

A Comparative Legal Analysis of Freedom of Belief and Worship in Turkey*

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Abstract

Freedom of Belief and Freedom of Worship are interrelated and complementary freedoms. While belief primarily concerns the internal aspect of an individual, their spirit and worship can be seen as the manifestation of belief, transitioning from the abstract to the tangible. Freedom of belief and worship are among the inalienable fundamental rights established in national, regional, and international human rights documents. Recognised as one of the core values of a democratic society, freedom of belief is considered a fundamental right that cannot be restricted, even in times of war or emergency. The scope of these rights and freedoms, as enshrined in the constitutions of modern societies, has expanded over time in favour of liberties through legislative regulations and judicial rulings. Generally, in the decisions of the Turkish Constitutional Court and the European Court of Human Rights, to which Turkey is a party, it is emphasised that the internal aspect of freedom of belief is an inseparable part of one's personality, making this freedom non-restrictable. However, it is difficult to assert that freedom of worship, which serves as an outward expression of this liberty, is fully guaranteed by the legal system, as it is acknowledged that this freedom can be restricted in line with the requirements of a democratic society. Given that the boundaries of freedom of belief and worship cannot be distinctly defined and that separating these two domains is highly complex, it must be recognised that any intervention or limitation on freedom of worship inevitably impacts freedom of belief. This study will examine international legal regulations on freedom of belief and worship, constitutional provisions, and the decisions of the European Court of Human Rights and the Constitutional Court on this matter. Additionally, progress made in Turkey, along with challenges and shortcomings encountered in practice, will be addressed, and potential solutions will be offered. The topic will also be compared from a religious perspective, assessing the role of religion concerning these freedoms.

Keywords: Belief; Worship; Secularism; Sharia; Freedom

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A. INTRODUCTION

There is a close relationship between the legal system in place where an individual resides and the freedoms they enjoy. The emergence of human rights as a systematic political doctrine dates back to the 17th century. The diminishing influence of religion in social and political spheres in Europe led to the search for a non-religious source of legitimacy for political authority. The assumptions of the "state of nature" and the "social contract," which form the foundation of human rights doctrine, are the outcomes of this search.

"Human rights," one of the indispensable concepts of contemporary democracy, have emerged due to prolonged and arduous struggles. Human rights are generally classified into three generations, considering the historical periods in which they emerged. In Jellinek's classification of human rights, freedom of belief and worship corresponds to negative status rights, which do not expect the state to take any active measures but impose a non-interference obligation on the state. The bourgeoisie, nourished by the philosophy of Enlightenment and the natural law movement, waged a struggle against the aristocracy, ending the feudal era dominated by privileges and bringing forth the first bundle of human rights. Among the rights expressed in the American and French Declarations of Human Rights are freedom of thought and expression, freedom of assembly and association, personal security, and freedom of religion and conscience.

The Republic of Türkiye, founded on the legacy of the Ottoman Empire, which practised Islamic law, has turned its direction towards the West since its establishment. First, the statement that the state's religion was Islam, which was present in the 1924 Constitution, was removed in 1928, and in 1937, the principle of secularism was added to the Constitution. In the period following the adoption of the principle of secularism as a constitutional rule, this principle continues to exist in the Constitution of 1924, the Constitution of 1961 and the Constitution of 1982, which is still in force, and the statement that this principle cannot be changed by the legislative body or even proposed to be changed is included in Article 4 of the Constitution. Since the principle of secularism is based on the separation of religious affairs and state affairs, the existence of this principle in the Constitution means that Sharia rule is impossible in the country. In other words, it signifies that the state's economic, political, or legal foundations cannot be partially based on religious rules.

Türkiye is a party to the European Convention on Human Rights. It is committed to abiding by the decisions of the European Court of Human Rights (ECHR), which oversees its implementation. Article 90 of the Constitution states

that international treaties on fundamental rights and freedoms duly put into force have the force of law. The Constitutional Court has not interpreted the Constitutional rule according to the European Convention on Human Rights when the Constitutional rule and the treaty rule conflict ([Eren, 2004: 67](#)). However, in case of conflict between international treaties on fundamental rights and freedoms duly put into force and laws that contain different provisions on the same subject, the provisions of the international treaty shall prevail.

According to the legal system currently in force in Türkiye, the Constitution, adopted in 1982, stands as the supreme norm. While treaties duly enacted are considered equivalent to laws, in cases of conflict between a treaty concerning fundamental rights and freedoms and domestic law, the provisions of the international treaty shall be given preference. According to the Constitution, any limitation on fundamental rights and freedoms must be made by law. The European Court of Human Rights (ECHR) considers written legal rules, including regulations introduced by decrees and independent rule-making bodies authorised by the parliament, to meet the criterion of legality. However, under Turkish domestic law, guarantees and limitations regarding freedom of belief and worship must be established by the Constitution, laws, and international treaties.

B. METHODS

In Türkiye, the Constitution, laws, and international treaties regulate the guarantees and limitations regarding freedom of belief and worship. However, the scope and exercise of this right are evaluated within the framework of the principle of secularism. This study first includes the regulations on freedom of belief and worship in the Constitution and international treaties. Then, it addresses the problems encountered in practice regarding freedom of belief and worship and the international law regulations, Constitutional provisions, ECHR, and Constitutional Court resolutions on freedom of belief and worship. It touches upon the improvements made in this field in Türkiye in recent years and offers solutions by emphasising the system's shortcomings in practice.

C. RESULTS AND DISCUSSION

1. Legal Regulations on Freedom of Belief and Worship

Article 2 of the Constitution stipulates that “the Republic of Turkey is a secular state of law”, and Article 13 of the Constitution states that fundamental rights and freedoms “may be limited by law” and that such limitations may not

be contrary to the requirements of the secular Republic outlined in the Constitution. Article 13 of the Constitution lists the principles to be followed in limiting fundamental rights and freedoms. The first of these principles is the “prohibition of effect on the essence.” This principle aims to prevent limitations that would eliminate or severely restrict the exercise of fundamental rights and freedoms ([Yazar, 2021: 85](#)). Other grounds for restrictions listed in Article 13 include adhering to the reasons specified in relevant articles of the Constitution, conformity with the letter and spirit of the Constitution, compliance with the requirements of a democratic society and the secular Republic, and proportionality. Additionally, the article stipulates that a fundamental right can only be restricted “by law.”

Article 14 of the Constitution stipulates that “None of the rights and freedoms enshrined in the Constitution may be exercised to disrupt the indivisible integrity of the state with its territory and nation, or of abolishing the democratic and secular Republic based on human rights.” It also provides that no provision of the Constitution shall be interpreted in a way that would allow for more extensive restrictions on the fundamental rights and freedoms granted to individuals by the Constitution than those explicitly mentioned. Article 15 of the Constitution, which applies during times of war, mobilisation, and states of emergency, guarantees that “no one may be compelled to disclose their religious, conscientious, philosophical, or political opinions, nor shall they be accused on account of these beliefs,” thereby affirming that the internal aspect of freedom of belief falls within the realm of “core rights.” ([Gözler, 2017: 439](#))

Article 24, Freedom of Religion and Conscience, states, “Everyone has the freedom of conscience, religious belief, and conviction.” It further provides that “worship, religious rituals, and ceremonies are free, provided they do not conflict with Article 14” and that no one shall “be compelled to participate in religious worship, rituals, or ceremonies, nor shall they be compelled to disclose their religious beliefs or convictions, or be condemned or accused on account of their religious beliefs or convictions.” The article also specifies that religious education and training shall be conducted under the supervision and control of the state and that religious culture and moral knowledge shall be among the compulsory subjects taught in primary and secondary education institutions. In contrast, other forms of religious education and instruction may only be provided at the request of individuals or, in the case of minors, upon the request of their legal representatives. Additionally, it is stipulated that “The exploitation or abuse, in any manner whatsoever, of religion, religious feelings, or things regarded as sacred by religion to secure political or personal benefit or influence, or for any other reason, is prohibited.

According to Article 68 of the 1982 Constitution, which addresses the establishment of political parties, membership in political parties, and resignation from political parties, "The statutes, programs, and activities of political parties cannot be contrary to the secular Republic." In the event of a violation of this prohibition, Article 69 of the Constitution provides that the Constitutional Court shall dissolve political parties acting in contravention of the prohibition.

Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the European Convention on Human Rights regulate freedom of thought, religion, and conscience. Additionally, Article 2 of Protocol No. 1 to the European Convention on Human Rights, titled "Right to Education," stipulates that "The State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions" in fulfilling its educational duties. Article 20 of the International Covenant on Civil and Political Rights argues that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must not be protected and must necessarily be restricted. Both hate speech and blasphemy should not be considered protected under the freedom of expression.

Following amendments to the Turkish Penal Code, it is now considered a crime to obstruct someone's right to education or the right to access public services through unlawful actions or to compel a person by force or threat to declare or change their religious, political, social, philosophical beliefs, or to prevent them from saying or disseminating such beliefs. Furthermore, it is a crime to obstruct, through force or threat or other unlawful means, the practice of religious worship or ceremonies either individually or collectively or to interfere with or force someone to change their lifestyle choices arising from their beliefs, thoughts, or convictions. It is also criminal to obstruct the freedom to work or pursue a profession using force, threat, or other unlawful actions or to prevent someone from accessing a public service due to hatred based on political opinions, philosophical beliefs, religion, or sectarian differences. Additionally, it is a crime to publicly insult a section of the public based on religious or sectarian differences or to openly denigrate the religious values embraced by a section of the public.

2. Freedom of Belief

Belief in God gives meaning to a believer's life, guides their thoughts and decisions, and influences their relationships with all living and non-living things. God, who created His subject, is also the one who shows the right path. The God

who created humans informed them of what to believe in through the prophets He sent. Complete belief in God is fulfilled when this belief is settled in the heart and expressed verbally. The conclusion drawn from this definition is that belief, according to religion, is completed when a person surrenders internally to what they are supposed to believe in and then expresses it outwardly. Thus, in defining faith according to Islam, it is essential not only to believe in something internally but also to express it outwardly.

In Islam, great importance is given to the freedom of thought and religion not only for adults but also for those who are not yet fully competent. The verse "If your Lord had so willed, all those on earth would have certainly believed, all of them together. Will you then compel the people so that they become believers?" (Yunus, 10/99) emphasises the futility of compulsion in matters of belief. At the core of religion is faith, and at the core of faith is the confirmation by the heart. A person's willing preference for something is only possible when they truly accept it. Thus, will is dependent on consent. Islamic scholars have, therefore, stated that declarations of faith made under coercion or pressure are invalid. ([Ünal, 2005: 3/278](#))

Freedom of belief can be defined as the ability of individuals to freely choose God and religion without being subject to pressure from other individuals, laws, or political authority. Being a religious member inherently involves personal participation in the worldly system required by that religion. This participation has value and meaning to the extent that it is freely chosen. In this respect, freedom of religion is considered a form of freedom of conscience, particularly under the heading of freedom of conscience. The fulfilment of the commands required by a person's religion can be understood as the outward expression of a divine command, that is, worship. In nearly all religions, the relationship between the believer and God is not solely individual; religion has a collective nature that extends to the organisation of a religious community. "Religions are not merely a matter of belief; they are a way of life, an act" ([Freeman, 1958 p. 826](#)). Divine religions are inherently missionary in nature, and the conveyance of religion to others is a necessity, a command from God. Religion shapes both the individual and social behaviours of humans. ([Kaboglu, 1991: 268-269](#))

Freedom of religion encompasses the freedom to choose between atheism and religious participation and the freedom to practice the requirements of religion individually or collectively ([Göze, 1989 pp. 416-417](#); [Soysal, 1986](#)). Practices associated with belief or non-belief, such as changing one's faith, proselytising, organising around faith, and freely leaving a faith, are also within

the scope of freedom of belief ([Özipek, 2011, p. 208](#)). Freedom of religion or belief must be protected regardless of a person's religious or political views, whether alive or deceased ([Yıldırım, 2022](#)). It is argued that everyone has the right to freedom of thought, religion, and conscience and that this right, as an internal aspect of individuals, manifests in their "hearts and minds," falling outside the jurisdiction of the state and the regime of limitations. ([Harris et al., 2013, p. 438](#))

In many cases, it seems impossible to interfere with freedom of belief, as it profoundly pertains to a person's inner world. It is difficult to interfere with one's freedom of belief when one can keep one's true belief or lack of belief hidden or claim to believe in something else under pressure or to protect one's interests. However, forcing individuals to adopt a belief to which they do not subscribe or to disclose their deeply held beliefs will severely damage their self-respect and human rights. The prohibition of any coercive intervention into the internal aspect of a person's religious, moral, or philosophical belief holds the same status as the prohibitions on slavery or torture in international law. These are absolute, non-derogable prohibitions. ([Bielefeldt, 2011: 6](#))

3. Freedom of Worship

The second dimension of freedom of belief, as stated in Article 9 of the European Convention on Human Rights, is the freedom to manifest one's religion or belief alone or in community, in private or in public, through worship, teaching, practice, and observance ([Doğru and Nalbant, 2013: 121](#); [Derin Türkoğlu, 2022: 124](#)). Worship refers to fulfilling the requirements, rituals, and ceremonies prescribed by one's religion. The freedom to worship also includes the freedom not to worship, meaning that individuals, even if they declare adherence to a particular religion, cannot be forced to perform the worship required by that religion. It is generally accepted that when freedom of belief involves external expressions, and there is a conflict between competing values, it may be subject to limitations ([Vural, 2014: 59](#)). Article 9 is the only provision that does not foresee restrictions based on "national security." ([Doğan, 2015, p. 624](#))

Discrimination based on adherence or non-adherence to a specific religion or belief; legally prohibiting membership in certain religions or beliefs; forcing someone to declare their religion or belief, or revealing a person's religion or belief without their consent; compelling individuals to follow religious or other beliefs, or threatening physical force or imposing criminal sanctions to change their religion or belief, are all considered violations of freedom of belief.

The increase in cases brought before the European Court of Human Rights (ECHR) in recent years concerning freedom of belief is thought to stem from the growing problems in this area ([Council of Europe, 2020: 9](#)). Since the state has a positive obligation to take specific measures in the realm of freedom of belief, failure to do so may constitute a violation of Article 9 of the European Convention on Human Rights and Article 18 of the International Covenant on Civil and Political Rights. Any restriction on freedom of belief must be prescribed by law, serve one of the legitimate aims specified in the texts of the articles, and be necessary in a democratic society. Judicial decisions consider an intervention into the freedom of belief legitimate when it is carried out for at least one of the purposes of “public safety,” “public order,” “public health or morals,” or “the protection of the rights and freedoms of others.” The ECHR evaluates the phrase “protection of the rights and freedoms of others” based on factors such as whose rights are at stake, the proximity of those rights to individuals, and the potential harms and effects of exercising and not exercising those rights on both parties. The most important factors determining the limits of discretion are the erosion of religious pluralism and the state's departure from impartial and objective conduct.

4. Freedom of Belief and Worship in Islam

According to Islam, all people possess certain rights equally, and these rights must be protected. Among the foremost of these rights are the right to life, the right to property, freedom of belief, freedom of thought and expression, and the right to privacy. Freedom of belief is emphasised in many verses of the Qur'an. “Say, ‘The truth is from your Lord: let him who will, believe, and let him who will, disbelieve.’” (Al-Kahf 18:29) and “We showed him the way, whether he be grateful or ungrateful” (Al-Insan 76:3). Furthermore, Islam recognises that having different beliefs is a natural state: “Had your Lord willed, everyone on earth would have believed. So will you force people to become believers?” (Yunus 10:99). This verse demonstrates that different beliefs have the right to express and define themselves. In other words, this verse highlights that having diverse beliefs is part of divine will and should be regarded as entirely usual. From this perspective, every believer deserves tolerance. Indeed, the Prophet Muhammad exhibited exemplary behaviour in this regard. He was always tolerant toward people of different beliefs, guaranteeing full freedom of belief to the Jews of Medina and the Christians of Najran. His caliphs also adhered to this practice with sensitivity. For example, Caliph Omar granted the same freedom of belief to the Christians of Palestine. ([Polat, 2023: 28/1, 206, 207](#))

According to the Qur'an, Islam is the common name of the religion revealed through all prophets (Al-Hajj 22:78; Al-Imran 3:67) and is accepted by God (Al-Imran 3:19, 85). There is no distinction between prophets in terms of being messengers of God. There is absolutely no difference in the concept of monotheism, which forms the basis of religion, or in other related tenets of belief ([Ünal, 2005: 3/276](#)). There is complete uniformity even regarding fundamental moral principles and primary forms of worship. In this regard, the Qur'an repeatedly emphasises that it was revealed to confirm previous sacred books (Al-Baqarah 2:41, 91, 97; Al-Imran 3:3, 50; Al-Fatir 35:31). Accordingly, the Prophet Muhammad reminded humanity of the previously delivered divine message and is the last prophet whose mission is directed toward all humankind, making his message universal (An-Nisa 4:79; Al-A'raf 7:158; Al-Ahzab 33:40; [Ünal, 2005: 3/276](#)). One of the fundamental principles of Islam's universal message is that there is no compulsion in religion. As stated in Surah Al-Baqarah 2:256, "There shall be no compulsion in religion. The right way has become distinct from the wrong way. So whoever rejects false deities and believes in Allah has certainly grasped the firmest handhold, which will never break. Moreover, Allah is All-Hearing, All-Knowing." Thus, no one can be coerced into accepting or rejecting any religion. Freedom of belief cannot be restricted by force or oppression. Additionally, no one is required to become a Muslim. Just as people have the freedom to believe, they also have the freedom not to believe. Once the truth has been clearly explained and minds are enlightened, everyone makes their own free choice and is responsible for it.

The Qur'an itself practices the expression of different beliefs and opinions. It recounts the perspectives of those with differing beliefs and thoughts, quoting them with expressions such as "they say" or "they believe this." (Al-Baqarah 2:13, 118, 167; Al-Ma'idah 5:110; Al-A'raf 7:66). The Qur'an even openly conveys thoughts that are kept hidden, stating what they believe or think internally (Al-Baqarah 2:105; Al-Imran 3:91, 168; An-Nisa 4:139). From this, it can be understood that the Qur'an allows for expressing and declaring all beliefs and thoughts. Not only does it express opposing beliefs and thoughts, but it also criticises them, offering alternative responses with phrases such as "Say" or "Respond to them" (Al-Imran 3:20, 29, 32, 154; Al-Ma'idah 5:59, 60), thereby encouraging reflection and dialogue. In this way, the Qur'an presents both the truth and falsehood, allowing individuals to choose among beliefs and ideas. ([Yakit, 2014: 389](#))

Islam regards places of worship where the name of God is mentioned as worthy of respect and protection. The Qur'an states: "If Allah did not repel some people using others, monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned would have been demolished" (Al-Hajj

22:40). From this verse, it is understood that protecting places of worship is a universal duty for Muslims. Moreover, it is the responsibility of Muslims and their governments to ensure that people of other religions living in Islamic lands can practice their faith freely and maintain their places of worship. For this reason, the places of worship of other religions in lands conquered by Muslims were not destroyed but preserved. One example is Caliph Omar's treaty with the native Christians of Jerusalem, where he granted them immunity for their church. ([Maturidi, 2007: 9/386](#))

Since more than 99% of people living in Türkiye are Muslims, and the rules of Islam pertain to both worldly and spiritual matters, it can be argued that in a secular legal system, it is primarily Muslims who face human rights violations. Given that Sunday is a day of worship for Christians and Saturday for Jews, and these days are official holidays in Türkiye, it cannot be said that non-Muslims generally face problems with the legal system. However, a significant Muslim practice, Friday prayers fall on a regular working day. Furthermore, Friday is not the only day of worship for Muslims, and prayer is not the sole form of worship. In Islam, not only is Friday prayer obligatory, but it is also obligatory to perform the five daily prayers in the congregation. Therefore, it is primarily believers in Islam whose rights regarding belief and worship are most often violated.

a. Islamic Rulings on Apostasy

The word "murtad" (apostate) comes from the root "rida," which means to disbelieve or to renounce one's religion ([Ferahidi, 2002: 2/111](#); [Cevheri, 2007: 400](#); [Isfahani: 349](#)). Accordingly, a "murtad" is someone who has abandoned their religion. The Qur'an expresses that those who exchange faith for disbelief have gone astray from the right path (Al-Baqarah, 2:108). It is emphasised that those who abandon their religion and die as disbelievers will have all their deeds rendered void in both this world and the Hereafter, and they will be condemned to Hell for eternity (Al-Baqarah, 2:217; Al-Ma'idah 5:5; Al-An'am 6:88; Az-Zumar 39:65; Muhammad 47:28). In conclusion, the Qur'an does not explicitly state how apostates should be punished in this world. However, some verses describe inevitable consequences for apostates in this life, such as wasting both their worldly life and Hereafter (Al-Hajj 22:11), their deeds being rendered void (Al-Baqarah 2:217), having a problematic death (Muhammad 47:27-28), being unable to harm Allah (Muhammad 47:32), and facing the curse of Allah, the angels, and all people in both this world and the Hereafter (Al-Imran 3:86-89).

Nevertheless, some scholars have interpreted certain verses as commanding the death penalty for apostasy. For example, according to Serahsi, apostates are categorised as Arab polytheists, and the verse "When the sacred

months have passed, kill the polytheists wherever you find them!" (At-Tawbah 9:5) commands the killing of apostates. It is reported that Abu Bakr and Ali referred to this verse in their battles against apostates ([Qurtubi, 2006: 10/109-110](#)). Explicit references to the execution of apostates are found mainly in hadith narrations. For instance, it is reported that the Prophet Muhammad said, "Kill whoever changes his religion" (Bukhari, "Istitabat Al-Murtaddin," 2). The Prophet also listed abandoning Islam and separating from the community as one of three crimes warranting the death penalty for a Muslim (Bukhari, "Diyat," 6). However, some scholars argue that the death penalty for apostasy mentioned in Islamic jurisprudence books was only applied to those who not only renounced their faith but also waged war against the Muslim community. ([Riza, 1990: 5/266-267; 9/553; Köse, 2003: 100-103](#))

Repentance by the apostate annuls the death penalty. According to the Hanafi and Shafi'i schools, even in the case of repeated apostasy, repentance nullifies the death sentence. From the moment a person becomes an apostate, their marriage bond is dissolved, any marriage they enter into is invalid, and the meat of animals they slaughter is not permissible to eat (Yüce, 2008: 35/90). In Türkiye's current secular legal system, there is no distinction between believing, not believing, or changing one's beliefs. The state is not concerned with whether or what a person believes. Therefore, the punishments prescribed by Islamic law for apostasy are not applied to those who leave the Islamic faith.

b. Islamic Rulings on Prayer

In Islamic terminology, prayer (*salat*) refers to a physical act of worship performed at prescribed times with specific conditions, movements, and words ([Jurjani, 2003: 209](#)). Although the form of prayer varies, it is a practice found in all religions ([Isfahani: 490-491](#)). The Qur'an speaks of past prophets, stating: "We made them leaders, guiding by Our command, and We inspired them to do good deeds, establish prayer, and give zakat. They were devoted worshippers of Us" (Al-Anbiya 21:73). Prayer is described in the Qur'an as an act of worship performed and commanded by prophets such as Ibrahim, Ishaq, Ismail, Musa, Zakariyya, Isa, Maryam, and Luqman (Ibrahim 14:37, 40; Al-Anbiya 21:73; Maryam 19:31, 55, 58-59; Taha 20:14; Luqman 31:17-18; Al-Imran 3:38-39, 42-43. [Ugur: 2008: 8\(2\)/147](#)). Two of the six essential qualities of successful believers mentioned in the Qur'an are related to prayer (Al-Mu'minun 23:1-11). Additionally, the only religious command given to the Israelites under Pharaoh's severe oppression was to perform prayer (Yunus 10:87. [Sulun, 2009: 30](#)). In the Old Testament, prayer is depicted and commanded as a daily act of worship ([Ugur: 2008: 8\(2\)/133-166; 2020: 291-315](#)).

Approximately one and a half years before the Hijra, during the night of the Mi'raj, the five daily prayers were made obligatory (Bukhari, "Beginning of Creation," 6). In some verses, prayer is mentioned immediately after faith (Al-Baqarah 2:3). Similarly, in many of the Prophet Muhammad's sayings, prayer is mentioned immediately after faith (Bukhari, "Faith," 2; Muslim, "Faith," 5). Some Qur'anic verses also state that those who abandon prayer will be punished in the Hereafter (Al-Muddathir 74:42-43; Maryam 19:59). Prayer is a prescribed obligatory act of worship in both the Qur'an and the Sunnah. Therefore, anyone who denies the obligation of prayer is considered a disbeliever (kafir) and subject to the death penalty as an apostate ([Nevevi: 3/14](#)). Islamic scholars unanimously agree that deliberately neglecting an obligatory prayer is a grave sin ([Jawziyya: 5](#)). The Hanafis classify the refusal to pray as a *tazir* crime, requiring punishment such as imprisonment or whipping until the person repents. In other schools of thought, this offence falls under *hadd* crime and warrants the death penalty. ([Ekinci, 2021: 405](#))

c. Islamic Rulings on Zakat

The word zakat in Arabic means "increase, purification, blessing, and praise" ([Ferahidi, 2002: 2/189](#); [Shaybani, 2009: 1/727](#)). In Islamic terminology, zakat refers to giving a portion of one's wealth to certain eligible Muslims after a specified time, purely for the sake of Allah ([Bilmen, 1985: 4/77](#)). Verses revealed in Medina command wealthy Muslims to give zakat to those in need (Al-Baqarah 2:219, 261-274; Al-Imran 3:92; At-Tawbah 9:103). It is understood that zakat was made obligatory in the second year after the Hijra ([Ibn Sa'd, 2001: 1/214](#)). According to the Qur'an, those who fail to give zakat will be severely punished in the Hereafter (At-Tawbah 9:35). The Prophet Muhammad stated that those who neglect zakat will face various forms of punishment in the Hereafter ([Bukhari, "Zakat," 1](#)). Islamic jurists assert that rejecting the obligation of zakat leads to apostasy ([Shawkani, 1993: 4/138](#)). Indeed, it is reported that Abu Bakr said, "I will fight those who separate prayer from zakat!" and he fought against those who refused to pay zakat during his caliphate ([Bukhari, "Zakat," 1](#)). The worldly punishment for failing to give zakat is that the Islamic state will forcibly take it, and an additional penalty imposed by the state will be applied. ([Donduren, 1991: 486](#))

d. Islamic Rulings on Veiling

The term veiling, or "tesettür" in Arabic, comes from the root "setr," which means "to cover, to hide, to close, to prevent" ([Isfahani: 396](#)). In the Qur'an, the headscarf is emphasised concerning women's veiling, and the terms "khimar" and "jilbab" are used for the headscarf. In the verse where the word "khimar"

appears, it is stated: "Let them draw their headscarves (*khimar*) over their chests" (An-Nur 24:31). According to the interpretations, "*khimar*" in this verse refers to what a woman uses to cover her head. The verse commands women to cover their chests by wrapping their headscarves around their necks ([Qurtubi, 2006: 15/215](#)). As soon as this verse was revealed, the first emigrant women tore off the ends of their garments and covered their heads with them ([Bukhari, "Tafsir," 24/12](#)). In the verse where the term "*jilbab*" is used, it is commanded to believing women: "Let them draw their cloaks (*jilbab*) over themselves" (Al-Ahzab 33:59). The word "*jilbab*" in this verse has been explained as "a shirt (*qamis*) or headscarf (*khimar*)" ([Isfahani: 199](#)), or as "a larger covering than a headscarf" or "an outer garment worn over clothes" ([Qurtubi, 2006: 17/230](#)). The requirement for women to cover their heads in Islam is established through the Qur'an, the Sunnah, and the practices dating back to the era of the Prophet. A Muslim woman who does not cover her head is considered sinful. However, if she denies the verses in the Qur'an related to veiling, she would fall into disbelief (*kufur*). ([Topaloglu, 1991: 13-20](#))

5. The Principle of Secularism in Defining the Limits of the Exercise of Freedom of Belief and Worship

Article 2 of the Turkish Constitution states that the Republic of Türkiye is a "secular" state, along with other characteristics of the Republic. The Constitution or law has not defined secularism but has been shaped through resolutions by the Constitutional Court. The concept of secularism has two fundamental aspects: freedom of religion and the separation of religion from state affairs. The Constitutional Court regards the separation of governance from religious rules as a red line ([Özbudun, 2010: 76](#)). However, for many years, the Constitutional Court ruled that female students in schools and women working in state institutions wearing headscarves violated the constitutional principle of secularism. According to the Constitutional Court, secularism is not merely the separation of religion and state affairs; it also functions as a societal project, even an ideology, aimed at modernising society through secularism ([E. 2008/16, K. 2008/116, KT. 05.06.2008](#)). However, in addition to being a secular state, Türkiye is also a democratic state, and the fundamental function of democracy should be to create an environment where everyone can peacefully live according to their religious or philosophical preferences. ([Kışlalı, 2006](#))

Legal rules inspired by religious-based customs, traditions, or obligations may exist in a secular state. For instance, in most countries, the designation of weekends as Saturday and Sunday has religious origins. Similarly, in Türkiye,

according to Law No. 2429, public offices and institutions are closed during Ramadan and Eid al-Adha, which has religious significance. Therefore, some laws may have religious roots in a secular legal system. The fact that religious rules influence the legislator in reflecting human will does not negatively affect the secular nature of the state. ([Özkul, 2014: 284](#))

The secular nature of state governance also extends to rules applied in the economic sphere. In Türkiye, alcohol sales are permitted to individuals over 18 years of age, and restaurants serving alcohol can be opened, regardless of whether the individual is Muslim or not. Municipalities allow the operation of establishments where prostitution occurs, provided they obtain a license and undergo health inspections. Institutions that lend money with interest can also be established and operate.

6. Forcing the Practice of a Religious Belief or Preventing the Practice of a Religious Requirement as a Violation of Human Rights in Türkiye

a. Oaths in Courts or Before Public Authorities

In Türkiye, individuals who are called to testify in court or before public authorities are required to take an oath before making their statements. The oath is as follows: "I swear on my honour, dignity, and all the beliefs and values I hold sacred that I will answer truthfully to the questions asked and that I will not withhold anything." The word "Allah" was previously part of the oath text but was removed by the Constitutional Court's decision dated February 2, 1996 ([Decision No: E:1995/25, K:1995/5](#)). Therefore, it is no longer included in the oath. The oath now requires individuals to swear on their conscience and what they hold sacred rather than invoking any specific religious belief. In practice, some individuals do not take the oath seriously because the word "Allah" is not included, as required by the secular system. In some cases, people have even given false testimony or refused to testify altogether, even though perjury is a crime, due to the content of the oath not aligning with Islamic beliefs.

In *Buscarini and Others v. San Marino*, on February 18, 1999, the European Court of Human Rights (ECHR) ruled that the requirement for three newly elected members of parliament to swear an oath on the Bible before assuming office violated Article 9 of the European Convention on Human Rights. The court determined that this requirement was not necessary in a democratic society and that it violated Article 9.

b. Compulsory Religious Education Among the Courses Taught in Schools

The most significant freedom violations in the context of the secular legal order are argued to arise within the provision of public services. With the 1982 Constitution, the introduction of compulsory religious culture and ethics classes in primary and secondary education, the fact that teachers appointed by the state provide this education, the existence of vocational high schools that provide Islamic religious education, and the allocation of public resources to individuals belonging to the Islamic faith ([Kaboğlu, 1991, p. 270](#)) are interpreted as violations of secularism. Although Türkiye has ratified Protocol No. 1 to the European Convention on Human Rights (ECHR), which protects the right to education, it has placed a reservation on Article 2 of the Protocol in the context of Law No. 430 on the Unification of Education, which is protected at the constitutional level. In Türkiye, it is forbidden to establish private religious education institutions.

Opponents of compulsory religious education argue that teaching about religions and beliefs should be sensitive, balanced, inclusive, free from dogma, impartial, and grounded in the principles of human rights related to freedom of religion or belief. They demand the exclusion of content in textbooks that provide information about the existence of God, the Qur'an, the Prophet Muhammad, the creation of the world, the purpose of life and death, angels, and the doctrines of Islam. On the other hand, many parents of children from the 99% Muslim population in Türkiye oppose raising their children without religious education. Suppose the state does not provide necessary religious knowledge, which is mentally and spiritually beneficial. In that case, people will seek this education from other sources, and sometimes, due to ignorance in the family, children may fall into the hands of terrorist organisations. The reasoning behind the constitutional provision for compulsory religious education is to ensure the provision of reliable and supervised religious education by the state. The course, offered for two hours a week, is called "Religious Culture and Ethics." The course provides general information about various religions and cultures, including philosophical movements and different religions, in a limited manner.

The connection between religious education and the right to freedom of belief is established in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. It is acknowledged that state schools may provide education about the requirements of a specific religion or belief; however, in such cases, states must offer alternatives or exemptions to accommodate the requests of families or guardians to avoid discrimination.

Non-Muslims in the Ottoman Empire and modern Türkiye have enjoyed complete freedom of religion and worship, including the freedom to protect and

express their beliefs, perform religious rituals, and teach their children ([Ansay, 2002, p. 72](#)). The basic principles and practices of Christianity and Judaism are included in Turkish high schools' 11th-grade Religious Culture and Ethics textbooks. In addition, theism, deism, atheism, and agnosticism are also covered in the same textbook. Christian and Jewish children in Türkiye are exempt from the Religious Culture and Moral Knowledge course.

Although some argue that a secular state should not provide religious education or try to influence society in this direction under any name (Norman Barry, "The Market, Morality, Religion, and the State," ([Trans. Mustafa Erdoğan, Freedom of Religion and Conscience in Türkiye, ed. Murat Yılmaz, LTD Publications, Ankara 2005, p. 67](#)), it is clear that both Türkiye and other countries adopt various methods to facilitate religious freedoms and services. These methods include state aid, special taxation, and exemptions, as well as public funding for services that can be considered religious. ([Borovali, M., & Boyraz, C., 2016:59](#))

In the *Folgerø v. Norway* case, the ECHR ruled that requiring parents to submit a written request for exemption from religious education if it did not align with their religion or philosophy placed an undue burden on them. The court found that this mechanism violated Article 2 of Protocol No. 1, as it could lead to unnecessary disclosure of personal beliefs and deter parents from seeking exemptions. ([ECHR, June 29, 2007](#))

The Religious Culture and Moral Knowledge classes currently offered in Türkiye are not a form of professional religious education but rather a cultural education program providing general information about various religions and philosophical movements. Rejecting such a course is akin to refusing a physics or chemistry class. The state-provided religious education is reliable and subject to supervision. The real problem lies in religious education provided outside the state's system. Unsupervised religious education could result in individuals joining terrorist organisations or learning incorrect information. If parents prevent their children from receiving religious education, it may result in the children growing up without religious knowledge. Later education might lead to radical tendencies. Therefore, educating students about religious matters should not be left solely to parents' discretion.

c. Conscientious Objection

Conscientious objection is defined as an individual's opposition to mandatory practices due to following the voice of their conscience ([Mızrak, 2015, p. 118](#)). In countries where military service is mandatory, citizens' refusal to

perform military service naturally means requesting an exemption from general rules that apply to all citizens due to religious, philosophical, or political reasons. Actions like performing a religious ritual or fulfilling religious obligations are considered in a different category than refusing to perform an act prohibited by one's religion. Unfortunately, performing a religious ritual or fulfilling obligations can be restricted by law in a democratic society if necessary; forcing individuals to engage in behaviour prohibited by their beliefs, mandated by the state, ignores the effects on their inner spiritual world and violates a protected domain.

The European Court of Human Rights (ECHR), with the Grand Chamber ruling in *Bayatyan/Armenia* ([ECHR, July 7, 2011](#)), established that conscientious objection is within the scope of Article 9 of the European Convention on Human Rights. Conscientious objection is also connected to paragraph 3(b) of Article 4, titled "Prohibition of Slavery and Forced Labor," of the Convention. According to this provision, "service of a military nature or compulsory alternative service for individuals who, based on their beliefs, refuse to perform military duties in countries that recognise such a right" cannot be considered forced or compulsory labour.

The ECHR has ruled on violations of freedom of religion or belief in several cases concerning conscientious objection to military service in Türkiye, including *Buldu and Others/Türkiye*, *Enver Aydemir/Türkiye*, *Erçep/Türkiye*, *Feti Demirtaş/Türkiye*, *Savda/Türkiye*, and *Tarhan/Türkiye*. The court found violations due to the applicants' multiple convictions and the lack of an alternative service option.

The United Nations Human Rights Committee, in paragraph 11 of General Comment No. 22 on Article 18 of the International Covenant on Civil and Political Rights (ICCPR), stated that while the Covenant does not explicitly recognise a right to conscientious objection, such a right could be inferred if the obligation to use lethal force seriously conflicts with the individual's right to freedom of religion or belief.

In the case of *Atasoy and Sarkut/Türkiye*, the UN Human Rights Committee (UNHRC) examined a complaint by two Jehovah's Witnesses who objected to the lack of an alternative service option in Türkiye. The Committee found that Türkiye had violated Article 18(1) of the ICCPR and ruled that the proceedings and penalties imposed on the applicants for refusing military service violated their freedom of conscience under Article 18.

Türkiye's conditions differ from those of other states that are party to the court. For 50 years, Türkiye has been fighting the PKK, a terrorist organisation supported by neighbouring states. Mandatory military service is essential for the country in the current circumstances. Thousands of soldiers performing compulsory military service have been martyred in terrorist attacks. The right to life is the most sacred and important. While people sacrifice their lives to ensure national security, granting exemptions to individuals who do not want to perform military service due to conscientious objection would also violate the principle of equality. Who will ensure the security of those who make claims for conscientious objection in the face of these terrorist attacks? How and with what type of weapons will the safety of those requesting conscientious objection be ensured?

d. Preventing Students in Schools and Public Officials in State Offices from Covering Their Heads

It was argued that individuals, civil servants, and students not adhering to the rules regarding dress codes in public services, such as covering one's head, would undermine the authority of the administration to regulate these matters ([Kaboğlu, 1991 p. 274](#)). For many years, the act of covering one's head was interpreted by the Constitutional Court as a violation of the principle of secularism, as it was seen as basing a regulation in public law on religious principles, disturbing the aesthetic public order, causing a conflict of freedoms, and even exploiting sacred religious sentiments by introducing such a regulation for religious reasons. It was argued that even in higher education, a student covering her head would restrict the freedom of the instructor, psychologically disturb the lecturer, and limit the instructor's ability to express themselves and that if tolerance were granted to those covering their heads, these individuals would deny freedom to those who do not cover their heads when they gained authority. ([Kaboğlu, 1991: 276](#))

The Constitutional Court, in a case commonly referred to as the "headscarf decision," challenged the law dated December 10, 1988, No. 3511, that allowed "the covering of the neck and hair with a headscarf or turban for religious reasons in higher education institutions," ruled that in a secular state, there could be no legal rules based on religious sources. The court reasoned: "In a secular state, sacred religious feelings... cannot, under any circumstances, be involved in legal regulations. Such regulations must be based on scientific data, according to the individual's and society's needs, not religious requirements or beliefs... The examined rule, while regulating women's attire in higher education institutions, which are considered public institutions, recognises the validity of headscarves

due to religious beliefs, thereby basing a regulation in public law on religious principles, violating the principle of secularism... Regulations based on religious rules cannot carry legal significance. The source of religious rules is God, while the source of law is the will of the nation that creates it... The legal system excludes religious rules and derives its authority from law, sustained by law. Laws cannot be based on or bound to religion." In its decision, the Constitutional Court defined secularism as an ideology, stating that the principles of the rule of law and the supremacy of law derive their strength from secularism, that the Turkish revolution gains its significance through secularism, and that it is impossible to remove this principle from the Constitution. The court emphasised that the dominant and effective force in the state cannot be religious rules but rather reason and science and that religion cannot be a determining factor in state affairs, nor can it replace contemporary values or law as a source and basis for legal regulations. ([AYM, E. 1989/1, K. 1989/12, KT. 07.03.1989](#))

The Constitutional Court, in its decision regarding Law No. 3670, dated October 25, 1990, which added the provision "Attire in higher education institutions is free, provided it does not violate existing laws" to the Higher Education Law, ruled that "entering classes with attire and coverings contrary to a modern appearance has no relation to freedom and autonomy, and the state's imposition of rules to maintain order does not violate freedom and autonomy" ([E. 1990/36, K. 1991/8, KT. 09/04/1991](#)). This decision was described as a "commented rejection" ([Limoncuoğlu, 2008: 145](#)). The court's interpretation of headscarves as attire and coverings contrary to modern appearance is notable. The court's stance on headscarves has long symbolised the violation of freedoms through obscure judicial decisions.

For nearly 80 years in Türkiye, primary, secondary, and higher education students were prohibited from covering their heads, and female public servants were forbidden from covering their heads in state institutions. Students who covered their heads were not allowed into schools, and female public servants who covered their heads were dismissed from their positions.

While the inner dimension of freedom of belief is important, the most critical aspect is its external dimension. Faith resides in the heart and mind of a person. For freedom of belief to be fully functional, individuals must also be able to practice the religious duties of their faith. The exercise of this freedom is especially significant in the context of Islam. Even if covering one's head is not a religious requirement, no one should interfere with another person's decision to cover or not cover their head for reasons of hygiene, fashion, or other factors. Freedom of dress should be guaranteed by the secular state. A person's choice of

clothing, for which they pay and which they find suitable, should not be questioned by others. All legal systems should guarantee decisions regarding personal attire and style.

With the legal regulations made with the support of all political parties in the Parliament, the barriers to women and female students covering their heads in public spaces have ceased to be an issue for the past 15 years. Although no changes have been made to the principle of secularism in the Constitution, the amendment to the Turkish Penal Code has, for the past 10 years, criminalised the refusal of entry to educational or public institutions based on attire choices. Today, students can cover their heads under their beliefs, and public officials can serve while wearing headscarves. Although rare, individual violations still occur, but these violations are defined as crimes under the Turkish Penal Code and are punishable by imprisonment.

The Constitutional Court evaluated a case where a judge postponed a hearing because the lawyer attending wore a headscarf and gave the client time to find another lawyer. The court ruled that “Preventing an individual from acting under their religion or belief weakens that belief and results in the violation of the individual’s freedom of religion and belief.” The court found this action to violate freedom of religion and conscience. The court emphasised that Article 24 of the Constitution, similar to Article 9 of the European Convention on Human Rights, protects the inner dimension of freedom of belief, which encompasses having or not having a belief, freely changing one’s belief, and being free from coercion in expressing a belief. It also protects the external dimension of freedom of belief, including the right to manifest one’s religion or belief in teaching, practice, worship, and observance, alone or in community with others ([AYM, June 25, 2014](#)). The court further ruled that the judge’s decision to delay the trial on the grounds of the lawyer’s headscarf constituted a violation of the right to manifest religious freedom. Similarly, when lawyers objected to a headscarf-wearing judge conducting the trial, citing that the judge’s attire with religious symbols violated secularism, cases were brought against those lawyers for “publicly denigrating values embraced by a segment of the population.”

According to Law No. 2596 of 1934, concerning the Prohibition on Certain Garments, religious officials of any faith cannot wear attire representing their religious duty or position outside places of worship. With the approval of the Council of Ministers, only one representative of a religious community is permitted to wear garments indicating their religious status in public spaces. With the Law on the Closure of Dervish Lodges and Tombs (Law No. 677,

adopted in 1925), titles and positions such as sheikh, dervish, disciple, elder, sayyid, successor, emir, naqib, and caliph were also prohibited.

The ECHR, in cases like *Leyla Şahin/Türkiye* (ECHR, November 10, 2005), has sometimes ruled that similar interventions regarding freedom of belief do not violate Article 2 of Protocol No. 1 and have considered such matters within the margin of appreciation of states. The ECHR found the ban on headscarves in universities to be in line with the European Convention on Human Rights ([ECHR, 10.11.2005, Şahin/Türkiye, No. 44774/98, para. 78](#)) and ruled that the expulsion of a student from school for refusing to remove her headscarf in physical education class did not constitute a violation of rights. From this, one can conclude that the ECHR may issue different rulings on similar matters, raising concerns about the impartiality of its decisions.

e. Issues Regarding Friday Prayers and Congregational Prayers

Freedom of worship, a natural extension of freedom of conscience and belief, refers to the individual's liberty to perform or not perform the rituals of their religion, both individually and collectively. However, concerns were raised in the past about public order being disturbed in various situations, such as when the sound from microphones used during religious talks in mosques to enlighten Muslims extended outside the mosque or when the congregation spilt out of the mosque during Friday prayers due to insufficient mosque space, disturbing nearby residents. Additionally, it was suggested that the sound of the call to prayer (adhan), particularly at dawn and nightfall, could disturb non-Muslims and disrupt public order. ([Kaboğlu, 1991: 270](#))

In Islam, the concept of freedom of belief is embodied in the verse from the Qur'an, "There is no compulsion in religion" (Al-Baqarah, 2:256), which is recognised as a fundamental human right in the constitution and international treaties. However, according to Islamic interpretation, this verse applies to non-Muslims who are free to choose whether or not to enter Islam. Once a person becomes a Muslim, they are obligated to fulfil the requirements of their faith. If they fail to do so or do not avoid prohibitions, they may be compelled to follow the religious commandments. This is because legal and criminal sanctions require a certain level of authority and enforcement to be effective ([Ateş, 2002 pp. 94-95; Küçük, 2009: 42-43](#)). The state must respect freedom of religion while simultaneously limiting its interventions in this area. However, in modern Türkiye, the separation of religion and state, or secularism, serves as a key guarantee of freedom of conscience, particularly for those who follow religions other than Islam, have no faith, or have converted from Islam to another religion.

A regulation proposing an additional hour for the lunch break to allow individuals to perform Friday prayers in a mosque was found by the Council of State to violate the principle of secularism. Today, the issue is resolved by delaying the time of Friday prayers so that they can be performed during the lunch break. However, there are still no provisions for individuals travelling long distances on intercity trips to stop vehicles and allow passengers to perform their prayers on time. Similarly, due to workplace regulations, employees are not permitted to leave during prayer times to perform congregational prayers in mosques.

f. Issues Related to Zakat and Fitr Charity

Although zakat and modern taxes share some formal similarities, they have significant fundamental differences. For this reason, many Islamic scholars argue that taxes cannot substitute for zakat. However, some scholars accept that taxes may count as zakat under certain conditions ([Suyuti: 2/133](#)), while others have stated that taxes may replace zakat without any specific condition. ([Düzenli, 2017: 635-642](#)) If an individual donates towards the construction of public service buildings, such as mosques or schools, a portion of that donation may be deducted from their tax liability. However, according to Islam, there are strict limitations on where zakat can be distributed. Some wealthy individuals who wish to perform their zakat obligations struggle to find ways to reduce their tax payments to give zakat or are unable to fulfil their zakat duties due to the requirement to pay taxes. Suppose a wealthy person attempts to pay both zakat and taxes. In that case, they may end up paying significantly more than other wealthy individuals, which could reduce their wealth compared to other merchants, putting them at a disadvantage.

Another financial act of worship is fitr, the charity a capable Muslim must pay at the end of Ramadan ([Yavuz, 1996: 13/160](#)). For many years, envelopes were distributed to students in schools to deliver to their families, with the money being collected and given directly to those in need. However, instead of distributing the fitr to the religiously designated recipients, the money was accumulated in a legal entity known as the Turkish Aeronautical Association and spent according to its objectives.

g. Allegations of Discrimination against Different Religions and Sects

The Presidency of Religious Affairs, a constitutional institution, is subject to the hierarchical oversight of the central government. The institution is responsible for the provision of religious services. All official imams and religious personnel in Türkiye are affiliated with the Presidency of Religious

Affairs. The institution's activities are monitored by the central government, and based on these inspections, the institution's actions may be annulled or altered.

In Türkiye, official institutions provide religious services that follow the Sunni interpretation of Islam. However, official state institutions offer no religious education related to specific sects. Although many religious orders and sects exist in the country, separate educational programs are not provided, and state funding is not allocated to these groups.

In the History of Islamic Sects, Alevi is used synonymously with Shia in a very general sense. Alevism's historical and present structure resembles a mystical/Sufi organisation similar to a religious order. Anatolian Alevism has not gained the status of a sect. The acts of worship known as the five pillars of Islam are not specific to any sect and were institutionalised during the time of Prophet Muhammad, before the establishment of sects and orders. These acts of worship are accepted by Muslims of various affiliations, such as Mu'tazili, Kharijite, Sunni, Shia, Mevlevi, Naqshbandi, and Bektashi, though the level of religiosity may differ among them (URL-2). Alevism in Türkiye differs in some respects from Shia in Iran. There are Alevis who attend mosques and pray, as well as Alevis who do not.

The denial of public religious services requested by Alevis (Shia) and the lack of recognition of Alevi beliefs by the state is, in fact, a practice applicable to all religious orders and sects. Alevism is not a uniform belief system. Some individuals who identify as Alevi define Alevism as a belief system above all religions. In contrast, others who identify as Alevi accept Prophet Muhammad as a prophet but differ from Sunni beliefs on some issues. The state of Türkiye does not recognise a system based on sectarianism. Not only Alevis, who claim discrimination, but also other sects such as Hanafi, Shafi'i, Maliki, and Hanbali are not granted special privileges.

The European Court of Human Rights (ECHR) has ruled that failing to allocate funds from the Presidency of Religious Affairs' budget for public religious services for Alevis violates the European Convention on Human Rights (ECHR). In the *Izzettin Doğan and Others/Türkiye* case, the Grand Chamber of the ECHR found that objective and reasonable grounds could not justify the different treatment of Alevis, and therefore, both Article 9 and, in connection with it, Article 14 had been violated.

The religious holidays recognised as official public holidays are Eid al-Fitr (Ramadan) and Eid al-Adha, which are important for Muslims. Holidays celebrated by Christians, such as Christmas, and by Jews, such as Rosh

Hashanah, are not recognised as national holidays. Since it is impossible to identify who is Christian or Jewish, and individuals have the freedom to change their religion and not disclose their religion, the state has no obligation to investigate individuals' religious affiliations. Furthermore, the ECHR has ruled that asking individuals about their religion and requiring them to disclose it violates the convention. For this reason, a system where holidays are recognised based on one's religion has not yet been implemented. However, upon request, members of other religions should be granted Christmas and Rosh Hashanah as holidays.

h. The Inclusion of a Person's Religion on Identity Cards

Before the transition to chip-based identity cards, individuals' religion was listed on their identification documents. In the digital system related to chip-based ID cards, there is a field for religion, where individuals can, at their discretion, have their religion or belief written or leave it blank. For individuals belonging to religions other than Islam to benefit from the right to be exempted from the compulsory Religious Culture and Moral Knowledge course, they must ensure that the religion field on their official records is not left blank. The Constitutional Court rejected the request to annul the "religion" field on ID cards with its decision dated June 21, 1995, case numbers E:1995/17 and K:1995/16. In its decision, the court stated that asking for this information in official records for public order, public interest, and social needs does not compel individuals or amount to coercion. ([Gözler, 2018: 66](#))

However, in the case of *Sinan Işık/Türkiye*, the European Court of Human Rights (ECHR) ruled that recording citizens' religion in official records or on ID cards, whether voluntarily or involuntarily, violates the individual's right not to disclose their religion. If an individual whose religious affiliation is unclear disappears or is living in another country without family, determining which religious rites should be followed for burial may be challenging. Therefore, the individual's religion should be recorded on identity cards but not listed for those who do not wish to disclose their religion.

D. CONCLUSION

Since the establishment of the Republic of Türkiye in 1923, replacing the Ottoman Empire, political will has favoured the adoption of Western legal systems over Islamic law. The Civil Code was adopted from Switzerland, the Penal Code from Italy, and the administrative structure was modelled after the French Constitution and administrative system. Since 1937, the principle of

secularism has been enshrined in the Constitution as an unchangeable, even unproposable, principle.

According to the Constitution, the State is prohibited from basing any part of its social, economic, political, or legal structure on religious rules. Article 309 of the Turkish Penal Code, under the title of "Crimes Against the Constitutional Order and Its Operation," states that "anyone who attempts, by force and violence, to abolish the order prescribed by the Constitution of the Republic of Türkiye, or to replace it with another order, or to prevent the operation of this order, shall be punished with aggravated life imprisonment." According to these regulations, it is prohibited not only to legislate any change to the secular system by Parliament but also to propose such a change. If there is an attempt to change the system by force, those who commit this act will be punished with life imprisonment under harsh conditions of execution.

For many years, secularism in Türkiye has been applied not as respect for everyone's religious beliefs but as state interference in people's lifestyles. The situation of non-believers has been legally protected. At the same time, secularism has been understood not as respect for the religious beliefs of devout individuals but as a tool to hinder the religious practices of believers through state intervention. Today, people can openly express their Muslim identity while simultaneously chanting "death to sharia" in public squares. For years, the Constitutional Court's decisions, based on the dictate that secularism equates to a civilized way of life, have interfered with the freedoms of belief and worship. Other judicial bodies have rendered similar decisions, forcing the predominantly Muslim population to choose between practicing their religious obligations and adhering to secular legal rules. For a long time, female students were banned from covering their heads in primary and higher education, and female public employees were barred from working in state offices with headscarves, while students who wanted to attend classes with headscarves were not allowed to continue their education, and public servants who wore headscarves were dismissed from their positions.

Since 2014, the application of the principle of secularism by political authorities and the judiciary has changed in favour of freedom, allowing students to attend schools with headscarves and public servants to work in state institutions. Additionally, legal sanctions were introduced in the Turkish Penal Code for those who prevent people from accessing public services or working because of their beliefs. However, violations of freedom of belief and worship are no longer limited to the headscarf issue. There is also no guarantee that there will not be a return to previous interpretations of the principle of secularism by

political authorities and the judiciary. The interpretation and implementation of the current secular system should facilitate individuals' ability to live according to their beliefs, and necessary precautions should be taken in these matters. Secularism is currently being used as a tool to secure the freedoms of non-believers rather than believers.

The European Court of Human Rights' (ECHR) decision to find the ban on headscarves in universities compatible with the European Convention on Human Rights and its ruling that the expulsion of a student for refusing to remove her headscarf did not constitute a violation of rights, is incompatible with democracy and freedom of belief and worship. Such a decision, particularly in countries where Muslims constitute a minority, could encourage states to commit further violations of headscarf-related rights. The restrictive understanding and application of secularism that dominated Turkish judicial decisions for years, which limited the freedoms of devout Muslims, now appears to have spread to newly established Turkish states like Azerbaijan and Kazakhstan, as well as to France, the inventor of secularism. While previously it was not considered a violation of secularism for female students to cover their heads in private schools, today, judicial decisions in France have found the ban on headscarves and the prohibition of women wearing long garments (robes) in schools to be lawful. The headscarf is not merely a religious symbol but attire for fulfilling a religious commandment. Discrimination against women for choosing to cover their heads, based on the claim that it is a religious garment, violates not only the freedom of belief and worship but also the principle of equality, which is enshrined in both the Constitution and international conventions that regulate the enjoyment of fundamental rights and freedoms.

Islam contains provisions regarding both the worldly and the afterlife. According to Islamic law, state affairs should be conducted under Sharia rules. In the current secular system, religious matters are separate from state affairs, and intervention in state matters based on religious rules is not allowed. Revenue is taxed from all legal business activities, including the sale of alcohol. Concerning the practice of zakat (almsgiving) and fitr (charity), the payments made by those who wish to fulfil these religious obligations should be spent by the state under Islamic rules, and such payments should be deducted from taxes. This would prevent tax evasion while ensuring that the funds allocated for this religious duty are delivered by the state to those in need, providing more excellent social assistance to the poor.

Some individuals in Türkiye oppose teaching basic Religious Culture and Moral Knowledge courses. Exempting people from these courses equates to not

providing education at all. However, the religious education included in school curricula for students who wish to learn the religious practices of their faith is insufficient. The state's failure to provide necessary and beneficial religious education from the perspective of mental and spiritual well-being may lead individuals to seek this education from unauthorised figures, which could, in some cases, lead to children falling into the hands of terrorist organisations due to their family's ignorance. The rationale behind the constitutional regulation of compulsory religious education is to ensure that the state provides reliable and supervised religious education. The course is part of a two-hour weekly class called Religious Culture and Moral Knowledge. It provides general information about different religions and cultures, including philosophical movements. The compulsory education provided within the scope of Religious Culture and Ethics is not vocational training but general cultural education about all religions and philosophical movements. Refusing to take this kind of education is akin to rejecting a physics or chemistry class. Parents should not have the right to prevent their children from taking religion classes. Children should receive proper religious education in schools, and it should be left to them to decide what to believe in. Even after adulthood, a person cannot be forced to believe or disbelieve in anything; no one should impose beliefs on them.

Opportunities are not provided for individuals who wish to perform their prayers on time by stopping the vehicles during long-distance or intercity journeys. Similarly, workers are not allowed to pray communally in mosques during working hours due to workplace regulations. These issues need to be addressed.

Türkiye, which is fighting external PKK terrorism, is a country with different circumstances than other states that are parties to the European Court of Human Rights. Compulsory military service is necessary for the country under current conditions. The right to life is the most sacred and important right for everyone. Granting exemption to individuals who do not wish to perform military service on the grounds of conscientious objection would violate the principle of equality and raise questions about how the security of those who claim conscientious objection will be ensured and with what kind of weapons. Granting some individuals the right to conscientious objection would create inequality for those obligated to perform compulsory military service.

In its recent decisions on freedom of belief and worship, the Turkish Constitutional Court has delivered rulings favouring freedoms more than its previous decisions on constitutional rights and freedoms. However, as seen in the European Court of Human Rights rulings on freedom of dress, the Court can

render different decisions on similar matters, often in favour of limiting freedoms, strengthening suspicions regarding the impartiality of the Court's rulings.

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