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# Turkey in the European Union

## The End of the Secularist Modernisation Project?

RADU CARP

One of the most frequent errors made when trying to interpret the relationship between Turkey, secularism, modernity and Europe is to believe that a linear process took place in this country during which, starting from the negation of the Ottoman system, a Western version of modernity was adopted by unconditionally imitating the evolutions in 20<sup>th</sup> century Europe. In reality, the Turkish political and cultural elite adopted, since the moment of its establishment in a state, an original project of modernity by critically disaffiliating with Westernisation and Islam, seen as two extremes which can endanger the stability of young democracy. This distance sometimes differs so insignificantly from the two attitudes mentioned, that it is almost invisible for an observer in Brussels or, in the other extreme, in Kabul.

The justification of this "third way" was the fear that an accelerated Westernisation would lead to the loss of national identity and, as a consequence, to the failure of the hardly achieved state unity, while on the other side it was considered that a continuation of the Islamic project in the limits imposed by the old regime would cause Turkey to remain a Muslim country no different than the others. For this reason, it has been, justifiably so, talked about a "hybrid modernity à la turca"<sup>1</sup>. It seemed, at a certain moment, that the Turkish experiment had succeeded, and of all its components, secularism was considered to be the best integrated in the common conscience, without all these transformations to be the result of a consensus at society level or a bottom-up democratisation process. At this moment, the European option for Turkey represents the end of a process of creating its own identity, in the same way as the attraction towards Islam endangers the very fundamentals of modern Turkey. For the Turkish version of the modernisation process to succeed, not only the state's sustained intervention in the public sphere was needed, but more notably in the private one. The state had a word to say even in the most intimate aspects of private life: from type of clothing to ways of spending free time. Trying to establish a public behaviour standard for individuals by modeling on western practices is, for this reason, a recollection of a period when the Turkish state was still searching for its own legitimacy.

Of all the aspects of the Turkish modernity template, the object of our analysis is only secularism, due to the fact that, seemingly paradoxically, what was thought to be the most successful part of the modernity project until recently, has become one of the most contested ones. Comparing this type of modernity with, on one side, Europe, and, on the other side, religion, secularism and Islam are the only way to find out to what extent the Turkish modernity project would still represent a viable solution beyond the moment of the country's accession to the European Union. The often sinuous relation that can be established among all these terms in

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<sup>1</sup> Alev ÇINAR, *Modernity, Islam, and Secularism in Turkey. Bodies, Places and Time, "Public Worlds"*, vol. 14, University of Minnesota Press, Minneapolis/London, 2005, p. 15.

the Turkish case reflects very well the fact that the link between religion and modernity is not marked only by secularisation and as time passes – its acceleration – but it can also be translated through the opposite of secularisation<sup>1</sup>.

In a society swayed by the principles of Islam for six centuries it would be impossible for religion to simply disappear simultaneously from the public and private realms. Noticing the limits of a risky social engineering, the founders of modern Turkey have not excluded Islam, but progressively integrated it in the political project. For this reason, a particular understanding of the concepts of modernity and secularism has developed in time. The "taming" of Islam has taken place through its progressive integration within the state. Instead of separating religion from state, following the American model known as the "wall of separation", Turkey chose a completely original version: all the religious practices and activities were placed under the control of the secular state. Thus, one of the first measures taken by Atatürk was the creation, in 1924, of a Presidency of Religious Affairs (*Diyanet*) which was placed under the direct subordination of the Prime Minister, while the president and the administrative council of this institution were to be nominated by the president of the republic. Simultaneously with the creation of the Directorate, all Islam authorities were outlawed, the Caliph's authority being denied. The Autonomous religious orders (*tekke* and *zaviye*) and the Sufi order (*tariikat*) were banned. Immediately after the creation of this Directorate, a new Civil Code was adopted, looking quite a lot like the one in Switzerland, with the purpose of replacing the old laws based on the Islamic law (*sharia*). Thus, polygamy was banned, religious marriages were no longer allowed, women and men were granted equal rights regarding heritage, marriage and divorce, the system of religious courts was dismantled, as was religious education. According to the new Criminal Code adopted in the same period, using religion for political purposes became an offence, whilst the Arab alphabet was changed to Roman. As a consequence of these measures, all Islamic religious authorities were dissolved, and the Presidency of Religious Affairs was authorised to verify the knowledge of religion and Islamic practice. This duty was carried out by supervising the mosques and all the manifestations taking place in them, the nomination of imams, thus acquired a state monopoly over the production and dissemination of Islam. In our times, religious teaching in schools is mandatory, but only the Sunni type; children from other religions, Christian or Judaic, are obliged to study Islamic religion in its Sunni version<sup>2</sup>. Even the traditional calls for prayers said by muezzins suffered the state's intervention, being only possible in Turkish language, by explicitly excluding Arabic. As these calls takes place five times a day practically everywhere, the state wished by this measure to contribute to the formation of a common linguistic conscience, distinct from the Arabic one. All these measures are equivalent to a genuine nationalisation of Islam. The formation of the national Turkish state is therefore strictly linked to the creation of a secular public sphere within which religion and religious practices received a place, but under the state's careful supervision. This project without equivalent not only in the Islamic world,

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<sup>1</sup> For the theories of secularisation, see Radu CARP, *Dumnezeu la Bruxelles. Religia în spațiul public european*, Eikon, Cluj-Napoca, 2009, pp. 45-67.

<sup>2</sup> Niyazi ÖKTEM, "Religion in Turkey", in Francis MESSNER (ed.), *The Status of Religious Confessions of the States Applying for Membership to the European Union*, Giuffrè Editore, Milano, 2002, p. 262.

but also in the western society, remained unchanged for seven decades, being constantly assaulted by other rival modernisation projects, like the Islamic one, the Kurdish one or the Marxist one. Of all these, the most powerful rival is undoubtedly the Islamic project, which reappears today on the background of attempts to create a European identity.

The main manifestation of the Islamic modernisation project, opposite to the one officially promoted by the Turkish secular state, belongs to the Refah Party. This party appears on the political scene in the 1960s, but until the 1990s it is identified mostly as a conservative right movement rather than an Islamic one. Only after the fall of Communist regimes in Eastern Europe the Refah Party assumed an explicitly Islamic identity. The disappearance of the alternative project based on Marxist fundamentals, regarded as a threat to the modernisation type practiced in Turkey, made possible for the Islamic alternative project to practically become the only rival of secularism. In the 1994 local elections the Refah Party marks its first important victory, as Recep Tayyip Erdoğan becomes the first Islamic mayor of Istanbul since the instauration of the republic of Atatürk. A year later, the Refah Party is already first in the parliamentary elections, and its leader Necmettin Erbakan becomes Prime Minister in 1996 as head of a coalition government. This sharp ascent was over what the limits of the Turkish secularism could have permitted at that moment and, for this reason, the Refah Party did not last longer than one year in the government. In February 1997 the National Security Council asked the government to take firm measures against Islamism and as a consequence the coalition government resigned. Subsequently, the Refah party was outlawed and it re-established itself in February 1998 under the name a Fazilet Party. In the 1999 parliamentary elections it won 15% of the votes, gradually moving to the margins in the political life and it was eventually banned by the Constitutional Court in June 2001.

The Byzantine heritage represents without any doubt the identity refused by the Turkish secularism to the highest degree. A common point among the supporters of this type of secularism and those who repudiate it by referring to the Islamic values, is the rejection of any creation based on an identity in relation to which it is considered that the sentiment of belonging to the Turkish nation was born only from opposition. In 1996, during the time when the current Prime Minister Erdoğan was mayor of Istanbul, a pompous and unprecedented celebration was organised on the occasion of 550 years since the fall of Constantinople under Ottoman occupation<sup>1</sup>, with the purpose of induce the idea of a "second conquest" of the city, along with the winning Istanbul's municipality office by the Refah Party, and also the idea of the birth of a Turkish identity long before the establishment of the modern Turkish state, with the conquering of the city. In order for its desired European identity to be recognised, Turkey should not put in brackets the Byzantine heritage: on the contrary, it should identify itself as a viable form of Byzantine-Islamic syncretism. Because, in the end, Turkey's geographic proximity to Europe compared to the rest of the East is due to the position of Byzantium and its role as a mediator between two continents<sup>2</sup>.

The victory of the Refah Party in the 1994 local elections in Istanbul generated a wave of movements in favour of secularism, in such way that the identification

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<sup>1</sup> Alev ÇINAR, *Modernity, Islam, and Secularism in Turkey...cit.*, p. 152 et seq.

<sup>2</sup> Radu PREDA, "De la apologie la lobby. Politici europene și viziuni ecleziale", in Radu CARP (ed.), *Un suflet pentru Europa. Dimensiunea religioasă a unui proiect politic*, Editura Fundației Anastasia, București, 2005, p. 349.

between secularism and modernity – the ideal longed for by the founders of the republic – became reality. Not at all by chance, the most active secular movements which appeared in this period had names like The League of Modern Women or The Association of Modern Writers. Due to Refah's ascent and the subsequent disapproval of the latter, it became obvious that secularism can no longer have monopoly in the public sphere.

In 2001 the moderate grouping of the Refah/Fazilet parties is transforming into the AK Party (*Adalet ve Kalkınma* – Justice and Development) under the leadership of Recep Tayyip Erdoğan himself. The AK Party does not represent a continuation of any of the two parties mentioned above, as it focuses on economic liberalisation and closing ties with the European Union, expressing its consent towards secularism and adopting moderate position from the Islamic perspective. The main affiliated media institution (unofficially) to the AK Party, *Yeni Şafak*, offers a perspective both Islamic and liberal in the same time which tries to define a mix of economic liberalism and political conservatism in which Islam plays the role of a definite value. The entire evolution of the political and cultural stages in Turkey after the coming to power of the AK Party in 2002 shows that there is an attempt to accredit the idea that Islam can produce effects with the same degree of modernity as secularism, and the result could be what is desired to be Islamic modernism. The AK Party was often characterised and it defines itself as having conservative-democratic nature, and Erdoğan often describes his own party as being built on the same principles as the Christian-Democratic parties from Europe. It is significant to note that the AK Party is associate member of the European Peoples' Party<sup>1</sup> and will receive the full-right member status once Turkey adheres to the European Union.

The AK Party chose this affiliation also for pragmatic reasons, because the biggest opponents to Turkey's accession to the European Union are member parties of EPP. French President Nicolas Sarkozy, whose party has an important position in EPP, has stated several times that Turkey cannot become part of the European integration project. Nevertheless, within EPP there are also favourable opinions regarding Turkey's accession to the European Union, especially among the Social-Democrats from Scandinavian countries<sup>2</sup>.

The anti-secularist rhetoric of the Refah leaders transformed itself into an approval of secularism by the AK Party, the latter considering that the Turkish state is anti-secularist because it intervenes in religious affairs and offers limited protection to freedom of conscience. The AK Party does not put first the principles of Koran or the Islamic religion, but it militates for a larger freedom concerning religions practice, by taking into consideration not only Islam, but also other confessions, including Christianity<sup>3</sup>. The victory of the AK Party in the 2002 elections, only a year after the separation of the Erdoğan faction from the Fazilet Party, marked the beginning of a new era not only in Turkish history, but also in respect to Islam's status within modern political regimes. It is significant that in these elections, the Saadet Party, led by Erbakan, obtained only 2.5% of votes. The AK won 34% of the votes, which allowed it to form a parliamentary and governmental majority

<sup>1</sup> See European People's Party's web page, <http://www.epp.eu> (accessed on 15.07.2009).

<sup>2</sup> Joost LAGENDIJK, Jan Martinus WIERSMA, *Travels among Europe's Muslim Neighbours. The Quest for Democracy*, Centre for European Policy Studies, Brussels, 2008.

<sup>3</sup> Alev ÇINAR, *Modernity, Islam, and Secularism in Turkey...cit.*, p. 174.

without the need to associate with other political forces. For the first time in the modern history of Turkey, a party with Islamic origins came to power without needing a military intervention, holding also the necessary majority to change the Constitution. This is how it became possible for the AK Party to be able to remove from the Constitution those provisions devoted to the secular character of the Turkish state, something that has not yet happened. The major challenge for the AK Party is to prove, especially to the supporters of secularism in Turkey, that a party with Islamic origins can be more efficient than any other secular party and can solve the social, economic and political problems of the country.

However, even if the AK Party has dissociated from Islam, the latter lies in the basis of its ideology. The majority of the wives of the AK members of Parliament and government are wearing the Islamic veil, including the wife and daughters of Prime Minister Erdoğan. The intense discussions pro and contra this attitude reached their peak in 2003 on the occasion of the reception offered for the national day by the president of the republic from that time, Ahmet Necdet Sezer: he did not send invitation to the wives of prominent AK Party members who announced they would wear the Islamic veil on the occasion. The incident was settled by the participation of AK Party leaders without their wives. This episode illustrates very convincingly the ambivalent attitude towards Islam of the AK and the challenges Erdoğan faces concerning internal politics. The AK succeeded, until this moment, to signalise that its new political ideology can be created and assert itself within the framework of official secularism. It remains to be seen whether this very framework will change along with the Turkish modernisation and Europeanisation. The question remains open, on whether a long lasting combination is possible between practice and Islamic ideology on one side, and between modernity and secularisation on the other side, combination which can allow a new Islamic modernism to appear.

It is generally believed that the large degree of acceptance of the principles promoted by the AK Party actually represent an outcome of an entire range of social and economic mutations which started in Turkey in the 1980s, generated by Turgut Özal, prime minister and then president in that period. The state's influence on economy was reduced and the economic monopolies associated with the state and its secular ideology gradually disappeared. State-controlled mass media, the main vehicle of Kemalism, started to compete against private newspapers and televisions, while the companies from Anatolia, led by conservative Muslims, entered in competition with the state-controlled or privately-held ones, led by the secular elite concentrated mainly in Istanbul. AK Party's success would be thus explained through a profound mutation in the Turkish society and the country's economy, and Erdoğan knew how to take position in order to meet all the dominant factions.

The fact that the AK Party is trying to implement a unique for Turkey experiment through which it wishes the adaptation of traditional Islamic values to the process of modernisation, has made its impact in countries from the Arab world, especially Morocco and Egypt<sup>1</sup>. Exactly for that reason, Abdullah Gül, during the time spent as minister of foreign affairs, had led a policy of appropriation towards the Islamic world. During his mandate as Secretary General of the Organisation of the Islamic Conference Gül has tried to mediate in the Arab-Israeli

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<sup>1</sup>Joost LAGENDIJK, Jan Martinus WIERSMA, *Travels among Europe's Muslim Neighbours...cit.*

conflict, including by inviting the leaders of Hamas to Ankara. In this way, the AK Party wants to show the Arab world that its pro-European orientation is not in detriment of the active role of Turkey in the Islamic world.

The AK Party remained in power also after the parliamentary elections in 2007, obtaining a better result than at the previous ones: 47% of the votes. In the same year there was a controversy over the secular fundamentals of the Turkish state, on the margin of Foreign Minister Abdullah Gül's intention to run for president. Gül's wife carries the Islamic veil. In April 2007, the army announced officially that it will oppose the election of any president, who questions the secular character of the state, which generated public demonstrations of large proportions in Istanbul, Ankara and Izmir. The strongest opponents of Gül's candidature were the seating president Sezer and the chief of army, Büyükanıt. In the end, the conflict was settled.

In March 2008, the attorney general of the republic informs the Constitutional Court in regard to the dissolving of the AK Party and for that 71 individuals holding and having held public positions, among which the president of the republic and the prime minister, to be sanctioned by banning them from being members of any political party for a period of five years. The main reason, invoked against the AK Party was related to supposed anti-secular activities. In July 2008, the Constitutional Court rejected this request with a tight majority, but did rule that the AK had acted against the secular principles on which Turkey is basing, which determined supplementary pressures in regard to political line of actions of this party.

Since seizing power, the AK Party nominated a commission formed of university professors with the mandate to revise the 1982 Constitution. Up to this moment, a functioning timetable for this commission has not been established and no project has been presented for the modification of the current Constitution. Nevertheless, in February 2008 the Parliament, dominated by the AK Party, modified two articles (10 and 42) of the Constitution in order to allow the wearing of the Islamic veil in universities, which triggered a powerful opposition from rectors. This position of the AK Party regarding the matter of the Islamic veil comes as a consequence to a decision of the European Court of Human Rights of November 2005, "*Leyla Şahin vs. Turkey*"<sup>1</sup>. The ECHR considered that the act of prohibiting the plaintiff to attend classes and exams of the Medical Faculty of Istanbul in 1998 because she was wearing the Islamic veil does not contradict the rights guaranteed by the European Convention on Human Rights. The court's decision did not clarify the problem of the Islamic veil; it just asserted that its prohibition is compatible with the secularism officially assumed by the Turkish state. Thus, this decision did not put an end to the controversies over the Islamic veil, but it could be said that it re-launched this discussion in other terms<sup>2</sup>. Eventually, the problem will find its solution in Turkey and not Strasbourg. It is interesting to note though in the case *Şahin vs. Turkey* is that the Turkish government took the side of the plaintiff in its position.

<sup>1</sup> COUR EUROPÉENNE DES DROITS DE L'HOMME, *Leyla Şahin c. Turquie*, Requête No. 44774/98, Arrêt de la Grande Chambre, Strasbourg, 10 novembre 2005.

<sup>2</sup> In a critical comment of this ECHR decision it was stated that this court did not judge the request lodged by Leyla Şahin, but in general, the Islamic challenge addressed to secularism and that the court "substituted the University of Istanbul with Turkey and a veil with Islam" (Kerem ALTIPARMAK, Onur KARAHANOGULLARI, "After Şahin: The Debate on Headscarves Is Not Over", *European Constitutional Law Review*, no. 2, 2006, pp. 268-292).

Prime Minister Erdoğan accepted this decision very difficultly, especially since his daughters are studying in the United States, and they have the possibility of wearing the Islamic veil. It took three years until his government decided to adopt an official position on this problem by modifying the Constitution. This position of the Erdoğan government can be interpreted also as a consequence of a disappointment felt in Turkey, the public opinion expecting from the European Court of Human Rights a more defined answer, in one way or another. It is not clear at this moment if lifting the ban on wearing the Islamic veil in universities represents a scope in itself or could be regarded more as an intermediate step towards achieving some purposes not assumed publicly by the AK party.

To see what is the position of the Erdoğan government and the AK Party regarding religious freedom which concerns the Muslim population, it is necessary to note, aside from the position on the Islamic veil, the case of the Imam Hatip schools and the Alevi community, the latter being analysed comparatively to the European Commission and ECHR's positions. The Imam Hatip schools represent institutions for secondary education which have the role of preparing Imams where, aside from the mandatory curricula for all the similar teaching establishments, eight hours per week are dedicated to the study of Koran and the Islamic theology. In the 1990s the number of those wishing to pursue such education increased. Erdoğan is a graduate of such form of education and he wanted to grant it a more favourable treatment. Due to the majority of the AK Party in Parliament, there was no problem to adopt a bill favouring the Imam Hatip schools in May 2004, but the Council for Higher Learning successfully contested this law in court. After the 2007 elections, the AK Party changed the council's composition and installed persons in favour of its approach. Nevertheless, even at this moment, the Erdoğan government hesitates to introduce in its agenda a draft law similar to that of 2004.

An Association Agreement between Turkey and the European Economic Communities was signed in 1963, and entered into force in 1964. In 1995 Turkey and the European Union decide to create a customs union, and the candidate country status is obtained by Turkey on the occasion of the Helsinki European Council in December 1999. The accession negotiations effectively kick off in October 2005. At the end of 2008, eight chapters were opened in the negotiations between Turkey and the European Union, and one chapter (Research and Development) was temporarily closed. The last form of the Accession Partnership between Turkey and the European Union dates February 2008.

The most recent European Commission report regarding the progress made by Turkey in view of accession to the European Union was published in November 2008<sup>1</sup>. Of the observations made by the Commission, in this context it is interesting to point out those regarding religious freedom, because they offer a perspective of the way in which secularism adopted in Turkey is seen as compared with the way in which religion is treated in the public realm of the European Union's Member States. A certain number of problems pointed out in the previous reports on these matters were partially solved, but others persist. The Commission notices in this report that Turkey has adopted a new law of association in February 2008. This law was adopted by the Parliament since November 2006 but President Sezer opposed its entering into force, the law being eventually adopted following pressures from

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<sup>1</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, *Turkey 2008 Progress Report*, SEC (2008) 2699, Brussels, 5.11.2008.



the European Union. The new law is more liberal than the previous norms, especially in respect to the selection of the association's management boards, acquiring assets, receiving funds from foreign donors and cooperation with other, foreign associations. The provision according to which foreign citizens could not establish associations in Turkey was replaced by the reciprocity principle. The new law provides for the creation of a Council of Associations as a government decision-making institution in this field, where the existing associations should be present. In spite of all these improvements, the provision that associations must notify the government authorities before receiving financial support from abroad was kept, as well as the obligation to supply the state with any documentation regarding this kind of support, which represents a serious constraint for those religious associations which have activities in Turkey even if their headquarters are not located in this state. As long as the constitutionality of other association forms continues to be questioned in Turkey, like this of political parties, and even of the governing political party, there cannot be talks about guaranteeing freedom of association, including in respect to religious associations. Regarding the religious associations' right of ownership, the new law marks a radical change: these would be able to inscribe to their name the assets which were listed after 1936 under fictitious names or those which were donated to them after 1936 but had to be listed to the donor's name or to the General Directorate for Associations subordinated to the government. The assets of the associations or religious cults can be transferred, according to the new law, to other associations or religious cults. As a result, the General Directorate for Associations issued a form letter concerning the restitution of properties belonging to non-Muslim associations which were registered under fictitious names. In matter of ownership, however, the new law is criticised by the European Commission because it does not take into consideration those properties of associations, not only religious, which were confiscated and/or sold to third parties.

In order to better understand the problems regarding law for the right of associations, especially those faced by religious cults and associations, as well as their ownership rights, it should be noted that during the Ottoman Empire the status of religious organisations' properties was only established through decrees of the Sultan. The Islamic law does not regulate the legal personality of private entities. For this reason, the property was not registered in the names of religious cults or associations, but in the name of individuals. Only in 1912 the possibility for legal persons to own properties in their name was recognised. Law no. 2762 of 1936 granted associations belonging to the Orthodox Church the status of *wakf* and they passed under the authority of the General Directorate of Evkaf (abusively so, because this institution, created in 1826, was placing under state authority only the charity establishments organised according to the Islamic religion rules), which meant that all properties held by these associations were confiscated by the state. After 1960, acquiring new assets by cults or religious associations was prohibited, and in 1974 the Supreme Court banned any transaction related to properties among these entities<sup>1</sup>. The new law for associations which entered into force in 2008 brought a solution to these situations through regulations which correspond to those applied in the Member States. This law brings a solution in a

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<sup>1</sup> For details, see Charalambos PAPANATHIS, "Turkey, Europe and the Ecumenical Patriarchate in Istanbul", in *Turkey in the European Union? Opinions of the European Consortium members*, European Consortium for Church and State Research, Newsletter, issue 5, April 2005, pp. 14-15.

European spirit to another problem religious associations were confronting with, especially the Orthodox ones: since 1991 these associations did not have anymore the possibility to organise elections for appointing their management boards. Without elections, when the person or persons who were managing such association were dying, the ownership rights of that association were passing under the administration of the General Directorate of Evkaf, which meant a nationalisation of assets owned by Orthodox religious associations. The new law which entered into force in 2008 eliminates this practice for the future, but the properties confiscated since 1991 until 2008 remain under state ownership.

In July 2008 the European Court of Human Rights ruled in a case against Turkey in which the plaintiff was the Ecumenical Patriarchate.<sup>1</sup> The latter was deprived by the Turkish state of its properties acquired in 1902 and they were dedicated to the specific use of the Greek Orphanage for boys on Büyükada Island near Istanbul in 1903. The General Directorate for Associations considered this orphanage as an association which ceased its activity in 1995 and as a consequence, took over its administration, which was contested by the Ecumenical Patriarchate before the ECHR. The court considered that the Turkish government did not have the legal justification to deprive the Patriarchate of its property without granting financial compensation and decided that in this case there has been a violation of the European Convention on Human Rights. European Commission's report offers this example without giving a point of view on the ECHR decision, but from the context of this reference to other parts of the report it can be concluded that, in the view of the European Commission, this ECHR decision represents a step forward towards granting religious freedom in Turkey.

The European Commission also found that the non-Muslim religious cults still have problems related to the lack of legal personification and to the restrictive regime on training clerical personnel. Turkish legislation in force does not allow forms of private religious education for these denominations and there is no possibility that such personnel receive specialised instruction in public schools. However, since 1999 at the Faculty of Theology of the University of Istanbul there is a department of Christian theology but which cannot prepare personnel for worship. The European Commission has criticised the fact that the Theological School of the Ecumenical Patriarchate on the island of Halki (Heybeliada) remains closed, situation dating since 1971. Another problem which the Commission considers that Turkey should solve is related to the fact that the Patriarchate cannot use this entitling in public in all occasions, even though in March 2008 Prime Minister Erdoğan declared that the Turkish state should not regulate further the issue of using the title "ecumenical". The Ecumenical Patriarchate has not been able to restore its own estates and places of worship for more than 30 years, only obtaining this right with the election of Turgut Özal as president of the republic<sup>2</sup>.

In this context should be made clear that the status of the non-Muslim minorities, including the religious ones, is governed by an act of international law of which Turkey is part, the Treaty of Lausanne of 1923 which recognises all these minorities with equal rights with the Muslim majority in respect to religious freedom and in particular religious education. These provisions however, were never

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<sup>1</sup> COUR EUROPÉENNE DES DROITS DE L'HOMME, *Affaire Fener Rum Patrikliği (Patriarcat Ecuménique) c. Turquie*, Requête No. 14340/05, Arrêt (fond), Strasbourg, 8 juillet 2008.

<sup>2</sup> Niyazi ÖKTEM, "Religion in Turkey", cit., p. 254.

entirely implemented by the Turkish state. It is noteworthy that the Christian minority numbered 100 000 members only in Istanbul in 1927, while today that number does not exceed 2000. Regarding the Theological School of the Ecumenical Patriarchate, whose situation is signalised in the European Commission's report, there are some additional details. It was founded in 1844 and worked uninterruptedly until 1971, providing theological training of clerical staff in several countries under the canonic jurisdiction of the Ecumenical Patriarchate. Its closing was justified by the Turkish state through the emergence of a new Education Law no. 625/1965 having it that religious education can be ensured only in public institutions of education. Subsequently, the Constitution of Turkey stated in Article 24 that the military and religious education is solely the responsibility of the state<sup>1</sup>. Reopening the Theological School of the Ecumenical Patriarchate would not require changing the Constitution: the article in question is inconsistent with the Treaty of Lausanne and the Turkish Constitution itself recognises the priority of international law to the internal.

An important case in which Turkey has problems with guaranteeing religious liberty is considered by the European Commission to be the situation with the Alevi community. These represent a religious grouping within the Islam, distinctive from the Sunni majority, existing in Turkey, but also from the Shiite tradition, with which it only shares the cult to Ali. Twenty-five percent of the Turks belong to the Alevi minority, which does not have a very cordial relation with the AK Party, seen as an expression of the Sunni majority. Due to the marginalisation of the Alevi, Turkish secularism has been considered authoritarian, because it recognises and co-opts for exercising power of only the Sunni type Islam, abandoning religious neutrality and creating therefore a monopoly of the Islamic faith's interpretation<sup>2</sup>. It is worth mentioning that Alevi do not represent the single dissident group of the Sunni Islam in Turkey, officially silenced by the state, but there are many more Muslim brotherhoods<sup>3</sup>, whose members also have limited religious liberty. In the 1990s, there has been a series of conflicts between Sunnis and Alevi, which are still present in the collective memory. The Alevi mainly oppose the Presidency of Religious Affairs, accused that it only allows public dissemination of the Sunni component of Islam. The AK Party has on its disposal two options: either it decides that this Directorate has to have a more liberal approach, so to ensure an equal treatment of all religions and confessions, or to encourage keeping the current policy, promoted by this organism, while losing some of its control leverages. The AK Party has not opted so far for any of these two alternatives, even if Erdoğan has made in 2008 some symbolical gestures towards reconciliation within the Islam variations, practiced in Turkey. Any modification of the statute of the Presidency of Religious Affairs would question the very foundation of the secularism the Turkish state lays upon and would generate protest movements, from which point of view the hesitation of the AK Party is justified, though this problem will have to find its solution even if it is only for the simple reason that Erdoğan has generated great expectations amongst the Alevi minority and the Sunni

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<sup>1</sup>Charalambos PAPANASTATHIS, "Turkey, Europe...cit.", p. 13.

<sup>2</sup>Cemal KARAKAS, *Turkey, Islam and Laicism: Between the Interests of State, Politics and Society*, PRIF (Peace Research Institute Frankfurt) Reports, No. 78/2007, <http://www.hstt.de/downloads/prif78.pdf>. (accessed on 15.07.2009)

<sup>3</sup>For their presentation, see Niyazi ÖKTEM, "Religion in Turkey", cit., pp. 264-269.

majority alike. In spite of the greater openness of Erdoğan's government to solve this issue, the European Commission considers that problems related to the religious education and establishments of this community are persisting. In October 2007, as a result of a request addressed by the members of a family, who were part of the Alevi community, ECHR has decided that religious education should include references to all religious currents of Muslim origin<sup>1</sup>. Due to the fact that this ECHR decision was not put in practice, in August 2008, the Alevi Federation has requested the Council of Ministers and the Council of Europe to intervene, demonstrating that materials used in the religious education in schools still only include superficial information on the Alevi. The Turkish state has not solved the situation respecting the ECHR decision, but instead, since March 2008, it is possible for school-children part of the Alevi community to be excepted of religious education classes. Another problem of the Alevi community, signalled by the European Commission is the non-recognition of their halidoms (*cemevi*), which consequently cannot receive financing from the budget for maintenance of the existing or the construction of new ones.

To highlight the problems that, in view of the European Commission, Turkey has in terms of ensuring religious freedom does not mean that religion should be considered a factor that prevents *per se* Turkey to join the European Union. The criteria for membership are others and do not bring to the fore excluding countries where Christianity is not the major religion. At this time no longer is it a question of whether a majority-Muslim country may be part of the European Union, but how much can the Union's institutions be involved in solving problems related to religious freedom, in the absence of a common relationship model between State and Church which applies to all Member States. The European Commission is aware of the limits of its approach in this matter: many of its observations on guaranteeing religious freedom in Turkey are based, as we saw, not on the *acquis communautaire*, but the implementation of ECHR decisions, a distinct mechanism on which the EU institutions don't have the competence to intervene. Not only that religion is not a handicap for Turkey, but it is even considered that this country's belonging to the European Union would have positive consequences in terms of religion: a possible exclusion of Turkey would create problems in relations with countries predominantly Christian, such as Georgia or Armenia<sup>2</sup>, included in the European Neighbourhood Policy and, more recently, in the Eastern Partnership, which would see such a gesture as a signal coming from the European Union that the whole region is not of interest in terms of enlarging the Europeanisation process and would nourish an entire anti-European rhetoric – in a part of the world in which the European Union has clear strategic and geopolitical interests. Even in the event that the European Union places in the forefront of its relationship with Turkey its identity and Christian heritage, it would not be an argument to deny the prospects for future membership in the European Union: any different status granted to Turkey on religious basis, before and after accession, will not create a state of inferiority to countries with non-Christian majority, but may contribute to increased diversity<sup>3</sup>, a value

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<sup>1</sup> COUR EUROPÉENNE DES DROITS DE L'HOMME, *Hasan et Eylem Zengin c. Turquie*, Requête No. 1448/04, Arrêt (fond), Strasbourg, 9 octobre 2007.

<sup>2</sup> Richard POTZ, "The European Union and Turkey", in *Turkey in the European Union? ...cit.*, p. 4.

<sup>3</sup> Matthias MAHLMANN, "Constitutional Identity and The Politics of Homogeneity", *German Law Journal*, Special Issue-Confronting Memories, vol. 6, no. 2, 2005, p. 310.

assumed by the European project, as, for example, the intensity of the sense of belonging to British identity does not depend on a privileged status of the Anglican Church in comparison with other denominations<sup>1</sup>.

Turkey's accession to the European Union will have the effect not only of an enlargement of territory and increase of population, but will change especially the way European integration is often perceived: as a project of the rich western countries with Christian tradition<sup>2</sup>. Regardless of the position they adopt, both those who support Turkey, and those who are against, agree that Turkey's accession will have effects on Turkey and the European Union alike<sup>3</sup>. Fundamental question to ask now is whether the EU can continue the process of economic integration, to get a collective political identity and to achieve its objectives while accepting Turkey as a Member State. Another related question is whether the impact on the process of European integration issues of size (territory, population, social and economic problems) in the case of Turkey will be tolerable, or whether, instead, welcoming this state will question the very foundations of the European political project<sup>4</sup>.

To answer these questions, it is important to see how Europe perceives its own boundaries and limits. The European Union does not have at this time a territory over which to exercise authority, limited by geographic borders that separate members from non-members or political and cultural borders, as some non-members are in a special relationship with the European Union, due to application parts of the *acquis communautaire* and/or belonging to a common culture. Europeanisation is not a process the outcome of which is known beforehand, in which case the problem of the geographical boundaries would have been put more accurately. Boundaries of the European Union are not territorial but functional: the dividing line between European and non-European space is defined by the presence and the absence of *acquis communautaire* and/or European culture. The European Union has, according to Michael Smith, at least four types of borders: geographical, institutional, cultural and transactional (formal)<sup>5</sup>. A non-member state may be outside the cultural borders of the European Union but within the Union through the sharing of common rules, as a Member State within the geographical and cultural boundaries of the European Union may not be within the institutional boundaries, by refusing to integrally apply the *acquis communautaire*. The case of Turkey is problematic from this point of view: whatever the type of border we refer to this country's belonging to the European Union remains for now in question. That the borders of Europe are not necessarily geographical but also cultural and that this is considered in the European Union is demonstrated by the fact that the European aspirations of Turkey have accelerated the debate over what is and what should be the Union: a construction based on Christianity and Western

<sup>1</sup> J.H.H. WEILER, *Un'Europa Cristiana*, Biblioteca Universale Rizzoli, Milano, 2003.

<sup>2</sup> Christopher HILL, "The Geo-political Implications of Enlargement", in Jan ZIELONKA, *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union*, Routledge, London, 2002, pp. 95-117.

<sup>3</sup> Barry BUZAN, Thomas DIEZ, "The European Union and Turkey", *Survival*, vol. 41, no. 1, 1999, p. 41.

<sup>4</sup> Sanem BAYKAL, *Unity in Diversity? The Challenge of Diversity for the European Political Identity, Legitimacy and Democratic Governance: Turkey's EU Membership as the Ultimate Test Case*, Jean Monnet Working Paper 09/05, p. 10.

<sup>5</sup> Michael SMITH, "The European Union and a Changing Europe: Establishing the Boundaries of Order", *Journal of Common Market Studies*, vol. 34, no. 1, 1996, pp. 5-28.

civilization, or one based on democratic values, regardless to historical references or a geographical area<sup>1</sup>.

The debate about the European identity of Turkey represents a very good occasion to reflect on what is Europe from both cultural and political point of view. The best way to respond to what is Europe consists in the affirmation on what it is not, namely "a space of amnesia and eternal beginning"<sup>2</sup>. In other words, the European identity of Turkey cannot be separated from the past and the present European identity of the rest of the countries that Turkey wishes to share a common future.

The more the four types of frontiers superpose, the more the coherence of a democratic governance of the European Union can be ensured, because the rules of democracy can be applied only on a well-defined territory and population. Otherwise, the EU risks to become some sort "neo-medieval empire"<sup>3</sup>, based on concentric circles and with a variable geometry, which will put the accent on the problems, related to the loyalty of its citizens to the European political project. Turkey's adhesion to the European Union places the problem of the enlargement in other terms, which may pose one of the risks, pointed out by J.H.H. Weiler: distancing of the European institutions from the citizens which they pretend to represent<sup>4</sup>.

It won't be a problem for Turkey, in the framework of the negotiations for accession to the European Union, to adapt the *acquis communautaire* in its domestic legislation, especially in technical domains, thanks to a level of economic development comparable at least to the level of the countries entered the Union in 2004 and 2007. There are, however, three great categories of problems, partially or not at all covered by the *acquis communautaire*: the freedom of speech, to which the liberty of religion and the one of associating are related; solving the "Kurdish issue" and the role of the army in society. At the moment, there is an intense debate going on in Turkey between those who believe that a change is needed in these three areas, this being a reasonable price to be paid in return for the advantages to be obtained from the status of a member of the European Union, and those who consider that any modification in these areas will undermine the very basis of the modern Turkish state.

On the other hand, not even the European Union has stated clearly how it would wish the change in these domains to happen, so that Turkey can become a Member State; domains in which its competences are much more reduced than those concerning economic issues and has not even set a timeframe for the adhesion. The European Union can play a decisive role in the democratisation and the Europeanisation of Turkey only in case there is no ambiguity towards this country. On the other side, though, the European Union has no way of modifying its approach towards Turkey as long as the public opinion and political leaders of the Member States have differences of opinion, which also tend to change, in regard to Turkey; hence a common approach in this sense is difficult to achieve. The

<sup>1</sup> Nilüfer GÖLE, "Islam, European Public Space and Civility", in Krzysztof MICHALSKI (ed.), *Religion in the New Europe*, Central European University Press, Budapest, 2006, p. 123.

<sup>2</sup> Radu PREDA, "Christianity and the Limits of Europe. A Social-Theological Approach", *EuroTimes. Journal of the Institute for Euroregional Studies*, vol. 5 (Religious Frontiers of Europe), Spring 2008, p. 124.

<sup>3</sup> Jan ZIELONKA, "Enlargement and the Finality of European Integration", in Christian JOERGES, Yves MENY, J.H.H. WEILER, *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*, European University Institute, San Domenico di Fiesole, 2000, p. 152.

<sup>4</sup> J.H.H. WEILER, "Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision", *European Law Journal*, vol. 1, no. 3, 1995, p. 232.

European Union does not have the capacity to intervene directly in order to change the current *status quo* of the relations between the followers of the Kemalist type of secularism and former Islamists "converted" to Western democracy, although, somehow paradoxically, exactly the aspirations of a European integration of these two camps have in fact generated the current situation. Why the European Union cannot intervene in this area; it is because there is no model of a secular state, completely neutral to religion, agreed upon in all Member States. The diversity of the relation models between State and Church at the level of the Member States makes it impossible to define such model: a state's Church, under the control, being this control even formal, of the head of state, like in Great Britain, would be inconceivable in France. As the Netherlands Scientific Council for Governmental Policy points out in a study, "there is no unambiguous, fixed European standard against which the current situation in Turkey can be measured. Nor are there any *a priori* reasons to assume that Turkey would, or would not conform with any of the available European development models"<sup>1</sup>. Still, it is clear that the interest of the European Union is to proceed in such a way that at a certain moment Turkey, at the end of its transformation, whose nature in many cases cannot be defined and even less so – anticipated at the moment, becomes a Member State.

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<sup>1</sup> NETHERLANDS SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY, *The European Union, Turkey and Islam*, Amsterdam University Press, Amsterdam, 2004, p. 38.