

*Acta Academiae Beregsasiensis*

2017



ISSN 2310-1954

МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ  
ЗАКАРПАТСЬКИЙ УГОРСЬКИЙ ІНСТИТУТ ІМЕНІ Ф. РАКОЦІ ІІ



# *Acta Academiae Beregsasiensis*

*Науковий вісник*

Том XVI

Берегово–Ужгород  
2017

УДК 001.2  
А – 19

Свідоцтво про державну реєстрацію друкованого засобу масової інформації  
Серія КВ №20186-9986Р від 18.07.2013 р.

„Acta Academiae Beregsasiensis” засновано у 2000 році  
та видається за рішенням Видавничої ради  
Закарпатського угорського інституту імені Ф.Ракоці II

Рекомендовано до друку Вченою радою Закарпатського угорського інституту ім. Ф. Ракоці II  
(протокол № 5 від 28.08.2017 р.)

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А-19 **Acta Academiae Beregsasiensis 2017:** науковий вісник / Міністерство освіти і науки України, Закарпатський угорський інститут імені Ференца Ракоці II; гол. ред.: *І.Орос.* – Ужгород: Вид-во ТОВ «РІК-У», 2017. – Том XVI. – 248 с.

У науковому віснику „Acta Academiae Beregsasiensis” Закарпатського угорського інституту імені Ференца Ракоці II розглядаються актуальні питання наукових досліджень докторантів, аспірантів, викладачів навчальних закладів та співробітників наукових установ не лише України, але і зарубіжних країн.

УДК 001.2

ISSN 2310-1954  
ISBN 978-617-7404-64-3

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імені Ференца Ракоці II, 2017

ISSN 2310-1954

UKRAJNA OKTATÁSI ÉS TUDOMÁNYOS MINISZTERIUMA  
II. RÁKÓCZI FERENC KÁRPÁTALJAI MAGYAR FŐISKOLA



# *Acta Academiae Beregsasiensis*

*Tudományos folyóirat*

XVI. évfolyam

Beregszász–Ungvár  
2017

УДК 001.2  
А – 19

Nyomatott tömegtájékoztatási eszközök állami nyilvántartásának igazolása:  
széria: KB № 20186-9986P; kiadta: Ukrajna Állami Nyilvántartási Szolgálat 2013.07.18-án

Az *Acta Academiae Beregsiensis* 2000-ben lett alapítva, és a II. Rákóczi Ferenc Kárpátaljai Magyar Főiskola Kiadói Tanácsának határozata alapján jelenik meg

Kiadásra javasolta: a II. Rákóczi Ferenc Kárpátaljai Magyar Főiskola Tudományos Tanácsa  
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Magyar Főiskola, 2017

ISSN 2310-1954

MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE  
FERENC RÁKÓCZI II. TRANSCARPATHIAN HUNGARIAN INSTITUTE



# *Acta Academiae Beregsasiensis*

*Research Journal*

Volume XVI

Berehovo-Uzhhorod  
2017

УДК 001.2  
А – 19

Certificate of State Registration of Printed Mass Media, Series KB № 20186-9986P,  
Issued by the State Registration Service of Ukraine, December 20th, 2013

The journal „Acta Academiae Beregsasiensis” was established in 2000 and is published by the  
Publishing Council of Ferenc Rákóczi II. Transcarpathian Hungarian Institute

Recommended to publication by the Scientific Council of Ferenc Rákóczi II. Transcarpathian  
Hungarian Institute, record № 5 from August 28, 2017

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## Cujus regio ejus religio? \*\* The case of freedom of religion in Turkey

**Abstract.** The issue of religious freedom is such an important criterion generating such an insolvable ontological situation between the EU and Turkey that it has become a fundamental obstacle in the accession process. According to the European Union in a constitutional democracy at the level of basic institutions and decision-making procedures there are different political, moral and religious views existing side by side. The concept of the “other” in the secular nation-state in Turkey has European roots and formulated by European model, the country’s official policy is secular, but was strongly influenced by the centuries-old Islamic tradition in the ‘80s and the human rights norms, including the issue of religious freedom was conceived within the framework of Islam. The Islam is thinking in community, EU and Christianity is thinking about individuals. In Turkey the widely interpreted secularism gives the political framework of freedom of thought, religion and conscience so this human right cannot be interpreted in this community without analysing the main turning points of the secularism and the legal logic of the Islam in this question which, interestingly, is opposite to the official policy and better harmonized with the EU criteria’s than the Turkish secularist policy.

**Rezümé.** A vallászabadság biztosításának kérdése és a kritérium mindkét oldalról történő megítélése véleményem szerint egy olyan összeegyeztethetetlennek tűnő ontológiai helyzetre világít rá az EU és Törökország között, mely a csatlakozási folyamatok alapvető gátját képezi. A „másik” fogalmának koncepciója a szekuláris nemzetállam Törökország esetében európai gyökerekkel rendelkezik, európai mintára került megfogalmazásra, az ország hivatalos politikája szekuláris, melyre a több száz éves iszlám tradíció a ’80-as évektől erős befolyást gyakorolt és az emberi jogi normatívákat, így a vallászabadság kérdését az iszlám keretein belül képzelték el. Az alapvetően keresztény gyökerekkel rendelkező Európai Unió szerint egy alkotmányos demokráciában az alapintézmények és döntéshozatali eljárások szintjén el kell fogadni azt, hogy egy társadalomban különböző politikai, erkölcsi és vallási nézetek egymás mellett léteznek. Az iszlám közösségben gondolkodik, a kereszténység egyénekben. Törökországban a széleskörűen értelmezhető szekularizmus adja meg a vallás és lelkiismereti szabadság politikai keretét, így ennek bemutatása nélkül ez az emberi jog ebben a közösségben nem értelmezhető. Jelen tanulmányban a hivatalos szekuláris politika főbb fordulópontjait elemzem. Figyelmet fordítok az iszlám jogi nyelvezet kérdésében kialakított álláspontjára, mely érdekes módon a hivatalos közpolitikával szemben helyezkedik el és jobban harmonizál az EU kritériumokkal, mint a török politika.

**Резюме.** Питання забезпечення свободи віросповідання і оцінка її критеріїв з обох сторін, на наш погляд, вказує на таку несумісну онтологічну ситуацію між ЄС та Туреччиною, яка створює головну перешкоду для процесу вступу. Концепція поняття «інший» у випадку секуляризованої національної держави Туреччина має європейське коріння, була сформована за європейським зразком. Офіційна державна політика має секулярний характер, на неї, починаючи з 80-х років, сильний вплив мала багатолітня ісламська традиція, тому загальнолюдські права, в тому числі питання релігійної свободи, мисляться в рамках ісламу. В ув’язненні Європейського Союзу, який має християнське коріння, конституційна демократія в діяльності своїх інституцій та процедурах ухвалення рішень повинна ґрунтуватися на тому, що в одному суспільстві поруч співіснують різні політичні, етичні та релігійні погляди. Іслам мислить колективно, а християнство індивідуально. У Туреччині секуляризм, який трактується широко, надає політичні рамки свободи віросповідання та совісті, тож без їх забезпечення про дотримання прав людини у цьому суспільстві йтися не може. У публікації проаналізовано головні поворотні моменти офіційної секулярної політики. Звернено увагу на точку зору, сформовану у питанні ісламської юридичної мови, яка цікавим способом відрізняється від офіційної політики держави і краще за неї гармонізує з критеріями ЄС.

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\*\* The Peace of Augsburg, 1555.

## 1. Introduction

*“The game came to an end. The process of Turkey’s EU membership stretches for 53 years<sup>1</sup>, we expect an open dialogue”* - said Recep Tayyip Erdoğan, Turkish President in Ankara in his speech at the beginning of the parliamentary session.<sup>2</sup> The Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle noted about the new EU accession of Turkey: *“Whenever I am asked if I could imagine Turkey in the EU, my answer is yes, absolutely. But it will be a different Turkey and it will be a different European Union.”*<sup>3</sup>

Europe’s resistance in relation to the question of Turkish accession is analysed by some. Some put the emphasis on the requirements of the EU economic considerations, or on the Turkish domestic political situation in the EU and the non-fulfilment of the criteria’s. Analysing the parts of the problem is probably all of them are right.

In my opinion the issue of religious freedom on both sides highlights an important criteria and seemingly such an incompatible ontological situation between the EU and Turkey which is a fundamental obstacle in the accession process. The concept of the *“other”* in the secular nation-state in Turkey has European roots and formulated by European model, the country’s official policy is secular, that was strongly influenced by the centuries-old Islamic tradition in the ‘80s and human rights norms, including the issue of religious freedom that was conceived within the framework of Islam. According to the European Union in a constitutional democracy at the level of basic institutions and decision-making procedures there are different political, moral and religious views existing side by side. The Islam is thinking in community, Christianity is thinking about individuals.

In Turkey the widely interpreted secularism gives the political framework of freedom of thought, religion and conscience so this human right cannot be interpreted in this community without analysing the main turning points of the secularism.

The concept of the official secularism in Turkey is not equal with the pure concept of the constitutional principle of Mustafa Kemal Atatürk declared in 1937. The former has strong ottoman roots, formed under the Republic of

<sup>1</sup> In 1959 Turkey submitted its application to join the European Economic Community, on 12th September 1963 signed the Ankara Agreement, which made possible the economic cooperation (customs union). In November 1970 the agenda was completed between Turkey and the EEC about abolition of tariffs. On 14th April 1987 Turkey submitted its application to join the European Community in 1989, the European Commission has responded that the economic and political situation in Turkey, the Turkish-Greek relations and the Cyprus crisis is the main reasons why the date was not suitable to start negotiations about accession. In 1995, Turkey made a custom union with the EU. In December 1999 the EU formally recognized Turkey’s right to join. In 2002, the European Union stated it’s willingness to commence the negotiations with Turkey without delay, as soon as it fulfills the Copenhagen criteria.

<sup>2</sup> <http://www.hurriyetdailynews.com/erdogan-tells-eu-were-at-the-end-of-the-game-.aspx?pageID=238&nID=104495&NewsCatID=338>

<sup>3</sup> <http://carnegieeurope.eu/strategieurope/?fa=53742>, 18 November 2013. (2016.10.10.)



Turkey and in the '80s got a strong Islamist influence. Besides the current leaders of the modern Turkey apparently seek to achieve re-Islamist and modernization efforts: the Turkish prime minister personally is a devout Muslim who strictly abide by the rules of the religion, his wife wears a hijab, yet his political ambitions bearing in the name of European integration and can be connected to the community's legal alignment.

In this study the major turning points of the official secular Turkish policies are analysed. I also pay my attention to the legal logic of the Islam in this question which, interestingly, is opposite to the official policy and better harmonized with the EU criteria's than the Turkish policy. The question arises: does disputes on religious freedom reflect the true views of Muslims or only the ideological weapons of the Turkish political parties?<sup>4</sup>

## **2. The brief history of secularism in Turkey**

### **2.1. The ottoman heritage**

Although the Ottoman Empire was the chief representative and protector of Islam over the centuries, it was not a theocracy. The Ottoman state gained its political and moral legitimacy from its ability to grant the autonomy and diversity for each *millet*. The Sunni Islam was not a state religion, but functioned as a “dominate” religion among the religions and sects of the *millets*.<sup>5</sup>

In order to keep this religiously and ethnically diverse empire the Ottoman rulers was not derived the public law rules from Islamic law.<sup>6</sup> The Ottoman public law was the law of the dynasty and the land of its inhabitants, the ottoman subjects. It consisted of the decrees of the rulers of the dynasty. Islamic law was applied primarily to the personal legal matters and transactions within the Muslim community.

The Ottoman government took the *ulema* under effective control with appointing its members to functionaries of his government.<sup>7</sup> Those lawyers who

<sup>4</sup>There was a survey made at the Boğaziçi University in 2007 about the majority of society would support to ban the wearing of Muslim headscarf, but the last year's (2015) studies pointed out that the issue is not as real problem among people as it generates gunpowder atmosphere among political actors. The Turkish Businesswomen Association (TIKAD) called Strategic and Social Research Center for a public opinion poll in 2010 and 2015, which showed that the headscarf debate has purely political nature and has no real basis in society. The discourse is an ideological weapon or power among the Turkish political parties for confirming their political power - said Nilüfer Bulut, head of the TIKAD. More than three thousand women and their husbands were interviewed on the subject and 80 per cent of the respondents did not care about her hair is covered with her hijab publicly or not. When they asked whether the Turkish women should be under scarf to hide their hair outside their home, 77 percent replied: only and exclusively to those who voluntarily choose to wear hijab. Id. <http://www.tikad.org.tr/home.html>

<sup>5</sup>İlter Turan. (1991). Religion and Political Culture in Turkey In: Richard Tapper (ed.). (1991). Islam in Modern Turkey. Religion, Politics and Literature in a Secular State. IB Tauris. London. 33.

<sup>6</sup>İlter Turan. opt. cit. 41.

<sup>7</sup> Serif Mardin. (1973). Centre Periphery Relations: A Key to Turkish Politics. Daedalus, 102/1, Post-Traditional Societies. Winter. 169-190.

<https://www.scribd.com/document/127450245/Center-Periphery-Relations>

interpreted and codified Islamic law condensed in law schools that were not as hierarchical organizations such as law schools set up by the Catholic Church. The Ottoman bureaucrats who obtained their qualifications in the palace, not in religious schools had a fixed idea regarding the interaction of politics and religion: the state interest is an essential factor in preserving the religion. According to them, the state keeps alive the religion, and therefore has priority over the religion.<sup>8</sup> The policy controls the religion providing the legitimacy of the religion.<sup>9</sup> The Ottoman administrative practices was characterized by this dichotomy. The primacy of national interest was paramount, which also acted to protect holiness.<sup>10</sup>

## **2.2. Modernization, westernization and secularization**

The secularization of the Ottoman Empire began in the 1800's and was linked to the ruling elite. The reforms affected especially the judiciary and education system.<sup>11</sup>

The most important point of secularism was the foundation of the Turkish Republic. The creation of the new nation-state led by the old ruling class saw an immediate need for changing the old basis of legitimacy. The Kemalist politicians mainly focused on the establishment of a political system that was free of the legitimacy of religious and dynastic power so the modern secular republic based on nationalist grounds.<sup>12</sup> They wanted to abolish the institutional structure of the religion. In 1922 they abolished the Sultanate, in 1924 abolished the caliphate, the Islamic courts were banned, the tombs and temples were closed, the mystical orders were banned. The traditional religious education was also abolished, all educational institutions had been under the control of the Ministry of National Education. In 1928 the article 2 of the Constitution of 1924 which stated that "*The religion of the Turkish state is Islam.*" was eliminated. Nevertheless, Islam remains an important component of the Turkish national identity.<sup>13</sup>

With introduction of the European principle of the separation the religion and state the Islam completely relegated in the private life for a time. In the political life in the vacuum of the eliminated Islam a new state ideology of Kemalism was broken into. According to Niyazi Berkes historian<sup>14</sup> the *saria*, the religious law

<sup>8</sup> Serif Mardin. opt. cit. 139.

<sup>9</sup> Niyazi Berkes. (1998). *The Development of Secularism in Turkey*. Hurst. London. 14.

<sup>10</sup> Niyazi Berkes. opt. cit. 8.

<sup>11</sup> Serif Mardin. opt.cit.45.

<sup>12</sup> Çağlar Keyder. (1983). *State and Class in Turkey: A Study in Capitalist Development*. Verso. London. 86.

<sup>13</sup> Nearly 90 percent of the country, approximately 75 million people are Muslim, most of them are belong to Sunni branch. Turkey have a sizeable population of Shiite Muslims, Alevi and small of Greek Orthodox, Armenian Orthodox, Roman Catholic, Jewish and Protestant groups. Approximately 5-20 per cent of the estimated number are Alevi, and from other Sufi orders (for example mevlevi, naksbandi monks).

[http://kitekinto.hu/eia/2011/01/20/torokorszag\\_es\\_a\\_vallas\\_a\\_kendzetlen\\_valosag](http://kitekinto.hu/eia/2011/01/20/torokorszag_es_a_vallas_a_kendzetlen_valosag)

<sup>14</sup> Niyazi Berkes. opt. cit. 467.

narrowed to family law. The secularization of Civil Code is officially reported the fall of the legal dimension of the religion. The previous traditions and permanent legal basis was ceased.

In 1926 new Civil Code was adopted from the Swiss Civil Code and promulgated by the National Assembly.<sup>15</sup> The cultural transformation and modernization is implemented through a series of reforms. The Imams (*hocas*) and preachers can wear their religious uniforms only during their service and performance of their duty. In 1925, the Hat Law was enacted prohibiting the wearing of fez (the Ottoman characteristic red hat) the symbol of the Ottoman rule and urged the European costume, although still there was no restrictions in connection with the traditional Muslim head scarf of the Muslim women (hijab). In 1928, the use of the Latin inscriptions in official places was introduced and at the same time the Arab and Persian inscriptions were banned. Also in 1928, the Arab and Persian languages was taken out of the school schedule. From 1930 instruction on religion were dropped from the school curricula. A law passed in 1934 prohibited the use of religious titles, such *Haci, Hafiz, Mullah*.<sup>16</sup> In 1928 Islam was disestablished as state religion and in 1937 the principle of laicism became an integral part of the Turkish Constitution.<sup>17</sup>

In the Republic of Turkey religion is not separated from the state. It followed the Ottoman model and the religious institutions were built into the administrative system. Two state institutions were created to control the religious domain: the Directorate of Religious Affairs (*Diyanet Isleri Başkanlığı*) and the *Evkaf*, the Directorate of Pious Foundations. The centralized Directorate of Religious Affairs was established to oversee all religious practices; the *Evkaf* administered religious endowments and maintenance of mosques. After 1931, it assumed the administration of cleric remuneration.<sup>18</sup> The Head of the Directorate of Religious Affairs was appointed by the president on the recommendation of the prime minister.<sup>19</sup>

The laicism not only meant that the state dominates and controls on religious institutions, but the state regulates the use of pre-Islamic traditions and religious expressions. The Directorate entrusted the Hanafi Law School, the most liberal of the four law schools of Islam.

Despite the imposed restrictions, religion was never meant to be completely eliminated from the official discourse of national identity. The majority of the republican cadres viewed religion as something to be modernized and reformed not as a mere anachronism. With translating the Qur'an into Turkish language and

<sup>15</sup> Niyazi Berkes opt. cit. 470.

<sup>16</sup> Niyazi Berkes. opt. cit. 466-477.

<sup>17</sup> English text of the Turkish Constitution of 1924 see <http://genckaya.bilkent.edu.tr/1924constitution.pdf>, 89-100.

<sup>18</sup> Andrew Davison. (1998). *Secularism and Revivalism in Turkey. A Hermeneutic Reconsideration*. Yale. 139.

<sup>19</sup> Andrew Davison. opt. cit. 39.

changed the language of prayers from Arabic into Turkish they created a national religion, the basis of public morality.<sup>20</sup>

These rigid and restrictive policies of the state encountered resistance among the population. The Sheikh Said revolt was motivated not only by the desire for an autonomous Kurdistan, but demanding the restoration of the holy law and the caliphate.<sup>21</sup>

The regime's repressive attitude toward religion during the 1930's was relaxed in the cultural policies as after the introduction of multiparty politics, both major parties started to court the Muslim voters. In 1947 religious education in schools (facultative courses) was established and introduced by the Faculty of Divinity, with allowing rituals and tombs and shrines in 1949. At the same time Article 163 was enacted in the Penal Code which strictly prohibited propaganda against the secular character of the state.<sup>22</sup>

The Democrat Party (*Demokrat Parti*) which came to power in 1950 continued the policies of moderation. The prayer call in Arabic was made legal again, religious education was expanded, and the number of preacher schools was increased. There was a marked increase in the building of mosques and the sale of religious literature. The DP accepted the existence of autonomous religious organizations. Its policy was often criticized for using religion for the purposes of a political agenda. Though the party lost its importance by 1960, there were no return to the strict policies of the Young Turkish Republic.<sup>23</sup>

The National Unity Committee (*Milli Birlik Komitesi*)<sup>24</sup> in 1984 declared that the national religion should be a tool of the state to protect the Islam from the influence of the conservative religious groups and political parties' influence. In its program the Committee patronized the modern rationalist Islam. For this new subjects were involved in the theological academic education: economics, sociology and law. The Qur'an was printed in Turkish and enlightened theology appeared amongst the scientific publications. Using religion for political purposes remained illegal, and the 1949 Criminal Code amendment that prohibited all propaganda against the nation state and the secularist notion of the state was included in the 1961 Constitution.<sup>25</sup>

The Kemalist notion of secularism prevailed throughout 1960's and 70's. In 1970 Necmettin Erbakan formed the National order Party (*Milli Nizam Partisi*) which had an Islamic orientation. In the elections of 1973, the MSP got 48 seats in the National Assembly. This was the first time in the history of the Republic that a pro-Islamic party, campaigning with pro-Islamic slogans came to occupy

<sup>20</sup> Serif Mardin. opt. cit. 123.

<sup>21</sup> Eric Zürcher. (1993). *Turkey a Modern History*, IB Tauris. London. 178.

<sup>22</sup> Eric Zürcher. opt. cit. 244.

<sup>23</sup> Mehmet Geyindagi. (1984). *Political Parties in Turkey. The Role of Islam*. Praeger. New York. 89.

<sup>24</sup> May 27, 1960, General Cemal Gürsel led the army and carried out a military coup, took the management over the country.

<sup>25</sup> Mehmet Geyindagi. opt.cit.89.

a relatively important position in the parliament. Nonetheless it was far from being perceived as an extremist party that can pose a threat to the secular foundations of the state. During the late 1970's the MSP also took part in two right-wing coalition governments; the first and second Nationalist Front in 1974 and in 1977.

The government allowed the graduates of the imam-hatip schools to pursue university education. At the same time the elective courses on religion, offered at academic schools, were allowed to be taught only by the graduates of the Higher Islamic Institutes.<sup>26</sup>

### 2.3. *The 1980's*

Despite the restrictions in the Turkish political life there were religious (pro-Islamic) groups and parties. Islamist groups emerged as a major challenge to the state monopoly and the laic foundation of the state only after the 1980's. The military leaders commenced a policy of depolitization which relied on the supposedly stabilizing function of the religious culture.<sup>27</sup> The idea of the Islamic *ummah*, a community of believers who are united by the same faith, seems to have set the model for a new sense of community which can consolidate social unity and solidarity and can eliminate the conflicts of opposing ideologies. The state's investment in promoting and controlling religion increased substantially. The number of imam-hatip schools increased sharply from 258 to 350, the number of students attending to those schools rose dramatically to 270000. There was also an increase in the number of the lower grade Quranic schools from 2610 (1980) to 4715 (by after 1980).<sup>28</sup>

In 1982, the military government introduced compulsory religious education in all primary and secondary schools with the exception of non-Muslim minorities in schools. This of course meant education of Sunni Islam. In this course, the military government was not intended by Islamisation of the political and legal institutions. The Turkish Constitution of 1982 reiterated the provisions on the protection of the secular nature of the state.<sup>29</sup>

In addition, the protection was also extended to the eight Reform Law which were enacted under the leadership of Atatürk. This eight Principal Reform Laws - which is considered to be the eight pillars of the Turkish secularism - the secular education, the introduction of the civil institution of marriage, adoption of Turkish alphabet, the introduction of international digits, Hat Law, closing the dervish convents, abolishing religious titles, prohibiting the wearing of certain garments. Additionally, the constitutional provision banning the use of religion for political purposes was copied directly from the Constitution of 1961.

<sup>26</sup> Mehmet Geyindagi. opt. cit. 109.

<sup>27</sup> Ahmad Feroz. (1985). The Transition to Democracy in Turkey. *Third World Quarterly* 7/2. 219-227. [https://www.jstor.org/stable/3991599?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3991599?seq=1#page_scan_tab_contents)

<sup>28</sup> Ahmad Feroz. opt. cit. 219-221.

<sup>29</sup> Ergun Özbudun. (1996). *Constitutional Law*. In: Tugrul Ansay-Don Wallace. (1996). *Introduction to Turkish Law*. Kluwer. Boston. 31.

The duality of the Turkish government's policy of '80s illustrated by the following regulations: in 1982 the Council of Higher Education prohibited students from wearing head covers while attending classes. The case caused widespread protest actions. The dual policy, on one side promoted teaching Islam, on the other side prohibited its manifestation illustrates the manipulation of the Turkish government with the religion. The main intention was to elicit the Islamic loyalties of the population for political stability under an authoritarian institutionalization. According to this religiously based moral authoritarianism the nation came to be understood as a homogenous unit based on a synthesis of the family, the mosque and the barracks.<sup>30</sup>

According to Levent Koker<sup>31</sup> Turkey's secular intellectuals developed a nation-building concept that emphasizes unity and solidarity based on a single moral tradition. The concept of national sovereignty of Kemalism therefore represents great feelings, but there is no tolerance in the direction of cultural, religious and linguistic plurality and divergence.<sup>32</sup>

However, in the 1980s, the Islamic movements represent the deep and cherished values of the people, especially in rural areas where the Islamic tradition has never worn out. During the official wording of the national unity dual conflict arose between the Muslim community and the concept of the secular state. Nevertheless, I guess that this conflict is based on the core values of existing society, or a short-term political purposes.

### **3. Religious liberty and its variations**

In 2002 the AKP<sup>33</sup> (Justice and Development Party in Turkish *Adalat ve Kalkınma Coast Isi*) at its election victory declared its political will to install constitutional and legal changes, which harmonize the Turkish legal system with the Copenhagen criteria, and build well established human rights system according to the European dimension. In order to this the language of individual freedoms of the European human rights in the political language was introduced. This trend were committed without exception by the various Islamic movements and organizations.

The freedom of religion or belief is regarded as a pillar of modern pluralism, protected as a fundamental principle by international human rights instruments.

<sup>30</sup> Birtek Faruk – Binnaz Toprak. (July 1993). The Conflictual Agendas of Neo-Liberal Reconstruction and the Rise of Islamic Politics in Turkey. *Praxis International*. 13/2. 192-210.

<sup>31</sup> Özlem Denli. (2000). Islam and the Freedom of Religion or Belief: Perspectives from Contemporary Turkey. Norwegian Institute of Human Rights. Oslo. 102.

<sup>32</sup> Heper Metin. (1985). *The State Tradition in Turkey*. Eothen Press. Walkington. 50.

<sup>33</sup> Turkey's center-right-wing, moderate, conservative governing party engages and encourages Turkey's accession to the EU liberal market policies. The party got the 47% of the votes in the Turkish Parliament in the 2007 elections. Abdullah Gül was nominated to President of the Republic. The opposition party, the CHP founded by Atatürk, vetoed it, arguing that the head of the Atatürk state cannot be a politician whose wife wears the Muslim headscarf.

Article 18 of the Universal Declaration of Human Rights (UDHR) establishes the principle of the freedom of religion or belief. Article 18 reads: „*Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief in teaching, practice, worship and observance.*”<sup>34</sup>

The internationally negotiated and accepted norms are designated to accommodate diverse cultural and religious contexts. Thus the key human rights documents do not prescribe any particular juridical relationship between the state and religious institutions; they allow the state parties to implement the norms by using different institutional arrangements.

The non-discrimination principle requires sensitivity to the differences. The institutional setting should assure the equal enjoyment of the freedom of religion or belief, and no group of individuals who can be defined in terms of criteria salient to religion or belief should be put into a position of systematic disadvantage.<sup>35</sup>

In modern societies the cultural diversity and the equal enjoyment of the freedom of religion or belief typically suppose and involve the separation of religion and state. Indeed, constitutional democracies are expected to refrain from establishing or promoting any particular religion, they are expected to allow persons to be free in their private lives to espouse or reject religion. Referring to this democratic norm, Robert Audi proposes three guiding principles<sup>36</sup>:

Libertarian principle saying that the state must permit the practice of any religion, though within certain limits.

According to the egalitarian principle states may not give preference to one religion over another. This principle not only rules out an established church – the existence of which might be arguably consistent with the libertarian principle – but also precludes such things as legally requiring a certain religious affiliation as a condition for public office.

Neutrality principle stating that the state should not favour or disfavour religion as such. That is, the state cannot give positive or negative preference to institutions or persons just because they are religious.

Freedom of religion in broad sense means that a person is entitled to reject a religious views as well. If the state prefers a religious institution or religion this can put pressure on people to pick up this religion. Or it could mean discrimination against other faiths as well. So if the government prefers one religion is synonymous with unequal treatment of religious and non-religious.

<sup>34</sup> <http://www.menszt.hu/layout/set/print/content/view/full/201> (2016. 11.03.)

<sup>35</sup> Arcot Krishnaswami. (1998). Study of Discrimination in the Matter of Religious Rights and Practices. In: Tad Stahnke - Paul Martin (ed.) (1998.) Religion and Human Rights: Basic Documents. Columbia University Center for the Study of Human Rights. New York. 2-52.,17.

<sup>36</sup> Robert Audi – Nicholas Wolterstorff. (1997). Religion in the Public Square. The Place of Religious Convictions in Political Debate. Rowman and Littlefield. New York. 32.

In my opinion the neutral approach is too weak in a divided society which we want to live in, therefore I evaluate the Turkish policies in terms of the other two principles: the libertarian and the equalitarian.

According to the libertarian approach official policies on religion nominally permit the practice of any religion within the limits of protecting basic human rights. Yet, not just non-Muslim minorities and non-Sunni sects of Islam (churches to maintain, organize religious education, their religious literature) but Sunni creed as well suffer from limitations on the right to manifest one's religion or belief (e.g. Hat Law).

As for the equalitarian principle the Republic of Turkey followed the Ottoman tradition. It built the Islam religious institutions into the state, and organized the state control over the religious activities. Islam meant solely Sunni Islam.

The Treaty of Lausanne in 1923 guaranteed the freedom of religion and equal protection by law for the non-Muslim citizens of Turkey. Similarly Article 88 of the 1924 Constitution stipulated, "*The People of Turkey, regardless of religion and race are Turks in regards to citizenship.*" However, the legitimacy of the state recognized on the basis of Sunni Islam this did not mean the detriment of other religions or sects only delegitimization of the alternative interpretation of Sunni Islam by autonomous actors.

Thus far from honouring the egalitarian and libertarian principle, official secularist policies in Turkey are inherently biased, exclusionist, and discriminatory.

#### ***4. The EU membership process of Turkey***

Turkey's candidacy for membership to the European Community was confirmed in the Helsinki Summit of 1999. In the Copenhagen Summit of 2002 Turkey was given date of December 2004. Since 1999 Turkey adopted constitutional reforms and altogether 8 comprehensive reform package instituting improvements regarding the protection of fundamental rights and liberties, primarily in the areas of freedom of religion and conscience, freedom of association. In the process more than one-third of the original text of the Constitution was amended.

In 1987 Turkey had already recognized the right to individual application to the European Commission of Human Rights and accepted the binding judicial competence of the European Court of Human Rights in 1989.<sup>37</sup>

The first reform package passed in 2002 amended Article 312 of the Penal Code, declaring incitement to hatred on the basis of the differences of social class, race, religion, sect and region. With the amendment only the expressions that may create danger for public order would constitute a criminal offense.<sup>38</sup>

No amendments were made to Article 24 governing the freedom of religion and conscience.

<sup>37</sup> Ergun Özbudun. opt.cit.25.

<sup>38</sup> Ergun Özbudun. opt.cit.19.



The third reform laws package, which went into force on 9 August 2002, recognized the right of community foundations (meaning non-Muslim foundations) to own immovable properties and to dispose of them freely. The sixth reform package, which went into force on 19th July 2003, recognized the right of non-Muslim communities to build places of worship subject to the approval of the competent administrative authorities.<sup>39</sup>

On the other hand the European Commission's 2004<sup>40</sup> accession report on Turkey observes, as far as the situation of non-Sunni Muslim minorities is concerned, there has been no change in their status. The Alevi's are not officially recognized as a religious community.<sup>41</sup> They were excluded from the institutional structure of the Directorate of Religious Affairs. According to the report the secular Turkey should treat all religions equally and should not directly support one particular religion, as it currently does through the *Diyanet*.<sup>42</sup>

According to the European Commission's 2015<sup>43</sup> Report freedom of worship continued to be generally respected. Court judgements on Cem houses and on compulsory religious and

ethics classes contributed to creating the enabling environment for the respect of this freedom.

Particular attention should be given to the implementation of judgement on the exemption from compulsory religion and ethics classes, indication of religious affiliation on identity cards, legal personality of religious bodies and institutions,

<sup>39</sup> Ergun Özbudun. opt .cit. 9.

<sup>40</sup> [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) 44.

<sup>41</sup> According to official statistics, about 89 percent of Turkey's population are Sunni Muslims, while the rest of the population is from Christian and Jewish communities. About 20 percent of the population belong to the Alevi religious direction. Most of them are Turks, about a quarter of them are of Kurdish origin. According to the official state position, the Turkish nation is made up solely from Sunni Turkish nationals. The Anatolian Alevi's are derived origins, which in the 14th century built a relationship with the Iranian Sufi order and separated themselves from the orthodox Muslim creed. Until 1922 the Ottoman Empire considered them heretics and accused them with immorality and even practicing incest. In the 90's modern Turkey the Alevi community was forced to conceal its identity aware. Their ceremonies were dedicated in the church houses (cemevi), not mosques. In their ceremony, the music and dance rituals both men and women took part. What's more consumption of alcohol was allowed for both sexes. Tolerance and equality is a very important principle of the religion: "There is no man without God, there is no God without man." In the new Turkish Republic the Alevi's religious identity faded. Their religious identity was rediscovered in the early '90s, when the Turkish political sphere made some opening towards liberalism. Currently, the Alevi religion is no longer a taboo in Turkey, even though the legal framework of minority rights is not provided. In Germany, about 40 percent of the first wave of immigrants were Alevi. They strongly distanced themselves from Sunnis, emphasizing cultural differences. After September 11, 2001 have applied for recognition that they are a separate religious community from the Muslim religion. The public recognition was received in less than two years, so today their children's religious education in schools is solved.

In: Markus Dressler. (2015). *Writing Religion, The Making of Turkish Alevi Islam* (AAR Reflection and Theory in the Study of Religion). Oxford University Press. 15-23.

<sup>42</sup> [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) 45.

<sup>43</sup> [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) 44.

rules on participation in religious elections, places of worship and work and residence permits for foreign clergy. Pending issues concerning the Alevi community also need to be tackled, including the implementation of the recent Court of Cassation judgement on the recognition of Cem houses as places of worship and effective judicial follow-up of attacks against Alevi's. Turkey is the only member of the Council of Europe that does not recognise the right to conscientious objection for conscripts. The Ecumenical Patriarchate received no indication from the authorities that it may use the 'ecumenical' title freely. The relevant 2010 recommendations of the Council of Europe's Venice Commission on these issues are yet to be implemented. Restrictions on the training of

clergy continued. No steps have been taken to open the Halki (*Heybeliada*) Greek Orthodox Seminary, closed since 1971. The Armenian Patriarchate's proposal to open a university department for the Armenian language and Armenian clergy has been pending for several years. The Syrian Orthodox community was only able to provide informal training outside official schools. Hate speech and hate crimes against Christians and Jews continued to be reported. References to the possible transformation of Hagia Sophia in Istanbul into a mosque raised controversy.<sup>44</sup> The report said overall, though the reforms implemented are significant, but inadequate in the area of religious freedom.

### ***5. State, Society, and the Individual: Islam as a Religion of Community***

The Turkish state constructs and propagates an „official Islam” in line with its political imperatives and restructures Islam's internal premises to fit a secularist republican agenda.

The Hanafi law school's approach has helped to strengthen the internal and pluralistic notion of the Islam which was traditionally shared. It helped accept that Islam in its basic sources can be interpreted in different ways. The pluralistic vision is based on a gap posited between the divine will and the acquired knowledge of it. The argument is as follows: the divine will reveals itself in the world of phenomena in a plurality of ways and there is disparity between the divine essence of the revelation and the human acquisition of it. Therefore the essence behind complex appearance cannot be inferred from the knowledge of its worldly expressions, which is bound to be relative and partial. Consequently what is divine cannot be reduced to the products of human effort. The immediate conclusion drawn is that there cannot be a single methodology that would legitimately bring out a single interpretation. Human acquisitions of the divine will cannot be monopolized by elite or placed at the disposal of a political authority. The quest for a single „true” reading can easily be a hostage to the political authority that aims at promoting a particular Islamic interpretation for its own purposes.<sup>45</sup>

<sup>44</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf)

<sup>45</sup> Christie Warren. (2013). *The Hanafi School*. Oxford University Press. 23-29.

In this approach, Islam is treated as the religion of a community, not as the religion promoted and controlled by the state, since the divine will resides in the *ummah* and the political authority must be organized in a way that would avoid official orthodoxy but allow the plurality, which stems from the lived traditions of the community.<sup>46</sup> An important aspect of this pluralist vision is abandoning the political aim of forming an Islamic state and disengaging the individual salvation from the issue of statehood.

Islam (Hanafi) does not authorize the duty of establishing an Islamic state and the fundamental sources of Islam do not furnish political models that can be implemented universally. Political authority is not a sacred instance but a mode of organizing the coexistence of Muslims. In summary Islam provides no legal and institutional closure, and its basic tenets can be implemented in a variety of institutional settings.<sup>47</sup>

The critical question here is the extent to which the modern principles of freedom and equality are accommodated in this pluralistic vision. The Islamists therefore prefer to define themselves as Muslim state of society rather Islamic State. The pluralists are working to establish a system that provides a dynamic and community-building religious life of every religion and faith.

As formulated in Article 1 of the Universal Declaration of Human Rights the idea of human rights is founded on the freedom and equal dignity of all human beings which is in turn translated into the idea of equal rights.<sup>48</sup>

Some Islamist thinkers seem to be taking the idea of equal worth and moral capability of every human being for affirming or rejecting faith and related ways of life as the starting point for appreciating the moral significance of equality in a more general sense. This may prove to be a successful route toward accepting the individual as the primary rights holder, which in turn is essential for counteracting the communitarian tendencies (religious communities can be rather repressive entities) so widespread among Islamists. There is a growing tendency toward articulating liberal positions in Islam, which do not contradict fundamental modern values and can actually contribute to their endorsement.

I agree with Mayer<sup>49</sup> that the normative resources of Islam can have for accommodating religious pluralism and for deriving support for human rights. This position does not imply that the Muslim mind responds solely to Islamic stimuli.

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<sup>46</sup> Fuat Keyman - Ahmet Icduygu. (2011). *Citizenship in a Global World: European Questions and Turkish Experiences*. Routledge. New York.34.

<sup>47</sup> Angel Rabasa-Stephen Larrabee. (2008). *The Rise of Political Islam in Turkey*. Rand. London. 56-58.

<sup>48</sup> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<http://www.un.org/en/universal-declaration-human-rights/>

<sup>49</sup> Ann Mayer. (1992). A Critique of An-Na'Im's Assessment of Islamic Criminal Justice. In: Tore Lindholm – Kari Voght (ed.). *Islamic Rights Reform and Human Rights*. Nordic Human Rights Publications. 133.

Instead it underscores the significance of transforming mentalities and enhancing the legitimacy of human rights in ways that are acceptable from Islamic point of view.

*“We have secularism in our efforts for a new constitution. We haven’t discussed the removal of secularism from the constitution”* - said Mustafa Şentop the head of the parliament’s constitution commission on preparing the new Turkish Basic Law in response to Ismail Kahraman chairman of the parliament’s statement who suggested that the principle of secularism *“must be removed”* from Turkey’s constitution.<sup>50</sup> Kahraman also added the state should stay in the service of the citizens, instead the opposite is happening in Turkey, the Basic Law protects the state and the citizens have to serve it. The largest opposition bloc, the Republican People’s Party (CHP) called the old politician for immediate resignation and drew the attention to minority rights and the development of democratic freedoms.<sup>51</sup> Burhan Kuzu, senior advisor of Recep Tayyip Erdoğan on his Twitter account evaluated Kahraman statement as an example of freedom of expression. At the same time reaffirmed that the principle of secularism will clearly stay in the proposal. *Whose power, his religion?*

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*Наукове видання*

**ACTA ACADEMIAE BEREKSASIENSIS**

НАУКОВИЙ ВІСНИК

*Том XVI*

Друкується в авторській редакції з оригінал-макетів авторів

*Матеріали подані мовою оригіналу*

Автори опублікованих матеріалів несуть повну відповідальність за підбір, точність наведених фактів, цитат, економіко-статистичних даних, власних імен та інших відомостей.

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ВЕРСТКА *В.Товтін*

Видавництво ТОВ «РІК-У»

Підписано до друку 26. 09. 2017 р.  
Формат 70x100/16. Папір офсетний. Гарнітура Таймс. Друк офсетний.  
Умовн. друк. аркушів 19,97. Наклад 300.

Віддруковано з оригіналів

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