

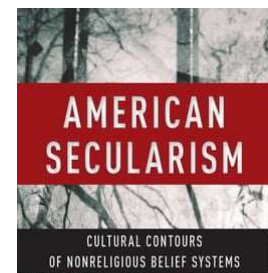
SECULARISM



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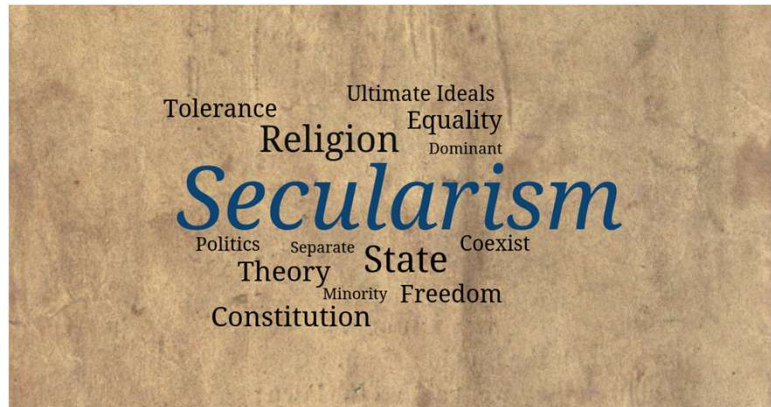
INTRODUCTION

- Secularism may be described simply as a system of governance which is impartial and neutral with respect to any set of religious and philosophical beliefs. Such a government does not give priority or privilege any belief system.
- 'Secularism' acquires a different character within each country, depending on the historical and cultural experience of the country. There are two predominant expressions of secularism in Western democracies.
- Secularism has a negative meaning in Anglo-American model. On the other hand, secularism has a positive side in the second (French) model.



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- We may argue that the concept of secularism in Turkey is closer to the French model, however, it has some peculiarities. Since some of the relations between religion and politics are rooted in the control of the predominant religion by the state, rather than by the separation of the two institutions, or by the tolerance of each to the other.



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SECULARISM IN THE 1982 CONSTITUTION

- The 1982 Constitution includes quite a few provisions related to secularism. Art 1 states that the Turkish State is a Republic; Art 2 enumerates secularism among the characteristics of the Republic; Art 4 prohibits any amendment to first three articles of the Constitution; Art. 6 rests the concept of sovereignty with the nation; Art 10 guarantees the concept of 'equality before law', Art 14.1 prohibits the exercise of constitutional rights and freedoms with the aim of 'endangering the existence of democratic and secular order', Art 15.2 outlaws individuals from 'being compelled to reveal one's religion and conscience' and from being 'accused on account of religion and conscience' in times of emergency regime, Art 24 guarantees the freedom of religion, Art 68.4 stipulates that the 'statute, program and conducts' of political parties may not contradict the principles of secularism, and Articles 69.5 and 7 envisage sanctions for violations of the stated principles, and Art 136 which draws up the Department of Religious Affairs are good examples to indicate the value of secularism within the constitution.

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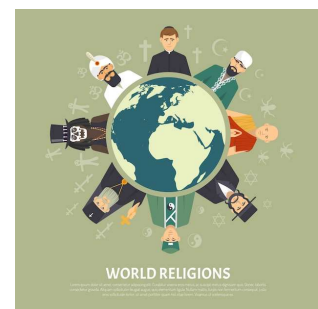
- However, some of the articles related to secularism in the 1982 Constitution are controversial. I focus this study on three contentious articles, and I suggest alterations to the text of the constitution.



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FREEDOM OF RELIGION AND CONSCIENCE

- According to Art 24.1 of the 1982 Constitution everyone has freedom of conscience, religious belief and conviction. The term 'religious belief' in this provision should be interpreted broadly.
- The freedom of religion equally protects both believers and non-believers.
- The practice of democracy requires pluralism in the expression of various ideological views, including different religions and beliefs.
- The current constitution prohibits to 'blame or accuse' someone because of their religious beliefs and convictions (Art 24.3) which serves to maintain religious plurality in the society.



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- The concept of freedom of religion has a close relationship with the allied concept of freedom of expression. In fact, the very existence of a 'religion slot' on the identity card of a Turkish citizen in Turkey, is one the divisive issues concerning the freedom of speech.
- The provision of information regarding an identity card holder's 'religion' was compulsory up until 2006.

HOW TO BE SECULAR



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- A secular state that is respectful freedom of religion and belief should not have the power to know citizens' beliefs either through inquiry or other means .
- The ECtHR has reached the same conclusion in the Sinan Işık case. As the Court notes, since the necessity of providing the identity card is common in everyday life e.g. registration to schools, identity checks, military service, etc.



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- Another dimension of the freedom of expression of religious belief expressed in the 1982 Constitution concerns political parties. Under the current Constitution, political parties whose statutes and programs violate the principle of secularism can be dissolved by the state (Art 68 and 69).
- Also platform of the party must conform with the democratic values, as well as the actions of the party must not involve or incite violence (Yazar and Others v. Turkey, 9 April 2002, application no. 22723/93, para.49).



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- The 'freedom of religion' also has a positive dimension with respect to the freedom of worship. The freedom of worship recognizes that individuals may chose how to worship.
- The 1982 Constitution does not set forth any limitations to the negative dimension of freedom of religion and belief as I have stated above, however, it obliges conducting acts of worship, religious services, and ceremonies in conformity with Article 14, that prohibits abuse of fundamental rights and freedoms.



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- Restriction reasons on freedom of religion take place some international human rights documents. For example, the United Nations International Covenant on Civil and Political Rights of 1966 (Art 18.3), the European Convention on Human Rights of 1953 (Art 9.2), and the American Convention on Human Rights of 1969 (Art 12.3) frame to limit positive dimension of this freedom prescribed by law, and on the grounds of protection of public safety, order, health or morals, or the rights and freedoms of others.



11

- The 1982 Constitution also recognizes in Article 24.1 freedom of conscience, beside and in addition to the freedom of religious belief and conviction. In this context, we may argue for the rights of conscientious objectors; those who refuse to do military service on account of their religious or philosophical beliefs, or political opinions.



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- Some countries such as Austria, Croatia, Russia, Spain and Portugal recognize conscientious objection as a constitutional right. Not a few legislators, e.g. Poland, Bulgaria, Ukraine, Czech Republic, Slovakia have enacted this as a right. In addition to these domestic legislations, some international human rights documents frame provisions related to the conscientious objection without expressly recognizing it.



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- The Consultative Assembly of the Council of Europe (1967), the European Parliament (1983), and the Committee of Ministers of the Council of Europe (1987) have recognized conscientious objection by adopting resolutions.
- Also, constitution makers should make clear that such service can not be considered as forced labor.



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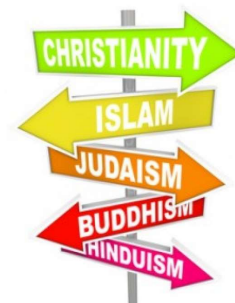
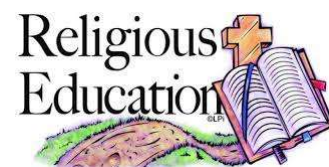
- According to the last paragraph of Article 24, “no one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets.”



15

RELIGIOUS EDUCATION

- The freedom of religion asserts that individuals have a right to learn, teach and disseminate their own religion. In contrast to this principle, the 1982 Constitution makes instruction in religious culture and ethics education compulsory in the curriculum of primary and secondary schools (Art 24.4).
- Religious education courses are not incongruous with secularism, per se, if the system provides an exemption mechanism or the option of attending a lesson in a substitute subject, or makes attendance at religious classes entirely optional, also if the courses are factually based and somewhat balanced.



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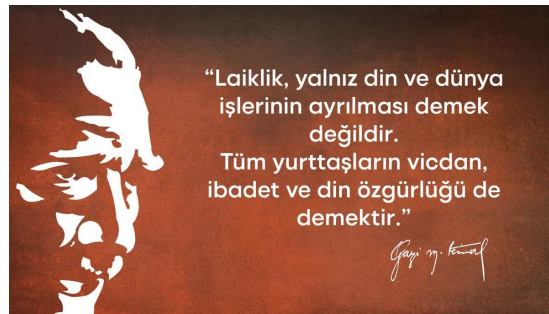
- The ECtHR has noted that this practice violates the freedom of religion in Article 9 of the ECHR, as well as the right for parents to have their children educated in accordance with their religious and other views enumerated in Art 2 of the Protocol. The case is *Hasan-Eylem Zengin v. Turkey* (9 October 2007, application no. 1448/04).



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- According to the 1982 Constitution, “training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established.”
- The principles and reforms of Atatürk embrace various elements such as, republicanism, populism, secularism, revolutionism, nationalism, and statism. These principles were inserted into the 1924 Constitution in 1937. The 1961 Constitution gave voice to the “full dedication to the reforms of Atatürk” in its Preamble.

“Secularism does not only mean the separation of religion and world affairs. It also means freedom of conscience, worship and religion for all citizens.” M.K. ATATÜRK



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DEPARTMENT OF RELIGIOUS AFFAIRS

- According to Article 136 of the Constitution, the Department of Religious Affairs (DRA) is a government entity founded with the aim of promoting national solidarity and integrity in accordance with the principle of secularism, which is within the general administration. Therefore, services relating to religion in Turkey are executed exclusively by the DRA.
- Moreover, only Islam, specifically the Suni denomination is dominant in the DRA to the exclusion of all other religions.



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- In practice, the DRA functions like a fetwa authority designating what is religiously right or wrong in daily life. It also gives opinions to various governmental organs on the Islam religion. However, this creates problems in a secular state because, to decide a belief has a religious character or not, is not among the state's duties.
- Just as the ECHR does not give discretionary power to state authorities to determine whether religious beliefs or the means used to express such beliefs are legitimate (See ECtHR case *Manoussakis and Others v. Greece*, 26 September 2006, application no. 18748/91, para 47), the state must be impartial to all religions and denominations in the society unless there is a conflict with public order or moral values etc.
- To ensure the representation of Alevi and other denominations in the membership of the DRA will not make this body conform with the principle of secularism.



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CONCLUSION

- There are a few problematic matters concerning principle of secularism in the 1982 Constitution that must be revised in a new constitution. Accordingly, a new constitution must guarantee various dimensions of freedom of religion, such as conscientious objection, and reformulate limits of this freedom in conformity with the European standards. Also new constitution must repeal the provisions involving mandatory “religious culture and ethic” classes and the DRA that clearly infringe the principle of secularism.

