

Mandates of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on minority issues

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/10, 41/12 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged discrimination faced by the Protestant Christian minority in Turkey, and in particular with regard to the registration of their religious organizations, their places of worship, the training of their clergy and religious leaders, as well as with regard to cases of harassment and intimidation of Protestant religious actors and their families.**

According to the information received:

Registration

The Turkish Protestant minority is comprised of more than 170 small and large fellowships throughout the country. Of them, only 96 have acquired a legal entity, under the existing law on associations and the law on foundations, while 74 have not acquired any legal entity. Most of those fellowships that have acquired a legal entity, they had done so mainly thanks to the amendments of both the law on associations and the law on foundations between 2004 and 2008, which repealed restrictive provisions contained in these laws in order to comply with the European Union legal framework.

However, today, Protestant congregations still face serious challenges with regard to their registration for a number of reasons: 1. there is no specific law regulating matters pertaining to religious organizations in Turkey and 2. according to numerous verdicts on cases of registration of Protestant congregations, the law on associations and the law on foundations does not provide for the registration of associations or foundations representing a specific religious congregation nor does it clearly establish the right of these associations or foundations to perform religious activities for the religious needs of their congregations.

In addition, the laws on associations and on foundations does not provide for the specific needs of religious institutions and organizations, such as organizational and financial matters, holding religious services, as well as training and hiring of

clergy, and therefore creates an ambiguity with regard to the legal status and operation of those congregations that have been registered under these laws, with the risk of being accused of performing unlawful activities and their operations shut down by the Turkish authorities, and their members facing legal repercussions. It is also reported that even among civil servants, there is no consistency on how to deal with the registration applications, and there is no consistent understanding about the legal status of these associations or foundations, and whether they should be considered as “house churches” or other forms of religious gatherings.

Places of worship

In 2003, article 2 of the Appendix of the Zoning Law was amended and the word “mosques” was replaced by “places of worship” which allowed, at least on paper, non-Muslim congregations to build their own places of worship following permission by the provincial, sub-provincial and municipal administrations. Nevertheless, it is reported that the implementation guidelines of the amended Zoning Law include conditions that cannot easily be met by small religious minorities, such as the minimum size of the parcels that religious communities are required to purchase in order to be eligible for a construction permission (i.e. 2,500 square meters).

In addition, concerns have been raised with regard to the arbitrariness of the administrations’ decisions to accept or not the allocation of land for the construction, the absence of specific regulations governing the decision process, and the complicated administrative procedures that the concerned religious communities need to follow, which may involve not only the provincial, sub-provincial and municipal administration, but also the National Estate Authority and the Directorate of Religious Affairs, which in some cases have issued conflicting decisions on the same purchase and allocation application.

Currently, out of more than 170 fellowships, only 13 perform their religious activities in buildings which are recognized by the authorities as “historic church buildings”. All the others worship either in registered private buildings, or in rented properties, offices or homes. It is reported that there are no established criteria for considering whether a premise is a place of worship or not, and this often leads to arbitrary decisions by the inspection units of the Directorate of Associations to impose fines on the congregations and to enforce closure of their place of worship. With the exception of the 13 congregations who use historic church buildings, all other congregations face the risk of eviction or of heavy fines for performing their religious activities in premises which are, according to the authorities, forbidden to be used for religious purposes. Requests by minority congregations to register the private properties, buildings, or homes, as places of worship have often been denied by the provincial, sub-provincial or municipal authorities.

Apart from the historic church buildings, the single example of a private building registered as a Church is the one by the Istanbul Protestant Foundation, in 2006. No other Protestant congregation has been able to establish an officially registered place of worship since then.

Absence of training, suspicion and harassment of Protestant religious actors

Non-Muslim religious minorities do not have any opportunities to train their clergy and religious leaders in Turkey. In addition, there are no specific laws or regulations with regard to the establishment by religious minorities of religious educational institutions at the secondary or tertiary levels for training purposes. The Turkish authorities have not made any particular progress in this regard, since the closure in 1971 of the Orthodox Theological Seminary of Heybeliada, despite the specific guarantees provided by the 1923 Treaty of Lausanne, in particular article 40, which states: *“Turkish nationals belonging to non-Muslim 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”*.

In this context and due to the lack of a sufficient number of trained Protestant clergy, the religious and spiritual leadership of some Protestant Churches is provided by foreign pastors and religious actors, some of whom have established themselves for years in Turkey, married Turkish nationals and support families. However, in recent years, and in particular following the 2016 failed coup attempt, there has been a rising suspicion against these religious actors and their activities, and propagation of perceptions and rumors about their alleged political interests and aspirations, which could undermine the Turkish national values and identity. Protestant Christian minorities have been portrayed as the “Trojan Horse” by the Turkish media and the country’s political, religious and intellectual leadership, and several cases of acts of religious intolerance have been reported in various regions, in particular during Christian holidays and celebrations.

In addition, since 2019, dozens of foreign Protestant religious actors, some of whom have a long-established presence in the country, have been barred from entering or re-entering Turkey without being provided with an explanation of the reasons. Almost all of these individuals were made aware of their N82 status (a designation requiring prior approval for entering the country) either at the airport before boarding their outbound flight or upon arriving in Turkey. It is also reported that in some cases the immigration authorities have refused to renew the residency permits of some of the religious actors. It is estimated that when the family members of these individuals are counted, more than 100 people have been affected by these bans.

Specific reference is made to the cases of Ms. Vija Herefoss, Ms. Joy Subaşıgüller and Ms. Amanda Jolyn Krause:

Ms. Vija Herefoss

Ms. Herefoss is a Norwegian citizen, living permanently in Oslo, and working for the Stefanus Alliance International – a Norwegian mission and human rights organization – as an advisor for international projects. In her professional capacity, she has visited Turkey several times since 2015 and has never experienced any particular problems entering or leaving the country. On 5 March 2020, she was flying again to the city of Antalya, in order to participate in an international conference, where she was stopped by the police at the passport check area of the Antalya Airport, her passport was confiscated and she was escorted to the police of the airport. An hour later, she was informed that she would not be allowed to enter the country because the Turkish government had imposed an entry ban on her for reasons of “national security”. She was handed an Inadmissible Passenger Form and was escorted to the plane flying back to Oslo on the same day. Her passport was not returned to her, but handed over to the flight attendant with the instruction to return it to Ms. Herefoss upon arrival in Oslo.

Ms. Joy Subaşıgüller

Ms. Subaşıgüller is a US citizen married to a Turkish national. She has established a Church, which has been part of the Istanbul Protestant Foundation. She has been living in Turkey for almost ten years, and her husband has been the pastor of the Church. Until this year, her residency permit has been renewed without any problem, and since her marriage, she has been holding a family residence permit which has been renewed every 2 years. However, on 5 June 2020, following a formal request by the Ministry of Interior, the Turkish immigration authorities informed her that her application for the renewal of her family residence permit was denied, and she was initially given only ten days to voluntarily leave the country. With the help of her lawyer, Ms. Subaşıgüller filed a complaint to contest this decision before the first administrative court of Ankara and her case is still pending. It is reported that since the rejection of her residence permit application, there has been no further action regarding her repatriation and the immigration authorities have been working with the Ministry of Interior to clarify her case.

Ms. Amanda Jolyn Krause

Ms. Krause is a US citizen holding a residence permit for over ten years. She has been engaged in religious activities on behalf of independent Christian churches in the United States. In October 2019, she was informed by the Ankara Immigration Office that her residency permit would not be renewed. On 17 October 2019, Ms. Krause challenged this decision before the first administrative court of Ankara, which, on 11 March 2020, decided to uphold the decision by the immigration authorities. On 20 May 2020, she appealed the decision of the court

and the verdict is still pending. In addition, in April 2020, her lawyer informed her that she was placed on an entry ban list (N82), and immediately she filed a complaint to contest this ban before the first administrative court of Ankara. This case is also pending.

While we do not wish to prejudge the accuracy of the received information, we express concern at the human rights situation of the Protestant Christian minority in Turkey, in particular in the absence of a clear legal and institutional framework for the enjoyment of the right of its members to their freedom of religions or belief. We wish to recall that the freedom to manifest one's religion or belief encompasses a broad range of acts, including freedom of worship through rituals and ceremonial acts or practices, the right to observe and practice, which may include also non-ceremonial acts and customs, the right to teach one's religion or belief by also establishing seminaries or religious schools, building places of worship, as well as preparing and distributing religious texts or publications. We deeply regret that as per the above-mentioned reported facts, it appears that the Turkish authorities have not taken the appropriate measures to ensure the full protection of these rights, which are guaranteed under international law.

Protestant Christian congregations continue to face challenges in registering their religious organizations and places of worship and they are vulnerable to administrative decisions, which are based on various interpretations of the existing unclear legislative framework, and which negatively affect their legal status and operation in the country. We wish to underscore that recognition and non-discriminatory registration of minority religious communities may prove essential to the maintenance of their religious identity, the development of their communitarian infrastructure and their long-term survival prospects, while at the same time non-recognized communities often live in situations of increased legal insecurity and structural vulnerability. Nevertheless, we wish to underscore that freedom of religion or belief has a status prior and independent of any administrative recognition procedures, and religious minorities should be respected in their freedom of religion or belief even without any registration.

We also express our serious concern at the reported discrimination and intimidation faced by the members of the Protestant Christian congregations and their religious leaders, including due to the reported increase of mistrust against minority religious actors and the securitized public discourse around their religious activities, which are often considered by the Turkish political and religious leadership as harmful for the national security, values, and identity. Of particular concern is the absence of training opportunities for the Christian clergy and the reported practice of placing foreign Protestant Christian religious actors, some of whom with long-standing presence and families in the country, on entry and re-entry ban lists, or of non-renewing their residency permits on the grounds of religious activities, which appear not to be prohibited by law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain how the current legal and institutional framework protects freedom of religion or belief and ensures that minority religious communities can obtain a legal identity, register their religious organizations and be protected against any discrimination in this regard.
3. Please provide detailed information with regard to the recognition and registration of places of worship of the Protestant Christian congregations, as well as of other minority religious communities in Turkey. Please indicate the measures undertaken in order to ensure that religious minorities in Turkey are not discriminated against in this particular area.
4. Please provide detailed information on legislative and policy measures to combat hate speech and incitement to hatred against religious minorities in Turkey, and provide information on the number of such cases brought before the courts.
5. Please indicate the measures undertaken to protect and promote the right of the members of minority religious communities in Turkey to teach their religion and to train their religious leaders.
6. Please explain the legal and factual grounds for the imposition of entry and re-entry bans and for the discontinuation of residency permits of a number of foreign Protestant Christian religious actors, some of whom with long-standing presence in the country, and provide information about the cases of Ms. Vija Herefoss and Ms. Joy Subaşıgüller and the outcomes of any investigation launched on the administrative decisions taken against these individuals.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fernand de Varennes
Special Rapporteur on minority issues

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, and in particular articles 2, 18, 21, 22, 26 and 27, which provide the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, freedom of thought, conscience, religion or belief, freedom of association and peaceful assembly, the principle of non-discrimination, and the rights of persons belonging to minorities.

The right of the Protestant Christians to religious practices and manifestations is provided by article 18 (1) of the ICCPR that stresses "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Human Rights Committee General Comment No. 22 further explains that "[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship [...] the display of symbols [...] In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications." (CCPR/C/21/Rev.1/Add.4, para. 4).

In addition, we wish also to recall that while the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria, including being non-discriminatory in intent or effect and constitute the least restrictive measure.

We would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in

this matter. According articles 6 (d) and (e), the right to freedom of thought, conscience, religion or belief includes also the freedom “to write, issue and disseminate relevant publications in these areas”, and the freedom “to teach a religion or belief in places suitable for these purposes”.

Furthermore, we would like to recall that the General Assembly, in its resolution 63/181 paragraph 9 (j) urges States “To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided.”

In his thematic reports, the Special Rapporteur on freedom of religion or belief has raised concerns about unnecessary bureaucratic restrictions, denial or delays in registration processes and the acquisition of a legal status, as well as in application procedures for the construction or renovation places of worship. He noted with concern that recognition procedures may be lengthy and overtly complicated, with the intentional and non-intentional effect of discouraging certain minorities from even applying. He has also expressed concerns about the decisions of certain States not to allow associations to pursue any religious or belief-related purposes, with the implication that religious groups per se cannot obtain any legal status under the law of association, as well as the arbitrary use of negative labels, such as “sect” or “cult”, to general prevent certain groups from obtaining legal personality status. He recommended that administrative procedures for obtaining legal personality status be established in a spirit of facilitating the full enjoyment of freedom of religion or belief for all religious or belief communities, including minorities. States should ensure that such procedures are facilitated in a quick, transparent, fair, inclusive and nondiscriminatory manner. In addition, they should favourably take into account the specific conditions of minorities, for example in defining quota and thresholds. (A/HRC/22/51, paras. 42, 43 and 69).

We wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.

The Special Rapporteur on minority issues has expressed concerns about the decision of certain States to grant recognition to only a few religious minorities, which is often influenced by the dictates of the dominant State-religion regarding which religious

minorities are to be officially recognized and which not, and has stressed that registration procedures designed to limit beneficiaries due to political or social intolerance run afoul of human rights standards. Freedom of religion or belief has a status prior and independent of any administrative recognition procedures, and religious minorities should be respected in their freedom of religion or belief even without any registration. In addition, the Special Rapporteur has stressed that teaching religion or belief requires the State to not criminalize or restrict the teaching or proselytizing of religion or belief and for any limitations to be strictly within the legal limitations outlined in article 18, paragraph 3 of the International Covenant on Civil and Political Rights (A/68/268, paras 59 to 63).

Finally, we also would like to draw your Excellency's Government attention to the recommendations of the sixth session of the Forum on Minority Issues on "Guaranteeing the rights of religious minorities" (A/HRC/25/66) and in particular Recommendation 17, which calls on States to ensure that "there is no discriminatory treatment in regard to the legal and administrative recognition of all religious and belief groups. Any registration and administrative procedures, including those relating to the property and the functioning of places of worship and other religious-based institutions, should be conducted according to non-discrimination standards. International standards do not allow non-recognition of religious or belief groups to result in denial of their rights. Such standards require an inclusive approach to be taken".