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The Right to Have Places of Worship: The Cemevi Case in Turkey

Omur Aydin ¹ and Bulut Gurpinar ^{2,3,*}¹ Department of Political Sciences and Public Administration, Istanbul University, 34469 Istanbul, Turkey² Faculty of Business Administration, Gebze Technical University, 41400 Gebze, Turkey³ Department of Strategy, Istanbul University, 34469 Istanbul, Turkey

* Correspondence: bgurpinar@gtu.edu.tr

Abstract: This study discusses the obligation of the state to provide places of worship to religious communities in society, or to grant such existing places a specific status in law and thus entitle them to benefit from some public privileges. The study finds that international human rights law does not impose direct positive obligations on the state in this context. If, however, a state has granted such public privileges and statuses to some religious communities in the society, or has developed a concordat-type relationship with them, then it should base this differential treatment between religious communities on objective and reasonable justifications. Cemevis, which Alevis accept as their places of worship, do not have the status of a place of worship in Turkey. In the official discourse, the difference between Alevism and Sunnism is approached from a cultural, not religious, perspective. The study determines that practices of secularism in Turkey have atypical appearances in some issues. There is an implicit concordat relationship between the state and the Sunni/Hanafi community, although this is not expressed in the official discourse, and Turkish-style secularism is reluctant to formalize this relationship or to establish similar concordat-type relationships with other religious communities. Due to this preference, Alevis cannot reach the status of a recognized religious society in Turkey, and cemevis cannot be granted the status of places of worship that are entitled to benefit from public privileges.

Keywords: Alevi identity; cemevi; Turkey; status of places of worship; recognition; compliance gaps



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1. Introduction

Freedom of thought, conscience, and religion is one of the fundamental rights and freedoms protected by national and international conventions. It is protected by many international and regional conventions, such as the United Nations (UN) Universal Declaration of Human Rights, the UN International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), and the EU Charter of Fundamental Rights. Furthermore, institutions affiliated with international organizations develop various guidelines and principles regarding these rights and their sub-components. It can be said that international human rights law, along with International Court jurisprudence and other contributions, has gradually created a perspective on the existence of the right to own and operate a place of worship. In principle, this protects the right to provide, open and maintain places or buildings devoted to religious worship. In order to identify the state's negative and positive obligations in the determination and protection of the normative content of this right, this study will draw on the above-mentioned jurisprudence, principles, and guidelines.

When rights and freedoms in Turkey are to be investigated, it becomes especially important to determine the respective approach of the Council of Europe, of which Turkey is a founder and a member. Freedom of religion, conscience, and belief is guaranteed in Article 9 of the Convention. The same article also protects the freedom to manifest one's

religion or belief, in worship, teaching, practice and observance, alone or in community with others, and in public or private. The right to have places of worship should be taken as a sub-component of freedom of worship, which is protected by the same article.

Having a place for individual or collective worship is an indispensable element for the realization of this right. However, acknowledging the existence of such a right brings along many unpredictable demands and debates in practice. At this point, the main questions to be answered are what the obligation of public authorities is in the face of such demands from religious communities, and how the limits of this obligation will be determined.

In order to find the answers to these questions, drawing on the jurisprudence, principles and guidelines of international human rights law, the study aimed to address the situation of cemevis, which are accepted as places of worship by Alevi citizens in Turkey but are not legally recognized as places of worship in Turkish legislation. This issue has long been dealt with and discussed by international institutions such as the EU and the ECHR in their reports and decisions about Turkey. For instance, there are decisions on the violation of rights made by the ECHR against Turkey, and also various decisions made by Turkish judicial authorities in accordance with domestic law. The study will discuss how the official discourse in Turkey contextualizes Alevi identity, as suggested by judicial decisions, administrative views, and political discourse. The main purpose of the study is to reveal how the sui generis nature of religion–state relations in Turkey, atypical practices, and the implicit preferences of the state in the field of religion are reflected in the cemevi issue, and the compliance gaps that emerge in this field.

2. Normative Framework of the Right to a Place of Worship

Freedom of religion includes not only practising one's belief individually and privately but also expressing it outwardly in the form of collective and public worship. According to international human rights law, those manifestations of a religion and belief belonging to a person's inner world (*forum internum*) which are reflected to the outer world (*forum externum*) by means of worship, education, training, and ritual are within this right's scope of norm. With the aim of creating a public order built on common values in Europe, the ECHR gives a central position to freedom of thought, religion, and conscience, which are regulated in Article 9 of the Convention. As emphasized in the ECHR's *Handyside v. United Kingdom* decision, a democratic society has three important elements: "pluralism", "tolerance", and "broadmindedness" (ECHR, 1976, Par. 49). In the Court's view, pluralism can be achieved in a democratic society by recognizing and respecting the diversity and the dynamics of cultural traditions, religious beliefs, ideas, and concepts. The harmonious interaction of persons and groups with varied identities is essential for the achievement of social cohesion (ECHR, 2004, *Gorzelik and Others v. Poland* [GC], Par. 92). Diversity of religion and belief is a product of the idea of pluralism. Therefore, according to the ECHR, public authorities should see this diversity not as a threat but as a source of enrichment (ECHR, 2005, *Nachova and Others v. Bulgaria* [GC], Par. 145).

Assuming the coexistence of different religions and religious communities in a democratic society, how the state will regulate its relations with them is an important question. The Court has frequently highlighted the state's role as the neutral and impartial organizer of the exercise of various religions, faiths, and beliefs, emphasizing that this role is conducive to public order, religious harmony, and tolerance in a democratic society (ECHR, 2005, *Leyla Şahin v. Turkey* [GC], Par. 107). Within this framework, the ECHR has imposed negative and positive obligations on states to protect the freedom of religion, belief, and worship. However, it should be emphasized that in democratic societies where several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (ECHR, 1993, *Kokkinakis v. Greece*, Par. 33).

It is not possible to talk about a unity of religion and belief in the member states of the Council of Europe. Because of this diversity, it is very difficult for an international organization to establish common values on freedom of religion, belief, and worship. The

influence of a belief on a society may change over time, and may not be as intense in another society. Rules on this vary from one country to another depending on national traditions and the requirements of maintaining public order and protecting the rights and freedoms of others. Therefore, the choice of the size and form needed for the restrictions to be applied by states regarding this right will inevitably be left largely to the state concerned, as it will depend on particular national circumstances (ECHR, 2004, *Gorzelik and Others v. Poland*, Par. 67). In the field of freedom of religion, belief, and worship, therefore, the emphasis on local conditions is important. Regarding this right, the margin of appreciation is narrower for the court, and broader for national authorities.

As for the cases the ECHR has examined so far, the Court ensures that different religions and belief systems benefit from the Convention's protection. The Court does not act according to a protection system which is limited only to the major traditional religions but ensures that different religions and belief systems also enjoy protection. In addition to basic belief systems such as Christianity, Judaism, Islam, and Buddhism, beliefs such as Krishna Faith, Jehovah's Witnesses, Divine Light Center, Church of Scientology, Druidism, Pacifism, and Veganism are also encountered in the Court's decisions. In its decisions so far, the ECHR has not made much discussion about the scope of the terms "religion" and "belief", and has avoided identifying and specifying their content (C. Evans 2001, pp. 52–55). Likewise, the ECHR has underlined that states should not discuss the correctness or legitimacy of a belief, either (M. D. Evans 2001, p. 291).

According to the ECHR, the duty of neutrality prevents the state from deciding the question of the religious belonging of an individual or group, which is the sole responsibility of the supreme spiritual authorities of the religious community in question (ECHR, 2009, *Miroļubovs and Others v. Latvia*, Par. 90). In other words, the state may not arbitrarily "impose" or "reclassify" the religious belonging of individuals or groups against their will. The Court is not concerned with how a religion or belief will be described but rather with its manifestations. The main problem we encounter at this point is how to establish the relationship between people's actions and their religion or belief. In other words, how will it be determined whether people's actions and demands are motivated or inspired by a belief or religion?

The answer to this question is very important because states have negative and positive obligations in the field of freedom of religion, belief, and worship. When the state has an obligation to act in this area, it may be necessary to consider the unlimited demands of individuals and religious communities, and to impose some restrictions on these demands. As a matter of fact, Article 9 does not protect every act motivated or inspired by a religion or belief, and does not always secure the right to behave in the public sphere (ECHR, 1997, *Kalaç v. Turkey*, Par. 27). The ECHR jurisprudence has established the necessary measure as follows. The right to freedom of thought, conscience, and religion denotes views that attain a certain level of cogency, seriousness, cohesion, and importance (ECHR, 1982, *Campbell and Cosans v. UK*, Para. 36). The existence of a sufficiently firm and direct link between action and belief should be evaluated considering the specific circumstances of each case.

Convention law guarantees the right of believers to assemble peacefully to practice their worship (ECHR, 2014, *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, Par. 41). From this perspective, freedom of belief and worship also includes the expectation that a religious community can operate peacefully without arbitrary interference from the state. According to the ECHR, the autonomous existence of religious communities is indispensable for pluralism in a democratic society, and is thus an issue at the very heart of the protection afforded by Article 9 of the Convention. If a religious community's right to organize is not protected by Article 9, other aspects of their freedom of religion will become vulnerable (ECHR, 2000, *Hassan and Tchaouch v. Bulgaria*, Par. 62). Article 9 protects, in principle, the right to provide, open, and maintain places or buildings devoted to religious worship because the operation of religious buildings is closely related to the capability of religious community members to exercise their right to manifest their religious beliefs (ECHR, 2014, *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, Par. 41). The status of

places of worship is important for every member of the community in terms of participation in community life, and this right of participation is recognized under the protection of Article 9 of the Convention as an expression of freedom of religion and worship.

The UN International Covenant on Civil and Political Rights (1966), to which Turkey is also a party, protects the right to have a place of worship as an extension of freedom of thought, conscience, and religion. In the “general comment” written by the UN Human Rights Committee on the implementation of Article 18 of the Convention, the building of places of worship is described as a part and manifestation of this freedom (UN 1993, p. 1). Again, the document entitled ‘Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief’, which the United Nations General Assembly adopted pursuant to the resolution no. 36/55 on 25 November 1981, states that the right to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes, including charitable or humanitarian institutions, is inherent in the freedom of thought, conscience, or belief (UN 1981).

To date, the ECHR has received various individual applications regarding places of worship and their use. In some of these, the ECHR found violations of rights, while it rejected some other applications or found the intervention of the national authorities to be proportionate. The cases that were not found in the applicants’ favour were examined and justified, each in its own circumstances. It should be noted at the outset that, according to the ECHR jurisprudence, Convention law does not in all instances oblige public authorities to provide a place of worship to a religious community. States have no direct positive obligation to that effect in the context of Article 9. Similarly, Convention law does not impose a direct obligation on the state to grant a specific legal status to places of worship (ECHR, 2013, *Juma Mosque Congregation and Others v. Azerbaijan*, Par 60).

The fact that the member states of the Council of Europe come from different religious and cultural traditions has influenced the approach of the ECHR. The differences in local conditions make it difficult to establish common standards in this field. The relations that a contracting state establishes with religious communities and the legal status of such communities are a product of that country’s history and local conditions. For this reason, it is beyond the jurisdiction of the ECHR to determine the form and principles of the relationship between a state and religious communities, or to impose obligations on member states in this regard. At this point, the margin of appreciation of national authorities is kept broader (ECHR, 2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Par.108).

In terms of the form of relations between a state and religious communities, the ECHR (Guide on Article 9 of the European Convention on Human Rights 2021, p. 54) mentions three types of models in Europe:

- the existence of official religious institutions (such as a state Church),
- complete separation between the state and all religious organisations, and
- concordat-type relations (the predominant model in Europe).

In Germany, for example, many legal regulations are available that govern the relationship of the state with religious communities. Legal regulations that directly or indirectly bind religious communities can be found in the legislation governing subjects such as tax, education, and military service. Issues such as the authority of religious communities to appoint religious officials, to determine their religious teachings, to establish foundations, to collect donations, to operate hospitals and nursing homes, and to open places of worship, kindergartens, schools, dormitories, and courses are among the subjects of various legal regulations. In France—which is in a sensitive position in terms of secularism due to its historical background—however, religious groups and communities have not been granted an autonomous status, although their right to organize is guaranteed (Sambur 2011, pp. 102–3). Under such diversity, the duty of the Convention bodies consists of overseeing whether public policies and practices at the national level conform to the ideals of a democratic society, and whether restrictions are proportionate.

A state may establish privileges or special exemptions for religious or belief communities, and may give them legal personality. However, if such a special status is granted to a religious community, other religious communities should also be entitled to request the same status for themselves on a non-discriminatory and fair basis (ECHR, 2014, *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, Par. 45). Thus, states may choose to go beyond the obligations imposed by Convention law and give such privileges to religious communities. The main point here is to ensure that there is no discrimination against other groups which want to enjoy such privileges. States do not have a direct or positive obligation to provide special statuses. However, if such a public policy is preferred, it is essential that this policy is covered by the prohibition of discrimination regulated in Article 14 of the Convention (ECHR, 2016, *İzzettin Doğan and Others v. Turkey* [GC], Par. 164).

The criteria on this issue are discussed in the 'Joint Guidelines on the Legal Personality of Religious or Belief Communities' adopted by the Venice Commission of the Council of Europe (Council of Europe 2014). According to the Guidelines, states may prefer to grant certain privileges to religious or belief communities or organizations, and this preference cannot, in principle, be considered to be a violation of the prohibition of discrimination if the following two conditions are met:

- any differential treatment between religious groups and communities is based on objective and reasonable justification, and
- similar agreements may be entered into by other religious communities wishing to do so.

According to the report, the administrative and registration procedures for religious communities to acquire legal personality should not turn into a tool of abuse that restricts the right; access to legal personality should be open to as many communities as possible, and should not exclude any community on the ground that it is not a traditional or recognized religion or belief (Council of Europe 2014, par. 40–42).

In the light of all these data, we can say that the following four principles stand out in the determination of the scope of norm of the right to have a place of worship:

- States should not discuss the correctness or legitimacy of a religion or belief, should not impose religious affiliation on individuals or groups, and should avoid classifying religious affiliation. This task rests solely with the high-ranking spiritual authorities of the religious community in question.
- Article 9 of the Convention guarantees, in principle, the right to protect, open, and maintain places or buildings devoted to religious worship because the operation of religious buildings is closely related to the ability of religious community members to exercise their right to manifest their religious beliefs.
- Convention law does not in all circumstances oblige public authorities to grant a special status or provide a place of worship to a religious community.
- Beyond the obligations imposed by Convention law, a state may establish special privileges for religious communities, and may grant them a special legal status and legal personality. However, if such a special status is granted to a religious community, other religious communities should also be entitled to request the same status for themselves on a non-discriminatory and fair basis.

3. Alevi Identity and Cemevis

How Alevism is to be defined in Turkey's socio-political and religious reality has long been controversial. The present study does not aim to contextualize this identity or to participate in related debates. With the support of the government, many Alevi workshops that brought Alevi faith leaders together were held between June 2009 and March 2011 to examine the problems and demands of the Alevi community in Turkey, and a final report was prepared. As a result of these efforts, known to the public as the Alevi initiative, the final report drawn up by Dr. Necdet Subaşı (TC Devlet Bakanlığı 2010) offers a detailed and comprehensive analysis on the subject. The report thoroughly discusses Alevi faith, the demands of Alevis, and differences of opinion among Alevi groups.

It is underlined in the report that the points of separation among those who see Alevism as a religious, cultural, ethnic, or ethno-religious cultural structure have been increasing rapidly. However, despite all of these disagreements, according to the report, Alevism is an identity which expresses the “customs and ceremonies” of Anatolian Muslims who are not Sunni and who, as their dominant characteristic, have a strong bond of love and respect with the Prophet Muhammad and his family, especially Ali bin Ebu Talib and his descendants (TC Devlet Bakanlığı 2010, p. 39). Alevism emerged mainly in the Islamization process of Turks and Anatolian people. It is an original phenomenon, and is part of the religious spirit deeply rooted in Turkish society and history, with its own theological features and its own particular tradition and practice, based on Muslim theology and terminology. Whilst some researchers see it as a Sufi order, others view it as a branch (*mezhep*) of Islam. Then there are various minority views which regard Alevism as a religion. Sunnism is distinct from Alevism both in formal terms and in terms of its referential values (TC Devlet Bakanlığı 2010, pp. 40–42).

The Alevism of Anatolia reflects the sum and synthesis of the beliefs and cultures that the Turks have encountered so far, starting from the political and religious divisions that existed before their conversion to Islam. Therefore, it is possible to see Alevism as a view in which various beliefs and ideas melt and merge (TC Devlet Bakanlığı 2010, p. 44).

It is difficult to give a clear and official figure on the population of Alevis in Turkey because there are no official statistics that have been shared with the public on this issue. In 1998, an EU report on Turkey estimated it to be at least 12 million (European Union 1998, p. 19). However, it did not specify what this research was based on. In the 2022 Annual Report of The United States Commission on International Religious Freedom, it is said that the Alevi population is estimated to be between 10 and 25 million (United state Commission on International Religious Freedom 2022, p. 63). According to the results of a Lifestyles survey conducted in 2018 by KONDA, one of the leading survey companies in Turkey, the rate of those who say they are Alevi is around 4 to 5 percent, that is, about 4 million (KONDA 2019, p. 27). Obviously, it is difficult to give a clear figure due to both the secular structure of the state and the divergences in identity policies in Turkey.

Cemevis are structures that emerged rapidly in the 1990s as venues of urban Alevism. In this context, cemevis and cem ceremonies fulfil important functions, such as establishing a connection with the historical roots of Alevi identity and reconstructing this identity (Yıldırım 2012, p. 169). The most important religious activity in Alevism is the ‘ayin-i cem’ meeting (*cem* ceremony) held under the supervision of guides known as *dede* or *pir* (TC Devlet Bakanlığı 2010, p. 161). For centuries, Alevis performed their cem rituals in a big house in the villages or other places where they lived, or, like other Sufi schools and groups, in centres such as dervish monasteries that were institutionalized as places of customs and ceremonies. In settlements where these were not available, they gathered and performed their rituals in the dwelling of an Alevi religious leader (a *dede* or *pir*) who had a sufficiently large house (Üçer 2018, p. 72).

Like other religious orders, Alevi groups were also significantly affected by Law no. 677 of 30 November 1925 on the Closure of Dervish Monasteries and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles. In order not to be in a position to violate the Law, these groups began to continue their rites by organizing under the name of dervish convents or cemevis instead of monasteries and tombs. These places, which Alevis and Bektashis established to give a religious structure and appearance to their foundations, associations, and cultural centres, etc., where they performed their customary practices, began to be called ‘cemevi’ in the 1970s (Rençber 2012, pp. 80–81).

Because Alevis lived in rural areas until the 1950s, their impact on social, economic, and political life was insignificant then (Çamuroğlu 2008, p. viii). In the 1950s, the phenomenon of migration from rural to urban areas began to increase the Alevi population’s presence and effectiveness in cities. Starting from the 1950s, Alevis entered into an extraordinary process of social change (Çamuroğlu 2008, p. X). The process of urbanization and modernization

deeply influenced Alevis and pushed them to seek to open up space for themselves in the public sphere, and this led to the construction of a new Alevi identity (Aydın 2019, p. 899). The phenomenon of migration from rural to urban areas, which accelerated after the 1950s, added new and urban forms of expression to Alevism. The increase in the number of educated Alevis and the emergence of an Alevi bourgeoisie led to the formation of a new social stratification (Çamuroğlu 2008, p. 2). Due to the dispersive, dissolving, isolating and homogenizing effects of the urban environment, Alevis began to organize in the city to counteract these effects (Kineşçi 2017, p. 255).

As of today, cemevis are not only places of customs and ceremonies but also identity-building centres where many social and cultural activities are conducted. In addition to their traditional functions, cemevis are also where socio-cultural knowledge is transferred, education services are provided to members, efforts are made to resolve intra-group conflicts within the Alevi community, and social assistance and solidarity is realized (Yıldırım 2012, pp. 167–73). Legally, however, they do not have the status of places of worship in Turkey. For this reason, Alevis create places of worship in buildings that belong to their own associations and foundations, and perform their religious rituals and other social activities in these buildings.

The migration of Alevis to cities and their participation in employment in the education and public sectors enabled them to integrate into the society to a greater extent, and also brought about more intensive contact and competition with the Sunnis, from whom they had lived separately for centuries (Bruinessen 2016, s. 120). Migration and urbanization led to the disintegration of traditional Alevism, the construction of a new Alevi identity, and an increase in their identity-oriented demands in the public sphere. These demands can be divided into five groups:

- the recognition of Alevi identity,
- Representation in the Religious Affairs Department (RAD),
- the inclusion of Alevism in the “religious culture and moral education” course taught in primary and secondary schools, or the exemption of Alevis from the course,
- granting cemevis the status of places of worship, and
- the employment of Alevi religious leaders in the public sector.

We can say that the debates on these demands are still current among the public, that such demands are brought to international courts, and that these issues are mentioned in the reports of international organizations regarding Turkey. The present study will only focus on the status of places of worship.

4. How Is the Status of a Place of Worship Achieved in Turkey?

Turkey added the principle of secularism to its Constitution in 1937 as an attribute of the state. While determining the public policies of the state, the founding ideologues of the Republic wanted to neutralize the influence of religion in this field as much as possible (Gözüaydın 2016, pp. 61–62). However, Turkey has a sui generis view of secularism. Within the framework of this view, the existence of a Religious Affairs Department (DIB/RAD) and the compulsory teaching of religion courses can be seen as atypical practices specific to Turkey. The RAD is an institution whose existence, legitimacy, impartiality, and autonomy have been disputed since its establishment (Kara 2000, p. 29). The 1982 Constitution states that the RAD “shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas”.

From its establishment until the 1960s, the RAD’s functions were extremely limited. Following the law enacted in 1965, in particular, the influence of this institution on social life became more noticeable, and its regulatory aspect grew more powerful. The desires of political powers to control and regulate the religious field and utilize the influence of religion on society are among the factors that have strengthened the institution (Aydın 2019, p. 891).

According to Article 1 of the Religious Affairs Department (Creation and Functions) Act, the Department, affiliated with the Presidency, “shall deal with matters of Islamic

beliefs, worship, and moral tenets, enlighten society about matters pertaining to religion and administer places of worship”.

As can be understood from this provision, “administering places of worship” is among the basic duties of the RAD. Then, how does a place acquire the status of a place of worship in Turkey? The answer to this question is important for our subject matter. As the special provision in Turkish law regarding the acquisition of the status of a place of worship, Article 3 of the Regulation enacted by the Council of Ministers on 18 February 1935 implementing the Law governing the wearing of certain dress defines places of worship as follows: “Places of worship (*mabedler*) are closed areas created in accordance with the relevant procedure and designed in the case of each religion for the practice of religious worship”.

As can be seen, the regulation does not lay down any specific procedure for granting the status of a place of worship. In a decision of the Court of Cassation on the subject, it is stated that the regulation provision is practically interpreted to indicate the existence of a link between the place of worship and the practice of a religion.

Whether or not a place is qualified as a “place of worship” bears many important consequences in terms of the legal order. First, places of worship are exempted from numerous taxes. Second, their electricity bills are paid out of an RAD fund. Lastly, when urban development plans are being drawn up, provision must be made for places of worship, the establishment of which is subject to certain conditions.

The above-mentioned regulation does not specify the types of places of worship or the method of establishing places of worship, but Article 2(f) of Decision no. 2002/4100 of the Council of Ministers—dated 23 May 2002—lists mosques, masjids, churches, and synagogues as places of worship in its description of the tariff exemptions to be applied to electricity subscriber groups.

In the ‘Mosque Planning and Designing Guideline’, the RAD sets out the principles regarding the design and project of mosques which are designated as “Place of Worship” or “Mosque” in their development plans, and which will be transferred to the RAD after they are built in areas allocated to the RAD. The Guideline regulates the main topics of Planning, Project Design, Implementation, and Operation in accordance with the mosque construction process. It stipulates that following the completion of their construction, mosques are to be delivered to the Presidency (to Offices of Mufti) pursuant to the relevant legislation. In addition, the Department sets the rules regarding the status of mosques as places of worship through various regulations such as ‘Regulation for Maintenance, Repair, Cleaning, and Landscaping of Mosques’, ‘Regulation on the Donated Goods in Mosques and Masjids Administered by the Religious Affairs Department’, and ‘Regulation on the Determination of the Professional Qualification of Those Working in Mosques and Masjids whose Administration Has Been Transferred to the Religious Affairs Department’.

Because cemevis do not have the status of places of worship in Turkey, they cannot benefit from the public services and exemptions offered by the RAD. This situation is the subject of objections from the Alevis, who state that they lack the opportunity of representation and suffer discrimination. In this regard, they take steps both in the political and legal fields. Through the above-mentioned Alevi Workshops initiated by the government and the ‘National Unity and Solidarity Work’ conducted under the coordination of the Ministries of Interior and Culture and Tourism, public authorities are working to solve the problems faced by cemevis. However, the Alevi community demands that these efforts bring the desired status. In this regard, they are trying to achieve legal gains both in domestic law, by resorting to administrative and judicial mechanisms, and in the international arena, by applying to the ECHR.

5. Alevi Identity in Official Discourse and the Status of Cemevis in Turkey

In Turkey, which, despite the secular nature of its Constitution, has an official institution like the RAD, the criticisms directed at the RAD by Alevis focus on the claim that the RAD conducts religious services exclusively in line with the Sunni–Hanafi understanding

of Islam. How does the official discourse contextualize Alevi identity and cemevis? At this point, it is necessary to describe the approach of the RAD. This Department sees Alevism as a Sufi interpretation and practice of Islam, rather than as an independent sect.

For example, Cemevi Building Association, which was established on 25 August 2004 in Çankaya, Ankara, requested—through a petition it submitted to the District Governor’s Office of Çankaya—that a land designated as a ‘place of worship’ in its development plan be allocated for the construction of a cemevi. Upon this request, the Ministry of Interior asked the RAD’s opinion on whether cemevis are a place of worship. In response, the RAD stated in its letter—dated 17 December 2004 and numbered 1773—that places other than mosques and masjids cannot be used as places of worship, citing the Reform Laws included in Article 174 of the Constitution, and also the law numbered 677. In the same letter, the RAD addressed Alevism as a “Sufi interpretation and practice of Islam” (Supreme Court Assembly of Civil Chambers, 2014/7-1038). The RAD tried to explain the difference of opinion between Alevis and Sunnis with cultural and political reasons rather than religious ones (Aydın 2019, p. 907).

In a statement he gave to the media, Mehmet Görmez—who served as the President of the RAD between 2010 and 2017—describes Alevism as a unique way that was born within the tradition of Islamic wisdom, and defines cemevis as the place where supplication and ritual are performed (T24 2012). In another statement, Görmez points out that he considers a cemevi as a house of supplication just like Mevlevi houses or Bektashi lodges, where Allah is mentioned and remembered, and that it is not possible to see cemevis as the temple of a different religion or as an alternative to mosques (Bulut 2014).

Again, in a decision by the ECHR (2016, *İzzettin Doğan and Others v. Turkey* [GC]), this matter was addressed in the academic opinions submitted to the ECHR by the Turkish government. In the opinions that were received from religious academics and submitted to the ECHR by the government, religious communities were divided into three, as religions, sects, and mystical groups, and it was stated that Alevism fell into the third category (mystical groups). It was also reported in the same case that it is not technically correct to compare Alevism with Sunnism, or to compare the status of cemevis with places of worship, and that cemevis are places where those adopting the Alevi faith practice their customs and ceremonies, and that Alevism could only be compared to other Islamic Sufi groups such as Qadiriyya or Naqshbandiyya Sufi orders (ECHR, 2016, *İzzettin Doğan and Others v. Turkey* [GC], par. 44).

In a response given by the Deputy Prime Ministry to a written question submitted to the Office of the Speaker of the Grand National Assembly of Turkey (GNAT) by a deputy on 27 December 2012 (GNAT 2013), it was explained that mosques and masjids are the common places of worship of all Muslims, and that no other place has ever been called a place of worship in the history of Islam. In the same response, it is stated that Alevism is not a separate religion, it is an Islamic, cultural, and Sufi formation, and that cemevis are a place where Alevi citizens perform some religious rituals, customs, and ceremonies, apart from the collective prayers in mosques and masjids. Similar views were expressed in a response given to another deputy’s question on 8 April 2013, and the number of cemevis in Turkey as of January 2013 was announced as 937.

It can be said that the legal struggle initiated by Alevi associations and foundations in the face of this official discourse has enabled the Alevi community to achieve some gains in national and international law. In the ECHR decisions in the cases of *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, dated 2 December 2014, and *İzzettin Doğan and Others v. Turkey*, dated 26 April 2016, evaluations were made on Alevi identity and the status of cemevis, and it was concluded that Turkey violated the freedom of religion and belief regulated in Article 9 of the ECHR Convention and the prohibition of discrimination regulated in Article 14.

In this area, another legal achievement was made by the Cem Foundation, which belongs to the Alevi community, in a case between the foundation and Boğaziçi Elektrik Dağıtım A.Ş. (BEDAŞ), which is responsible for the distribution of electricity. BEDAŞ initi-

ated enforcement proceedings against the Cem Foundation for forty-six unpaid electricity bills between 16 February 2004 and 4 December 2007. The foundation, on the other hand, claimed that a part of the building in question had the status of a place of worship, and requested an exploration in the foundation building for this purpose. This request was rejected by the local court, which decided in favour of BEDAŞ. The Foundation appealed this decision of the first instance court to the Court of Cassation, and the 3rd Civil Chamber of the Court of Cassation unanimously reversed the decision of the first instance court (3rd Civil Chamber of the Court of Cassation, 2015/9711). Referring to the international conventions to which Turkey is a party, and to the ECHR decisions on this subject, the Court of Cassation considered the failure to carry out a discovery with the help of an expert on the site as a reason for the reversal (3rd Civil Chamber of the Court of Cassation, 2015/9711). This decision of the Court of Cassation can be considered as a deviation from the traditional approach to obtaining the status of a place of worship in Turkey. This decision of the Supreme Court can be considered as a deviation from the traditional approach to obtaining the status of a place of worship in Turkey. However, we cannot say that there has been any significant legal improvement on the subject following the decision.

Here, it is important for our study to address the inconsistencies between the promises of states in the field of human rights and the situations that emerge in practice. Constitutions are the most important legal document in recognizing and securing human rights. In the period after the Second World War, national constitutions and international organizations showed great interest in the subject. Despite this increasing interest, however, constitutional promises could not be fully realized. Although constitutions still keep promises of religious freedom high, it is observed that the level of restrictions in this area has increased on a global scale. Dane R. Mataic and Roger Finke, who have conducted important studies on the reasons for and dimensions of the disconnect between constitutional promises of religious freedoms and the practices of states, call this situation “compliance gaps” (Mataic and Finke 2018). The compliance gap literature had previously tried to explain this problem with “economic development”, “political and governance dimensions”, and “global connections”. Mataic and Finke added the fourth explanatory key of “religious economies” (Mataic and Finke 2018, p. 125).

Restrictions on religious freedoms can be divided into two, as governmental restrictions and social restrictions. Governmental restrictions arise from official laws, policies, or administrative actions. Social restrictions, on the other hand, arise from other religious groups, associations, or non-state actors (Finke and Mataic 2019, p. 589). The religious, social, and cultural pressures within a nation can arise from formal or informal alliances. The formal alliance between a majority religion and the state is the most obvious. This alliance often provides the dominant religion with subsidies, status and other privileges which are not given to other religions. The ultimate result of the alliance is that the dominant religion gains a competitive advantage over other religious and cultural groups (Finke and Mataic 2019, p. 595).

According to Mataic and Finke, heightened levels of government favouritism towards specific religious organisations will result in larger compliance gaps for religious minorities. Thus, it can be determined that the compliance gap is higher in countries which resort to state-level favouritism and social restrictions. Mataic and Finke point out that the most obvious example of government restrictions is found in the registration requirements for religious organizations. The aggravation of these requirements appears to be the most obvious evidence of this restriction (Mataic and Finke 2018, pp. 127–28).

Finke and Mataic (Finke and Mataic 2019, p. 605) state that although 95 percent of all nations in the world provide constitutional assurances of religious freedom, the level of restrictions has increased, and this trend is seen all over the world and in all religions. In the field of human rights, the controversial nature of the relationship between *de jure* and *de facto* constitutional law strengthens the restrictive tendency in this area. Although constitutions focus on individual rights, recent research has revealed the importance of

institutional rights. The individual's right of religious practice is dependent on the rights of the religious institutions making this practice possible (Finke and Mataic 2021, pp. 302–4).

In accordance with the above-mentioned observations, freedom of religious belief and worship is under constitutional guarantee in Turkey. Turkey is also a party to many international human rights conventions. However, regarding the status of Alevis and ce-mevis, international human rights institutions have been making decisions on the violation of rights against Turkey. Within the framework of the observations made by Mataic and Finke, a compliance gap can be inferred in Turkey in this area. Again, as emphasized in the present study, atypical secularism practices in Turkey cause this gap to grow. The implicit alliance and favouritism established by the state with the majority Sunni/Hanafi community also contributes to the growth of compliance gaps.

6. Conclusions

States have negative and positive obligations concerning the freedom of religion, belief, and worship. Negative obligation indicates the duty to avoid, to the extent possible, interference with or restriction of a right, except for legitimate reasons. Positive obligation, on the other hand, imposes a duty on the state to satisfy the necessary conditions and to take positive actions to remove the obstacles to the use of the right in order for the right to be used effectively in practice. Freedom of religion and belief encompasses the right of believers to assemble peacefully to practice their religion, that is, the right of a religious community to function peacefully without arbitrary interference by the state. The right of religious communities to build, open, and administer temples is part of the right of group members to manifest their religious beliefs. However, according to the established jurisprudence of human rights law, public authorities are not obliged in all circumstances to provide or build a place of worship for a religious community, or to grant places of worship a special status. States do not have a direct positive obligation in this sense. However, a state can develop various forms of relations with domestic religious communities. It can give special privileges to a religious community, grant it a special type of legal status, and provide legal personality. States also have a clear margin of appreciation in the determination of the principles of this relationship. In this regard, the duty imposed on the state by human rights law is not to violate the prohibition of discrimination. In other words, the state should ensure that other religious communities can also attain such special statuses without having to fulfil complicated procedures and principles.

If religious communities in a country are able to organize freely and have legal personality, that is, if they can have a status recognized by the legal order, it is easy to remove the prohibition of discrimination under certain conditions. In such countries, the state develops concordat-type relations with legally recognized religious communities. How and by what methods this relationship will be established, and the procedures to be followed in order to achieve this status have a legal basis. Thus, the issue is placed in a legal corridor, and can be discussed on a legal basis within the framework of the “law of status”.

When the subject is considered in view of the reality of Turkey, it can be said that there is no such legal basis in Turkey as described above. Since the foundation of the Republic of Turkey, there have been two basic principles that dominated the founding philosophy of the state: unitary structure and secularity. In Turkish political life, discourses and projects contrary to these two principles are banned, and political parties that violate these two principles are closed. While the principle of a unitary state requires defending national indivisibility, the secular state principle requires the state to be neutral in the face of religions and beliefs, and to avoid having an official religion or belief. Except for non-Muslim religious minority groups recognized in the Treaty of Lausanne, therefore, there is no other religious community in Turkey that enjoys legal status. It is not legally possible for the state to establish a concordat-type relationship with an Islamic religious community because, due to the secular state structure, such a legal status does not exist in Turkey.

There have always been two main objections to the secular nature of the state in Turkey. Although secularism requires the state not to be based on an official religion or sect, and to remain neutral in the face of religions and beliefs, the existence of the RAD as an official institution and the compulsory nature of the religious culture course in Turkey constitute the main subject of these objections. Those who voiced this objection claim that the content of compulsory religion classes and the public services offered by the RAD are for the Sunni sect of Islam and the Hanafi faith, excluding other intra-Islamic groups. This is a *de facto* reality of Turkish-type secularism. The RAD was not a very effective institution from its establishment in 1924 until the 1960s. The founders of the Republic assigned this institution to the control of religion by the state and the management of places of worship. However, since the 1960s, political powers have wanted to benefit from the influence of religion on the social sphere, and the RAD has developed a large organizational structure in this process. With the effect of urbanization and modernization, identity-oriented demands have increased since the 1990s, and the debates on the RAD's representation have increased. Despite this *de facto* reality, however, the discourse prevailing in the legal context is that the RAD is an institution which works in line with the principle of secularism. It is also possible to see this in the decisions of the Constitutional Court. Thus, during the period of either the 1961 Constitution or the 1982 Constitution, which is currently in force in Turkey, the *de facto* situation in Turkey was not officially or formally acknowledged. The dominant political discourse on this issue is that the Department carries out a simple administrative function in accordance with the principle of secularism. However, the *de facto* situation shows that the institution provides public services only to the Hanafi faith of the Sunni sect in Turkey. Nevertheless, the political system has refrained from acknowledging this officially. For this reason, there is no legal status that any religious community can demand in Turkey. The acquisition of a legal status by a religious community will have three main consequences:

- the autonomous existence of the religious community will be recognized by the state,
- the religious community will gain the opportunity to build and operate places of worship, and will enjoy certain public privileges, and
- the state will develop concordat-type relations with the religious community.

We can say that these three types of relations in Turkey have taken place on a *de facto* basis, and implicitly between the state and those who adhere to the Sunni/Hanafi sect. It should be noted, however, that the official expression of this is carefully avoided. It is necessary to look at the issue of Alevism and cemevi from this perspective. As emphasized in the study, the state does not legally accept the autonomous existence of Alevism or other Islamic religious communities, and does not provide them with such a status. Moreover, the state does not accept Alevism as a sect within Islam but prefers to consider the difference between Alevism and Sunnism in a cultural, rather than a religious or sectarian, context. It describes cemevis as places where Alevis perform some rituals for the continuation of their cultural heritage. Trying to define Alevism in this way in Turkey constitutes a violation of rights according to the ECHR. Thus, the ECHR considers this official choice of the Turkish state to be a violation of its negative and positive obligations in the field of freedom of belief and worship. According to the ECHR, the state ignores the belief of Alevis by defining their identity without considering their self-definition, and commits discrimination by depriving them of the opportunities it provides to Sunnis and Hanafis.

In order to comply with the ECHR jurisprudence, the state can accept Alevism as an identity, grant cemevis a legal status, entitle cemevis to benefit from certain public privileges, and employ Alevi religious leaders in the public sector. However, doing these will mean that the existence of religious communities is legally recognized, and that the state can establish concordat-type relations with these groups. Adopting such a method will mean that the atypical and *sui generis* character of Turkish-style secularism gains a legal identity. We have underlined above, however, that the state's approach towards the Sunni Hanafi sect is a *de facto* situation, that there is no official acceptance regarding this, and that, in fact, such a declaration of acceptance is specifically avoided. The founding philosophy of the Republic has an approach that prevents the state from establishing such

concordat-type relations with religious communities, as this issue is directly associated with the constitutional indivisibility of the nation's integrity. Concerns in this regard prevent the granting of such status to religious communities in Turkey.

Considering the Alevi Workshops, we can see that various groups of the Alevi community do not have a unanimous attitude towards this issue. While all parties find a common ground in their criticism of the RAD's activities and services, there are disagreements about what kind of legal action will be taken to solve the problem. As such, the subject presents a multifaceted and intricate issue involving the unitary structure of the state, its secular nature, identity policies, the de facto situation in religion-state relations in Turkey, and implicit preferences. It is not just a matter of the law of status. In order to satisfy the requirements of the ECHR's decisions on the violation of rights in this regard, Turkey might acknowledge Alevism as a religious identity with a certain level of cogency, seriousness, cohesion, and importance in the lives of Alevi individuals and community, as emphasized in the ECHR case law, and might fulfil the demands. Establishing the kinds of statuses which all religious communities can access and demand, on the other hand, will inevitably lead to some disputes. Recognizing the legal identity of religious communities and establishing concordat-type relations with them means the disclosure and official acceptance of the state's implicit concordat with the Sunni and Hanafi community. The constitutional order and ideology in Turkey meticulously avoid such an outcome. Therefore, discussing and addressing the issue only on a technical and administrative basis, such as granting status to religious communities, is insufficient to provide a solution. In Turkey, the atypical practices of secularism and the existence of implicit preferences of the state in the field of religion and belief take the issue beyond a technical and administrative ground. As Mataic and Finke put forth in their studies, removing restrictions on religious freedoms depends on the strength of democratic institutions in a country. As a matter of fact, studies show that such restrictions are reduced and religious freedoms defuse tensions and reduce conflict in those states which ensure free and democratic elections, have an independent judiciary, reject discriminatory practices in the field of human rights, and have a social structure based on religious tolerance.

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