turkey’s cultural wars,” in which the AKP “has gradually injected religion into public life over the past 12 years in an effort to reshape Turkish society.”<sup>122</sup> Many Sunni parents have chafed at these changes in the state-run educational programs, “arguing that the schools exerted pressure on their children to enroll” in basic religious knowledge courses and “grumbling that the government is slowly but surely indoctrinating children at early ages to Islam.”<sup>123</sup> “The issue is that the government is trying to create a monolithic identity involving religion in the new Turkey. It doesn’t seem to be willing to give space to differences,” said Riza Turmen, a former ECHR judge and deputy for the main opposition Republican People’s Party.<sup>124</sup> Most recently, teachers and the Alevis community have organized boycotts and protests “in several cities across Turkey, including Istanbul, Ankara, Izmir Eskisehir, Edirne, Artvin, Denizli, and Antalya,” denouncing the “Islamisation” of schools.<sup>125</sup>

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121. *Id.* See also Kristin Fabbe, *Turkey’s secularization in reverse?*, WASH. POST (Feb. 9, 2015), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/02/09/turkeys-secularization-in-reverse/>.

122. Yeginsu, *Turkey Promotes Religious Schools, Often Defying Parents*, N.Y. TIMES (Dec. 16, 2014), [http://www.nytimes.com/2014/12/17/world/europe/turkeys-religious-schools-rise-as-erdogan-exerts-sway.html?\\_r=1](http://www.nytimes.com/2014/12/17/world/europe/turkeys-religious-schools-rise-as-erdogan-exerts-sway.html?_r=1).

123. Daloglu, *supra* note 8. See also Aysegul Sert, *Turkish Reforms Entangle Education*, N.Y. TIMES, (Oct. 12, 2014), <http://www.nytimes.com/2014/10/13/world/europe/turkish-reforms-entangle-education.html>.

124. Daloglu, *supra* note 8.

125. *Dozens detained around Turkey in school boycott*, HURRIYET DAILY NEWS (February 13, 2015), <http://www.hurriyetdailynews.com/boycott-of-schools-begins-across-turkey.aspx?pageID=238&nID=78308&NewsCatID=339> (last visited March 11, 2015); *Turkish police use water cannon on protesters denouncing ‘Islamisation’ of schools*, THE GUARDIAN (February 13, 2015, 10:02am EST), [http://www.theguardian.com/world/2015/feb/13/turkish-police-use-water-cannon-on-education-protesters?CMP=share\\_btn\\_tw](http://www.theguardian.com/world/2015/feb/13/turkish-police-use-water-cannon-on-education-protesters?CMP=share_btn_tw) (last visited March 11, 2015); *Alevis march against compulsory religion classes in Istanbul*, HURRIYET DAILY NEWS (February 8, 2015), <http://www.hurriyetdailynews.com/alevis-march-against-compulsory-religion-classes-in-istanbul.aspx?pageID=238&nID=78076&NewsCatID=339> (last visited March 11, 2015).

Given this backdrop, concerns remain even though the mandatory religion class curriculum had received an overhaul between *Zengin* and the time *Yalcin* came before the ECHR. “The Court notes that changes were made during the program . . . [but] they have not been made . . . a real overhaul to principal axes of the course.”<sup>126</sup> The emphasis on Sunni prayer remained, and the Turkish government continued to assert that the main rites of the Alevi “are presented as if it were the cultural [and folk] activities” rather than a belief system.<sup>127</sup> The ECHR again asserted that the Alevi faith was sufficiently distinct from Sunni Islam to merit the parents to “legitimately consider that the teaching [methods] of the material in question . . . are likely to result in . . . [their children experiencing conflicting allegiances] between the school and their own values.”<sup>128</sup> And again, only Jewish and Christian children were offered exemptions, which the ECHR found to be a violation of Article 2 of Protocol No. 1.<sup>129</sup> “Therefore, notwithstanding the significant changes in 2011-12 [in the] course . . . and in the manuals [r]elating thereto, it appears that the educational system of the [R]espondent State is still not equipped with the [a]ppropriate means . . . to ensure [respect for parents’ convictions.]”<sup>130</sup>

The ECHR’s decision puts Turkey in the position of having to weigh its national interest in indivisibility, a cornerstone of its Constitution, against the ECHR demarcated mandate that state-run education programs promote pluralism and prevent indoctrination:

“in fulfilling the functions assumed by [the State] in regard to education and teaching, [it] must take care that information or knowledge included in the curriculum is conveyed in an objective, critical, and *pluralistic manner*. *The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions*. That is the limit that must not be exceeded.”<sup>131</sup>

Article 2 of Protocol No. 1 has as its aim, “enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism.”<sup>132</sup> Turkey’s Constitution directed the Diyanet to use an official version of Islam for “national solidarity and

126. *Yalcin*, *supra* note 2, at 20.

127. *Id.*

128. *Id.* at 21.

129. *Id.* at 22.

130. *Id.* at 23.

131. Kjeldsen, *supra* 35, at 23 (emphasis added).

132. Lautsi & Others, *supra* note 48, at 26.

integrity."<sup>133</sup> In ordering Turkey to expand the "possibility of choice . . . [for] parents with . . . religious or philosophical [beliefs] other than Sunni Islam,"<sup>134</sup> the ECHR is forcing Turkey to amend its unamendable self-understanding as an "indivisible entity" by expanding minority rights to Muslim religious minorities.<sup>135</sup>

#### V. THE EUROPEAN CONVENTION AND THE TURKISH CONSTITUTION: WHAT NOW?

*What does this mean for the application of the Convention? What happens when a party to the Convention can no longer reconcile their Constitution with the ideals of "prevention of indoctrination" and "protection of pluralism"?*

The ECHR has already demonstrated flexibility in crafting the balancing test between a State's duty to educate and a parent's right to education: the public policy at issue must be sufficiently grave to trump the privileging of pluralism, and private education options must be available.<sup>136</sup> "Given that more than a generation has been indoctrinated by the State in Sunni Islam, for the time being Alevis are not in favour of abolishing the compulsory religious course totally. Rather, they support the idea of separate religious lessons on Alevism to be taught by Alevi teachers."<sup>137</sup> Anything short, would just perpetuate the Alevis' discrimination.

Article 9 of the European Convention states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."<sup>138</sup> Article 11(2) limits the preceding paragraph, stating:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety . . . for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the

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133. CONSTITUTION OF THE REPUBLIC OF TURKEY (1982), art. 136.

134. Yalcin, *supra* note 2, at 23.

135. CONSTITUTION OF THE REPUBLIC OF TURKEY (1982), art. 3-4.

136. See Kjeldsen, *supra* 35, at 23-24.

137. Akbulut & Usal, *supra* note 1, at 443.

138. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 20, at art. 9.

exercise of these rights by members of the armed forces, of the police or of the administration of the State.<sup>139</sup>

Therefore, in determining the legality of Turkish education policy, one must ask whether the content of the curriculum and/or the exemption policy is tailored to fit the exception of Article 11(2). In other words, the issue is whether the Sunni-dominant curriculum, the limited exemption policy, and/or the Constitutional prohibition against recognizing Muslim minority groups, is “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>140</sup>

Mansur Yalcin *et al.* asked just that by alleging an Article 9 violation in conjunction with Turkey’s Article 2 of Protocol No. 1 violation before the ECHR.<sup>141</sup> Yalcin argued that teaching a mandatory religion class from an exclusively Sunni perspective, “is not reconcilable with the requirement of State neutrality” as revealed by ECHR precedent.<sup>142</sup> Unfortunately, in a 4-3 decision, the ECHR declined to consider whether there was a breach of complaints under Article 9 of the convention.<sup>143</sup> The dissent asserted that *Yalcin’s* Article 2 of Protocol No. 1 violations were essentially “of the same nature” as *Zengin*, and the ECHR should have addressed the “more decisive” questions of alleged Article 9 violations, namely:

The Turkish education system sees Alevism as a culture and that religion is thereby relegated to a lower rank in the religious education program compared to the majority confession [Sunni Islam]. The Alevi faith has not been granted the status of a distinct religion, enjoyed by Christian and Jewish students, for exemption from compulsory religious instruction. [The Alevi faith] is not treated with the same respect as that enjoyed by other branches of Islam. The analysis of the majority on the ground of Article 2 of Protocol No. 1, instead of addressing the underlying issue of religious discrimination, merely considers the content of the

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139. *Id.* at art. 11(2).

140. Stefan Sottiaux & Gerhard Van der Schyff, *Methods of International Human Rights Adjudication: Towards a More Structured Decision-Making Process for the European Court of Human Rights*, 31 HASTINGS INT’L & COMP. L. REV. 115, 138 (2008). *But see* UNESCO, *Turkey Country Report*, [http://www.unesco.org/education/wef/countryreports/turkey/rapport\\_1.html](http://www.unesco.org/education/wef/countryreports/turkey/rapport_1.html) (last visited Mar. 11, 2015) (Turkey’s stated objective for their education policy, which reads in part, “supporting and accelerating economic, social and cultural development *in national unity*” does not seem to fit these criteria).

141. Yalcin, *supra* note 2, at 23.

142. *Id.*

143. *Id.* at 23-24.



training program regulations.<sup>144</sup>

The issue might be that the current Turkish regime's interpretation of Turkey's Constitution is itself discriminatory toward Muslim minorities. By using Sunni Islam "as an umbrella which would cover ethnic differences" and unify Turkey, Turkey denied the existence of an Alevi religious identity.<sup>145</sup>

Turkey and the ECHR seem to have two options: (1) to give Muslim minorities the right to exempt their children from attending religious courses or, alternatively, (2) commit to wholesale changes in curricula, "providing religious and moral education for all without emphasizing any particular belief – in the jargon of international human rights law: 'in a pluralist and objective manner'."<sup>146</sup> The former would require constitutional change, granting Muslim minorities protected status over and against an undivided Turkish Republic. The latter would demand that Turkey, a country with little experience in robust religious pluralism, risk putting away its umbrella. In either event, the ECHR, the Council of Europe and – should Turkey's application to join the European Union pass – the EU, have a duty to the Alevi to protect their rights to education and religious freedom.

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144. *Id.* at 25 (Sajo & Vucinic, dissenting).

145. Akbulut & Usal, *supra* note 1, at 436; see also Fehim Tastekin, *Turkey's Minorities Still Orphans on 90-Year Anniversary*, AL-MONITOR (Oct. 30, 2013), <http://www.al-monitor.com/pulse/originals/2013/10/turkey-minorities-rights-kurdish-armenian.html#>; Semra Sevi, *Istanbul's Police Violence is No Surprise to Turkey's Minority Groups*, THE GLOBE AND MAIL, (July 4, 2013, 12:26 PM), <http://www.theglobeandmail.com/globe-debate/istanbuls-police-violence-is-no-surprise-to-turkeys-minority-groups/article12986317/>.

146. Akbulut & Usal, *supra* note 1, at 454.