The Significance of Religion for Turkish Labour and Social Legislation

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I. Introduction

The element of religion is of particular importance in today's Turkish judicial system. This is due to the fact that, along with the proclamation of the Republic, Turkey started to lay the institutional foundation for the transition to a secular judicial system. Hence, along with the establishment of the Republic, efforts to develop a secular Turkish society were initiated. Accordingly, the Republic was proclaimed on 29 October 1923 and the caliphate was abrogated one year later, on 3 March 1924.

Secularity is the main ideological characteristic of the Turkish Constitution adopted after the establishment of the Republic in 1924. First, the basic laws of Western European countries have been translated into Turkish law and legislated. In this respect, the adoption of the Swiss Civil Code and Code of Obligations as the Turkish Civil Code and Turkish Code of Obligations has been the most important example in creating the Turkish secular judicial system. Similarly, the acceptance of civil courts instead of sharia courts constitutes the main example of the new secular period[1].

[1] *Nevhis Deren-Yıldırım*, 'Ein allgemeiner Überblick über das türkische Recht', Waseda Proceedings of Comparative Law, Vol. 7, 2004, p. 60.

Thereby, all Islamic influences have been removed from the current Turkish judicial system. Therefore, the law applicable in Turkey constitutes part of the continental European judicial system. However, the element of religion continued to be the nightmare of the Turkish judicial revolution. Also, during the transition to the multi-party system, which started in the 1950s, and the advent of politicians exploiting the religious feelings of society, the element of religion became increasingly important. In this respect, it is quite significant that a conservative looking party, one that gives importance to religious elements, is governing Turkey today.

The meaning of the element of religion regarding labour and social law in the Turkish judicial system has not been researched in depth. However, freedom of religion has a particular meaning in labour law from the point of Islam. Freedom of religion usually concerns workers' lives only outside the workplace. However, the religion of Islam – which does not separate the mundane and life after death – has a comprehension that regulates everyday life as well. That is the reason why a Muslim worker can face problems at his workplace because of his/her religion[2].

Furthermore, Turkish labour law has, so far, not dealt with the workers' freedom of religion and conscience in detail. This is due to the fact that the Turkish legislation, influenced by the principle of secularity, has been purified of religious elements. Accordingly, the element of religion is not obvious in legislative regulations; yet, if we consider the underlying impact, it contributes to achieving the objectives of Islam under the influence of social reality. In this respect, regulations influenced by the element of religion in labour and social legislation are fragmented, and it is not possible to put them on common ground. Therefore, we will try to reveal the importance of the abovementioned element of religion, providing research with a potential link between different legal regulations and the principles of Islam.

II. The concept of freedom of religion

1. Scope of freedom of religion

Freedom of religion tends towards the external sphere of the person (*forum externum*) and denotes the liberty of revealing his/her religion or belief by way of teaching, practice and doing worship and performing religious ceremonies alone or within a community. Accordingly, freedom of religion, in accordance with the requirements of the belief system of a person, is an acting-out from the inner sphere to the external sphere (*forum externum*). The notion of freedom of

[2] *Ufuk Aydın*, İş Hukukunda İşçinin Kişilik Hakları, Eskişehir 2002, p. 132.

conscience, which goes along with freedom of religion in Turkish law, concerns the belief system that only resides in the inner sphere of a person[3].

2. *A short overview of the evolution of freedom of religion in Turkey*

a) The period of the Ottoman Empire

Politics regarding the converting of non-Muslim persons to Islam were not examined during the Ottoman Empire. Thus, all non-Muslims were granted the rights corresponding to their proper religion, and their personal legal matters were delegated to their own spiritual leaders. However, this conception of tolerance during the Ottoman Empire did not mean that freedom of religion was recognized. As the Ottoman Empire did not rely on secular principles, and religious elements were particularly important in its governmental structure[4], freedom of religion and the protection of churches during the Tanzimat (reform) period in 1839 started to become a subject of foreign affairs for the leaders of the Ottoman Empire[5].

b) The period of the Republic

The 1924 Constitution of the Republic period regulated freedom of religion in secular terms (Articles 70 and 75). Indeed, the provision in the 1924 Constitution defining Islam as the religion of the Turkish State – which clashes with the principle of secularism (Article 2) – was abrogated by the amendment made in 1928.

Later, the Constitution of 1961 – which considers the principle of the secular State as a key feature of the Turkish Republic – presented the most widespread freedom of religion and conscience without making any distinction between the various religions[6].

c) Freedom of religion today

Freedom of religion has been secured via Article 24 of the 1982 Constitution, essentially on an individual basis. Accordingly:

"Everyone has the freedom of conscience, religious belief and conviction.
Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14.
No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or to be blamed or accused because of his religious beliefs and convictions.

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[3] *Hande Seher Demir*, Türkiye'de Din ve Vicdan Özgürlüğü, Ankara 2011, p. 7.

[4] *Bihterin Vural Dinçkol*, 1982 Anayasası Çerçevesinde ve Anayasa Mahkemesi Kararlarında Laiklik, Istanbul 1982, p. 24.

[5] *Demir*, op. cit., pp. 104–105.

[6] See *Dinçkol*, op. cit., p. 38.

[...]
No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets".

Article 24 of the Constitution, which stipulates freedom of religion, is a warranty provision applicable to atheists and persons of Abrahamic and non-Abrahamic religions' adherents (workers). The provision in question owes its strength to the idea of secularism. Therefore, we cannot talk about freedom of religion without talking about the principle of secularity[7].

On the other hand, should freedom of religion essentially be attempted to be used to
- disrupt the integrity of the State,
- jeopardize the existence of the Turkish State and the Republic,
- remove the basic rights and freedoms,
- make a discrimination of religion and sect,

it shall be restricted by law (Article 14/II and III and Article 24 of the Constitution)[8]. The restrictions in question are generally considered as compatible with Article 9, Paragraph 2 of the European Convention on Human Rights, which supports the principle of the possibility of limiting freedom of religion for the purpose of protecting others' rights and freedoms, public safety, public order, general health and public moral.

3. The importance of freedom of religion for Turkish law

Freedom of religion gained significance in Turkey along with the creation of the modern Turkish State. Since the granting of freedom of religion is based on secularity, it was possible for Turkish law to gain a secular character only in line with the creation of the Republic. In this sense, the principle of secularity means that the power of sovereignty of the State is legitimized in a non-religious way, the State shall not intervene in religious affairs and religious influences shall be kept apart from State affairs[9].

During the Ottoman State, Turkey was influenced by Islamic law but the reforming acts of the end of the Ottoman period brought the dichotomy of Islamic law/Western law (secular law). Following the proclamation of the Republic, the dichotomous order in question was based on secularity, and the essence of secularity constituted the core and foundation of the reform movement undertaken.

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[7] *Demir*, ibid., p. 16; *Dinçkol*, ibid., p. 67; *Bülent Tanör/Necmi Yüzbaşıoğlu*, 1982 Anayasasına Göre Türk Anayasa Hukuku, Istanbul 2001, pp. 166 and 67.

[8] See also *Dinçkol*, ibid., p. 81; *Christian Rumpf*, Laizismus und Religionsfreiheit in der Türkei, Ebenhausen 1987, p. 30.

[9] *Rumpf*, ibid., p. 18.

In this sense, efforts were made to remove religious references from the Turkish law system during the Republic period[10]. This was due to the circumstance that during the transition from the Ottoman State to the Turkish nation state, religious elements were considered to undermine the ideal of a democratic and secular order. However, the Republican government could not escape from the influence of the social reality and religious elements started to become influential in the course of the transition to the multi-party system.

III. The influence of religious elements on employment

1. The influence of religion on the individual employment contract

The employment contract shall be kept free from religious influences both during its drafting, its application and its termination. In this respect, Article 5/I of the Labour Act provides that the employment contract shall be kept free from religious themes and includes the provision that "*discrimination on grounds of religion or sect belief or due to similar reasons must not be allowed in labour relations*". However, there are different points of view concerning the scope of the provision in question.

a) Equality during recruitment

The expression "*labour relations*" as mentioned in Article 5/II of the Labour Act is a matter of debate regarding the question of whether or not the ban on discrimination in question actually includes the period prior to the drafting of the employment contract. By assuming that the provision in question does not include the period prior to the drafting of the employment contract, the possibility to prevent the employer from discriminating between people with specific beliefs during recruitment is annihilated.

Accordingly, the restrictive interpretation of Article 5/II of the Labour Act means that the employer can discriminate between people with specific beliefs before recruitment. In this case, with respect to the Turkish mosaic composed of non-Muslim Turkish citizens or foreigners and Muslims who may, at the same time, be members of different sects, we cannot ignore that this might lead to results which would not be validated by law.

On the other hand, Article 15/II of the Constitution provides that no one can be forced to declare his/her religious conscientious convictions and thoughts and be accused on grounds of these convictions. Thus, during the recruitment of the job candidate, no question related to religion may be asked; if, however, this should happen, this kind of question must not be taken into consideration,

[10] *Demir*, op. cit., p. 22.

except in cases where the job candidate is subject to work in a religious establishment[11].

b) Equality after establishment of a labour relation

Concerning the conditions of work and the termination of the employment contract by the employer, it is out of the question that the factor of being a member of a particular religion or sect may have any influence (Article 5/II of the Labour Act). Accordingly, in the case that discriminating conditions of work are imposed on the worker due to his/her religion or affiliation with a sect, or that the employment contract is terminated, the worker may claim damages equal to up to four months' wages and appertaining rights denied to him (Article 5/VI of the Labour Act).

Further, concerning workers who enjoy legal job security, it is provided that religion cannot be considered as a valid reason to terminate the employment contract (Article 18/III of the Labour Act).

Concerning the interdiction of discrimination on grounds of religion or affiliation to a sect, Article 5/I of the Labour Act and the regulation of Article 18/III of the Labour Act work along the same lines; yet, we can see that their range of protection is different. Also, both provisions aim at the same interdiction of discrimination (discrimination on grounds of religion or affiliation to a sect). However, in case of a discrepancy (during the lawsuit), if the worker does enjoy legal job security, it is up to him to prove that he has been discriminated against; if the worker does not enjoy legal job security, he/she does not have the responsibility to prove the facts; instead, it is up to the employer to do so, which means that the obligation to produce proof is with the other party.

2. Restrictive regulations on women's employment

a) In general

When looking at the working population in Islamic countries, it can be observed that the employment rate among women is remarkably low. However, during the period before Islam (the early 7th century), Arabic women were allowed to carry out economic activities and to trade on their own. Accordingly, the first wife of Muhammad, Hatice, managed a camel caravan business and shared parts of her benefit with the men working for her. However, we can observe that this right granted to women was abolished completely. In the system installed, women were obliged to stay at home in order to deal with the housework and to ask permission from their husbands for anything they wished to do. Concerning agricultural land, that is to say the working of women in the field, it became a

[11] *Şükran Ertürk*, İş İlişkisinde Temel Haklar, Ankara 2002, p. 74.

common task for women to do, as such work was considered as housework and did not need to be carried out in the presence of men[12].

The employment rate among women in Turkey with its Muslim majority is remarkably low as compared to that of EU countries, where the majority is not Muslim. The respective rates in 2013 were:

- 31.8 % for the 20/64 age group,
- 29.6 % for the 15/64 age group,
- 21.5 % for the 15/24 age group[13].

In this respect, it is obvious that restrictive measures on the employment of women have resulted in lower employment rates among women.

b) The place of the housewife in labour law

aa) Permission from the husband to the married woman who wants to work

After the proclamation of the Republic, the Swiss Civil Code was translated into Turkish law in order to be legitimated as the Turkish Civil Code. In this way, efforts were made to grant Turkish women the same rights as men during the new period, rights that they had been deprived of before. Yet, the former Turkish Civil Code – which continued to be applicable until 2002 – included some dispositions which did not serve this cause. One of these dispositions is Article 159 of the former Turkish Civil Code, which provided that a married woman had to get permission from her husband if she wanted to work either permanently or independently.

This means that during the period before 2002, women had to make a choice between work (profession) and marriage (family). During this period, a woman who knew that her husband-to-be would not give her permission to work, was obliged to abstain from working. If a married woman wanted to work without getting such a permission from her husband, she had the possibility to resort to the judge (to the court) and justify that the fact of her working would be beneficial for the continuation of the marriage union. However, enforcement of this decision frequently led to divorces due to severe marital conflicts. After all, husbands who did not accept the fact that their wives worked, tended to generate trouble in their marriage and this situation could end up in divorce.

The Constitutional Court abrogated this provision after 60 years of application (in 1990)[14] and the new Civil Code that became effective in 2002 got rid of

[12] *İlhan Arsel*, Şeriat ve Kadın, Istanbul 1991, p. 399.

[13] http://appsso.eurostat.etc.europa.eu/nui/submitViewTableAction.do?dvsc=9.

[14] See the verdict of the Constitutional Court, dated 29 November 1990, 30/31 – Official Gazette, 2 July 1992, No. 21272. In detail: *Hüseyin Hatemi*, 'MK 159 Kuralını İptal Eden Anayasa Mahkemesi Kararına İlişkin Düşünceler', İş Hukuku Dergisi, Vol. 2, No. 4, October-December 1992, p. 566; *Cevdet Yavuz*, 'Türk Hukukunda Kadının Çalışma Hakkı İle İlgili Düzenlemeler', Argumentum, Vol. 2, p. 224.

provisions which obligated women to obtain permission from their husbands to be allowed to work.

bb) Payment of severance pay to the married woman

Women workers who decide to quit their jobs during the year after concluding the marriage obtain the right to receive severance pay (Article 1/XIV of Labour Act No. 1475). This provision relies on the idea that a working woman should not be deprived of severance pay in case her recent husband does not approve of her working. The stipulation that a person who resigns voluntarily cannot receive severance pay would otherwise adversely affect women in the above situation.

The provision granting women who get married the right to receive severance pay was adopted during the period when a married woman had to get permission from her husband if she wished to work. However, despite the fact that the Civil Code now accepts that married women no longer need such a permission, the provision in question still prevails. Moreover, the Constitutional Court considered that the provision which grants the right to receive severance pay to women who get married was compatible with the Constitution and did not abrogate it[15].

It is disputable whether the fact that this provision grants severance pay to women workers who quit their jobs after getting married constitutes a positive form of discrimination or not[16]. At any rate, there are some situations in this case that need to be discussed with a view to the possible existence of positive discrimination.

The first of these situations is governed by the fact that married women no longer need permission from their husbands to work. The second situation revolves around the circumstance that women who quit their work after getting married are free to work somewhere else the day after having received the severance pay. In this respect, the Court of Cassation does not consider it an "abuse of a right"[17] if a working woman finds a new job and continues to work after having got married and received severance pay. To conclude, women who receive severance pay can in practice continue to work in the same workplace, provided that the employer accepts this. This situation disburdens women workers who need cash when getting married as severance pay is usually paid in cash. Also, the employer is relieved because he/she will need to pay less severance pay in the future as the severance pay is calculated by considering only the services after marriage.

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[15] See the verdict of the Constitutional Court, dated 19 June 2008, 2006–156/125 – Official Gazette, 26 November 2008, No. 27066.

[16] *Tankut Centel*, 'Kıdem Tazminatında Pozitif Ayrımcılık', Sicil, Vol. 4, No. 15, September 2009, p. 5.

[17] Court of Cassation, General Council Decision, 27 April 1988, 9–225/369 – Cevdet İlhan Günay, *Şerhli İş Kanunu*, t. 1, Ankara 1988, p. 670 No. 13; Court of Cassation, 9th Div., 25 Jan. 2001, 2000–16313/1306 – İşveren, Vol. 35, No. 11, August 2001, pp. 17–18.

In contrast, women workers who know that they will receive and save the severance pay thanks to getting married will be more willing to quit their work and to accept a life as a housewife. In addition to that, women workers, after having received their severance pay, are likely to continue to benefit from their insurances, as premiums will be paid on their behalf by the husband; this means that they will be entitled to receive pension payments in the future without having worked; or they will claim from the State the repayment of insurance premium payments made before the marriage, alleging the reason of marriage as a justification[18]. The fact that this situation encourages women to refrain from working cannot be ignored[19].

c) The socio-legal position of the married woman

aa) Civil marriage and the payment of widow's pension

Regulations restricting women's employment are targeting married women on the basis of the existence of a civil marriage. Thus, the "imam marriage" element which constitutes a social reality in terms of marriage has to be taken into consideration.

(1) The place of religious marriage in Turkish society

The reality is that civil marriage for the first time appeared in Turkey along with the adoption of the Turkish Civil Code in 1926. Accordingly, the principles of monogamy and the celebration of marriage in an official service started to lay the foundations of Turkish society under the Republic regime from this date. However, this reality does not constitute a barrier to concluding a religious marriage after the civil marriage. However, concluding a religious marriage prior to the civil marriage is subject to penal sanctions provided by the Turkish Penal Code.

Therefore, in the case of multiple marriages, a person who concludes a marriage while he/she is already married is subject to a prison sentence ranging from six months to two years according to Article 230/I of the Turkish Penal Code.

Concerning imam marriage, a prison sentence ranging from two months to six months is given to persons who have a religious marriage ceremony without being officially married. However, provided that the civil marriage is concluded thereafter, public prosecutions and adjudicated punishments will be withdrawn along with all the consequences (Article 203/V of the Turkish Penal Code). Accordingly, a person who has a religious ceremony (imam marriage) without having presented the document showing that the marriage act has been conclud-

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[18] See III 2 c bb and cc below.

[19] *Kadriye Bakırcı*, 'İstihdamda Cinsiyetler Arası Eşitlik ve Mevzuatta Yapılması Gereken Değişiklikler', Sicil, Vol. 2, No. 8, December 2007, p. 35; *Şükran Ertürk*, Çalışma Hayatımızda Kadın Erkek Eşitliği, Ankara 2008, p. 188.

ed according to the law, is subject to a prison sentence ranging from two months to six months according to Article 230/V of the Turkish Penal Code.

Despite all these provisions, the number of people who are still living in an imam marriage cannot be underestimated. Therefore, according to the data of the Turkish Statistical Institute, while the percentage of people who both have a religious (church) wedding and a civil (official) wedding is 93.7 %, the percentage of people who only have a civil wedding is 3.3 %, and that of people who only get religiously married is 3 %. While the percentage of only religiously married people is 8.3 % in Southeastern Anatolia, this percentage falls to 0.9 % in South Marmara[20]. However, we have to keep in view that the number of people who get married by an imam tends to decrease compared to the past[21].

(2) The non-attribution of allowance to the religiously married wife

The widow of a deceased insured person is one of the persons who can benefit from the burial insurance. In this respect, as provided by legislation, 'bonds of matrimony' shall exist for the beneficiary to be considered as the widowed spouse of the deceased insured person. Accordingly, in case of the nonexistence of official bonds of matrimony between the deceased insured person and his widowed spouse, the payment of burial allowance to the surviving spouse is out of the question[22]. Thus, a merely religiously married spouse will not be able to benefit from burial allowance due to the nonexistence of a civil marriage between the insured person meanwhile deceased and herself.

The payment of burial allowance to the officially married spouse is subject to some exceptions. The first of these exceptions refers to civil marriages concluded before the application of the Turkish Civil Code in 1926. According to this, in case of death of an insured person who got married more than once before the application of the Turkish Civil Code, the burial allowance is equally shared between any surviving spouses. If one of these allowances is cut, the allowance of this person will be added onto the allowances of the other surviving spouses (Transitional Article 14 of Law No. 506; Article 70 of Law No. 5434).

The second exception provision, the "Act on unpunished registration of children born from unofficial unions", concerns the spouses. These are the mothers of children born out of wedlock but registered (recognized) at a later stage . The persons in question are considered as rightholders in terms of burial insurance and it is accepted that they benefit from burial allowance[23].

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[20] www.tuik.gov.tr/PreHaberBultenleri.do?id=13662.

[21] See www.sdergi.hacettepe.edu.tr/makaleler/ycik.pdf.

[22] *Ali Güzel/Ali Rıza Okur/Nurşen Caniklioğlu*, Sosyal Güvenlik Hukuku, Istanbul 2014, pp. 710 and 721.

[23] Ibid., p. 710 fn. 9.

Apart from the two exceptions mentioned above, civil marriage is required for allowances to be granted and spouses married by an imam cannot be beneficiaries of burial allowances. In this respect, a recently taken decision by the Court of Cassation has accurately stipulated that the spouse in question, who was married by an imam, cannot be holder of the right to the burial allowance of her deceased spouse who was supporting her financially[24]. The legal justification of the Court of Cassation on this subject is mainly based on the fact that according to current national law, the imam marriage performed by an imam cannot constitute an obligation for third parties or for the State.

The result of this decision is accurate within the framework of the legislation in force. However, there are arguments that persons considered as not holding any rights under this law (i. e. the spouse married by an imam who was supported financially by the insured person) are nevertheless able to benefit from burial allowance, provided that there is a portion remaining as an augmented share of that allowance[25].

bb) The return of premiums to a woman that is to be married

Additional Article 1 to Social Insurance Act No. 506 has granted the right termed "*full payment*" to women workers in order for them to reacquire the total of insurance premiums paid until the date they got married during the year that they quit their work or for those who quit their work during the year of their marriage (Paras. 1 and 2).

Accordingly, half of the insurance premiums regarding disability, old-age and death that they and their employers paid will be fully refunded, upon written request, to women workers who quit their work due to marriage. This payment is called "full marriage payment" as it is made in the case that the insured person gets married.

Although the full marriage payment has a security function for women workers, it is to simplify their rupture with working life. Fact is that women workers who know that the premiums they pay until they get married will not be lost but be paid back to them, will more readily stop working and get married to a person who does not accept that the wife works.

Women workers who receive the full marriage payment reset their insurance period with effect from the date of receipt of the payment. However, women workers who are supposed to start working again after having received the full marriage payment, can reactivate their reset insurance period provided that they pay back the amount they got. Therefore, women workers who are supposed to go back to work after having received the full marriage payment can recover

[24] Court of Cassation, 10th Div., 1 March 2010, 2008–18155/2758 – Sicil, Vol. 6, No. 22, June 2011, p. 180.

[25] See *Kadir Arıcı*, 'Ölüm Sigortasından Yararlanma', Sicil, Vol. 6, No. 22, June 2011, p. 186.

the lost previous benefits provided that they pay back the premiums with an interest of 5 % from the date they received the marriage payment. The insurance period of women workers who do not pay back the premiums they have received resumes on the date they go back to work; in turn the lost insurance periods are not taken into account for the calculation of later benefits (Additional Article 1/ III of Social Insurance Act No. 506).

However, as women workers who have received the full marriage payment are free to work again, the main part of Social Insurance Act No. 506 has been abrogated and has been replaced today by the Social Security and Universal Health Insurance Act No. 5510, which does not accept the full marriage payment. The fact that the full marriage payment option is not provided by law in the new legislation is considered as an accurate step to prevent this payment from encouraging women workers to quit their jobs and to be cooped up at home[26].

cc) The right of social insurance to the non-working married woman

Married women have the right to benefit from retirement and general insurance without working and within this framework, to be retired in the future and receive retirement pay by means of the provisions of "optional insurance" (Articles 50–52 of Act No. 5510).

In reality, the optional insurance of Act No. 5510 is a kind of "elective insurance" (Article 50 of Act No. 5510) for persons who want to benefit from retirement and general health insurance by way of paying a voluntary premium. Thus, persons who had "compulsory insurance" earlier and who

- do not work as compulsorily insured workers,
- did not receive allowances for their own insurances,
- are older than 18 years,
- have applied to the Social Security Institution,

can maintain their insurances provided that these conditions are met[27].

The second group of persons who meet these conditions, i. e. married women who stop working, has the right to benefit from the optional insurance. Thus, the husband will probably pay the woman's premiums and the latter will have the guarantee to receive burial allowance provided that she exclusively stays at home and takes care of her family (i. e. of the needs of the husband and children). It is obvious that this situation encourages married women to quit working life.

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[26] See *also Ali Nazım Sözer*, Türk Sosyal Sigortalar Hukuku, Istanbul 2013, p. 384.

[27] See *Yusuf Alper*, Sosyal Sigortalar Hukuku, Bursa 2014, p. 116; *Güzel/Okur/Caniklioğlu*, op. cit., p. 215; *Sözer*, ibid., p. 12.

IV. The role of religion in the organization of work

1. The use of weekend holidays

After the proclamation of the "Republic" of the Turkish State on 29 October 1923, the Act on Weekend Holidays No. 394 was accepted[28]. Consequently, in all the industrial and commercial workplaces of cities with a population of more than 10,000 inhabitants, work will stop during one day per week and workers who work six days per week will have the right to rest for at least one day (Article 1 of Act No. 394).

Because of its importance for Muslims, the holiday of the week has been proclaimed to be "Friday" by Act No. 394. However, this has been changed and Friday has been replaced by "Sunday" by Article 3 of Act No. 2739 dated 27 May 1935, which took effect on 1 June 1935.

Act No. 2739, which adopted Sunday as the holiday of the week was abrogated on 17 March 1981 by the Act on Bank Holidays and General Public Holidays. However, Act No. 2429 has conserved the fact of Sunday being the holiday of the week (Article 3/A of Act No. 2429), is still applicable and the regulation concerning the fact of Sunday being the holiday of the week has not been directly repealed due to concerns that it might generate a community backlash. However, the still applicable Labour Act No. 4857 adopted on 22 May 2003[29] has definitely withdrawn the matter in question. Hence, "at least twenty-four hours of uninterrupted rest (week holiday) within a period of seven days of work" is to be given (Article 46/I of the Labour Act). In this way, the fact that a worker has worked on a Sunday will not mean that he/she has not already used the weekend holiday, provided that he/she is required to take a holiday on a day other than Sunday.

During the period of enactment of the Labour Act, some secular circles were concerned about the fact that Friday might be reaccepted as a free day. The employer class who had permanently asked for flexibility so far, stayed quiet in view of these concerns.

The new Labour Act has legally smoothed the way so that employers can chose Friday as the holiday of the week in the workplace instead of Sunday. In this case, the employers can give their workers a holiday on a particular day according to the environment (situation and conditions).

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[28] Official Gazette, 21 January 1924, No. 54.

[29] Official Gazette, 10 June 2003, No. 25134.

2. The use of the right to a holiday on religious holidays

a) Religious holidays recognized by the law

Act No. 2429 accepted religious holidays as holidays along with bank holidays and official holidays. Therefore, the Ramadan Feast of 3.5 days and the Feast of the Sacrifice of 4.5 days are some of the religious holidays (Article 2/B of Act No. 2429).

As we can notice, the religious days recognized by the law as religious holidays concern only Muslims. The reason for this is naturally related to the fact that the majority of the Turkish population is Muslim.

However, this does not mean that non-Muslims will not celebrate their own religious holidays. Thus, workers and employers must agree on the fact that taking a holiday on the other religious holiday respectively can be considered as a right. In cases where such an agreement has not been made, it is not possible for non-Muslims to take a holiday on their own religious holidays and claim this as a right from their employer.

b) Rest during religious holidays

The worker has the right to rest on holidays. In this way, the worker enjoys the possibility to rest and to perform religious duties during a total of eight religious holidays per year.

Due to the fact that religious holidays are considered as holidays pursuant to Act No. 2429, the employer cannot force the worker to work on these days, and in the case that the worker refuses to work, the employer cannot terminate the employment contract on this ground. If this was to happen, the termination of employment effected by the employer would count as unjustified termination of the contract.

c) Remuneration during religious holidays

The employer is obliged to pay the full day of the worker without asking any work in return, irrespective of the worker's religion, during days which have been accepted as religious holidays by Act No. 2429 (Article 47/I of the Labour Act; Article 43/I of the Maritime Labour Act).

On the other side, workers can accept to work during religious holidays. In this case, workers who do not take the holiday off will be paid for each day they work instead (Article 47/I of the Labour Act). Work conducted on a religious holiday is paid double. This means that workers who accept to work on religious holidays will not receive one but two days' wage.

3. The effect of religion on working time

a) Practicing worship during break

Praying five times per day constitutes the basis of the religion of Islam. Furthermore, the Friday prayer performed in the group (within the religious community) around noon is of particular importance and involves a special procedure. From this perspective, the question of stopping the production during the abovementioned periods and of giving or not giving workers the possibility to worship is an issue troubling the existing legal system, but ultimately a question of organization within the workplace.

The function of organizing working time, as a general rule, rests with the employer. Accordingly, the person who has to determine the starting and finishing hours of work at the working place is the employer. That is why the employer is obliged to inform workers at their workplaces on the starting and finishing hours along with break times (Article 67/I of the Labour Act).

There is no legal obligation for the employer to take into consideration the period of prayers and especially of Friday prayer while determining break times. Therefore, Article 24 of the Constitution, while highlighting that everyone has the right to freedom of religion and conscience, assuring the right to participate in a religious ceremony and rites and not being obliged to declare his/her convictions, does not contain a provision which would aim to guarantee the right of practicing worship (Paras. 1 and 2).

In the same line, Article 68/I of the Labour Act precises that the break has to be determined at an average time of the working day and according to the needs of the workplace and the local customs. Besides, it is mentioned that the midday break should be used according to the climate, season, local customs and the nature of the workplace (Article 68/III of the Labour Act), but religious elements (prayer times) are not included in this scope.

For this reason, and as employers and workers mostly have the same religion in practice, it is preferable to ask for the employer's discretion instead of forcing the former to determine the rest periods according to prayer times; alternatively, respective provisions can be laid down on this subject in the collective labour agreement.

b) Worship at work

In the religion of Islam, it is not compulsory to worship in a group except for the Friday prayer. Thus, the question of praying at work will arise when prayer time coincides with presence expected at work. In such a case, if the employer grants authorization to the worker to worship at the workplace, he will need to assign the worker a special place for this purpose.

In January 2016, the Prime Ministry circularized that employees of public institutions and establishments who so desire will be given time off for Friday prayer, even if the time overlaps with working hours, without causing a loss in working hours[30]. In response to this, a lawsuit was filed with the Council of State, Turkey's highest administrative court, arguing that the government order goes against Turkey's secular Constitution and the new prayer practice is an exploitation of religion for political goals[31].

However, there is no provision in the legislation which obliges the employer to open a prayer room or a masjid (Islamic prayer room) at the workplace. In this case, the employer can assign a special place for worship. Even though it is not mentioned in the legislation, the parties can include provisions in the collective labour agreement in order to have a place for worship assigned at work[32]. This kind of provision in a collective labour agreement regarding religion and the conscience of freedom is legally valid and not contradictory to the Constitution and the imperative provisions of laws (Article 33/V of the Act on Unions and Collective Labour Agreement).

4. The limits of freedom of dress at work

The way of dressing and appearance is one of the worker's personal rights. In this respect, the way of dressing and appearance are considered to be individual rights of expression of the worker. Thus, be it eye-catching or conservative attire, it is considered as a notion proper to the dress sense of each worker.

However, it can be the case that the nature of the work obliges the worker to dress in a particular way or in good attire. Accordingly, work in a healthy and safe environment may require a particular dresscode and appearance. In this regard, the fact that the employer can impose a special dresscode or attire on the worker (or forbid the latter to wear certain clothes) constitutes a problem.

When we consider the freedom of dress and appearance only from the religious perspective, especially with regard to women workers in relation to the Islamic form of dressing and headscarf, or in respect to men regarding the fact of their wearing a beard or a tie, we see that this can pose a problem in practice.

In this respect, if we firstly take in hand the decisions taken by the Court of Cassation concerning workers who refuse to shave or trim their beards and wear them at work, it is difficult to say whether the Court of Cassation has settled a decision on whether wearing a beard or refusing to shave it due to employer-imposed demands does or does not constitute a reason for justified termination of

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[30] Official Gazette, 8 January 2016, No. 29587.

[31] http://www.aljazeera.com/news/2016/01/turkey-court-challenge-friday-prayer-time-160108171547568.html; http://www.al-monitor.com/pulse/originals/2016/01/turkey-friday-prayer-criteria-for-schools.html.

[32] See V 4 below.

the employment contract. Thus, the Court of Cassation in some cases accepted the circumstance that wearing a beard and letting it grow was not a legitimate reason for a termination of contract[33]. On the other hand, the insistence of a person working as a chef to keep his beard despite cease-and-desist warnings and pay cuts is not considered compatible with health regulations and the particular nature of the work[34]. Correspondingly, it can be said that the employer can intervene with regard to the way of dressing and appearance of the worker according to the particularities of the work, within the framework of the customary and the principle of good faith[35].

Concerning the subject of Islamic form of dressing and headscarf for women workers, it is accepted that the employer requires the workers not to use clothes and accessories which demonstrate their religious beliefs or politic views. After all, this way of dressing and appearance will jeopardize the impression that the employer would like to make on the community[36]. Especially the neutrality of public servants has become a requirement of secularism. This is because public servants are understood as representing the State, and are therefore responsible for protecting the values of collective life[37].

On the other side, the bases applicable for private sector workplaces are even more frequent in the public workplaces. However, the way of dressing and appearance of workers in public workplaces is subject to the "*Regulations on Dress Code for Personnel of Public Institutions and Establishments*" of 1982[38].

In the regulations mentioned above, there is an effort to ensure that "the public officials dress with decorum and without excess keeping with the reforms of Atatürk" (Article 1 of the Regulations on Dress Code). Accordingly, women workers cannot wear sleeveless and shirts with a very low-cut neckline, blouses or dresses, jeans, stretch and legwear of similar fabric and cut; the length of their skirts shall not be shorter than knee-length and their skirts shall not be slit. Further, the clothes of male workers shall be clean, decent, ironed and simple and their shoes shall be closed, clean and polished. Workers should be bareheaded inside the building or during the accomplishing of their mission (Article 5/a and b of the Regulations on Dress Code). Concerning the provisions on the dresscode for officials working in religious affairs related to the Religious Affairs Directorate, they are applied within the framework of the basis defined and approved by the Directorate (Article 5/c of the Regulations on Dress Code).

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[33] Court of Cassation, 9th Div., 6 February 2001, 2000–18594/1750 – Kazancı Hukuk Otomasyon 2.0, İçtihat Bilgi Bankası; *Aydın*, op. cit., p. 116.

[34] *K. Ahmet Sevimli*, İşçinin Özel Yaşamına Müdahalenin Sınırları, Istanbul 2006, p. 232 fn. 574.

[35] *Aydın*, op. cit., p. 117.

[36] *Sevimli*, op. cit., p. 234.

[37] *Amélie Barras*, Refashioning Secularisms in France and Turkey. The Case of the Headscarf Ban, London 2014, pp. 45–46.

[38] Official Gazette, 25 October 1982, No. 17849.

The rights and functions of the employer of the public sector are considerably restricted in light of the provisions mentioned above[39]. Moreover, it is legally not possible, even on the condition that agreement is made with the labour union, that the employer accepts provisions contradictory to the provisions in question in the collective labour agreement. The reason is that the regulation in question prohibits the provision of dispositions contrary to the bases mentioned in the collective labour agreement (Article 13/I of the Regulations on Dress Code).

V. Religious patterns in collective labour law

1. Freedom of association of religious officials

a) The right to unionize and to be member of a union

First of all, workers can, under their employment contract unionize or be member of an existing labour union (Article 2/IV, 6/I, 17/I of the Act on Unions and Collective Labour Agreement).

In addition, persons who carry out independent/freelance professional operations against a fee without any employment contract but according to agreements related to transportation, attorneyship, publications, commission fees and ordinary company agreements, have been granted the right to unionize (Article 2/IV of the Act on Unions and Collective Labour Agreement). Accordingly, independent drivers, carriers, writers, attorneys, commissioners and associates of ordinary companies have the right to unionize or be members of similar unions already existing provided that they do not work in accordance with an employment contract.

However, workers in religious workplaces and places of worship do not fall within the scope described. In this sense, the question arises as to what might be the union rights of workers in religious workplaces and places of worship which do not depend on an employment contract.

b) The situation of religious officials

Concerning religious officials, their affiliation is connected to the Religious Affairs Directorate, which in turn is connected to the Presidency. Religious officials of the Religious Affairs Directorate shall be subject to the Act on the Structure and the Missions of Religious Affairs Directorate No. 633 and Civil Servants Act No. 657. Accordingly, we have to say that workers in religious workplaces are in reality working under the status of "*civil servant*" in the Turkish law system.

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[39] See also Barras, op. cit., pp. 48–49.

The unionization of religious officials who are not religious civil servants has already been prohibited in Turkey earlier on. However, Act on Labour Unions No. 274 (Article 4/I c) of 1963 and also Act on Labour Unions No. 2821 (Article 21/I 3) of 1983, provided that workers in religious workplaces and places of worship shall not be members of a labour union. During the acceptation of Act No. 274, this decision was justified, as "the religious activities have a divine character that would require to consider different kinds of discrepancies between the citizens"[40]. Besides, the interdiction in question not only concerns the religion of Islam today but also workers in religious workplaces and places of worship[41].

The interdiction of unionizing for workers in religious places and places of worship was repealed in 1988 by Article 17 of Act No. 3449[42]. However, the repeal of the act in question has not been so important. Fact is that it is important for persons in religious places and places of worship working as civil servants within the framework of the Religious Affairs Directorate to unionize within the framework of civil servants' labour unions. The unionizing of civil servants only appeared in Turkey in line with the efforts of democratization in 1995.

In the Turkey of today, where civil servants and other public workers have the freedom of association, there are no more obstacles for religious servants: they can also "unionize among civil servants" and be a member of these unions as provided by Act No. 4688. Therefore, service branch number 11, which is counted in the branches that can be created by the civil servants' union, is divided between "religious affairs and religious foundations services" (Article 5 of Act No. 4688).

2. The religious bases of the unions

a) In compliance with the characteristics of the Republic and democracy

The unions and the confederations cannot act in contradiction with the characteristics of the Republic and the democratic principles. Thus, the status, management and operation of the unions and confederations cannot be in contradiction with the principal characteristics of the Republic and democratic principles (Article 51/VI of the Constitution).

The principal characteristics of the Republic are explained in Article 2 of the Constitution. Accordingly, the Republic of Turkey is a democratic and secular State governed by the rule of law, respecting human rights, and loyal to the nationalism of Atatürk.

Concerning the democratic principles, they are relatively wide. To give a few examples, it is possible to quote basic principles like the attribution of function to managers by election, the right of management of the majority, equal treatment,

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[40] *Öner Eyrenci*, Sendikalar Hukuku, Istanbul 1984, p. 106.

[41] See *Ergun İnce*, Toplu İş İlişkileri, Istanbul 1983, p. 73.

[42] Official Gazette, 8 June 1988, No. 19830.

the protection of the basic freedoms of the members and the application of the principle of secret vote/public count during elections[43].

b) The closing of establishments in contradiction with the established regime

aa) Contradictory activities

Article 31/I of the Act on Unions and Collective Labour Agreement provides that unions and confederations in contradiction with the characteristics of the Republic and democratic principles mentioned in the Constitution shall be closed. If the activities in question are led only by the managers of labour unions and confederations, their functions will be terminated by the court in accordance with the same provision.

On this subject, we should not lose sight of the provision of Article 24/V of the Constitution. Accordingly, "no one can use the social, economic, political and legal organization of the State, based on religious rules, in order to misuse and abuse religious feelings or matters considered as sacred by religion whatsoever the purpose, to obtain political or personal benefit or to ensure an influence". Thus, with regard to unions and confederations acting in order to exploit religious feelings of the community or use religious bases of the principal organization of the Turkish State, Article 31/I (the closing of these unions by court judgment) applies.

On the other side, the provision on the closing of unions is compatible with the consideration of these kinds of activities related to religion in terms of political activity. This is because the interdiction provided by Article 24/V of the Constitution is also applicable to political parties which will act in this way. In this regard, as political parties that act using the religious bases of the Turkish State will be closed by the Constitutional Court, no support of these parties from unions and confederations will be possible. If the unions and confederations act in violation of this principle, they will be confronted at the risk of being closed in the same way as political parties.

bb) Closing by court order

Unions and confederations which act in violation of the characteristics of the Republic and democratic principles in the Constitution in that they make use of religious bases are closed by labour court decision upon request of the public prosecutor (Article 31/I of the Act on Unions and Collective Labour Agreement). In this respect, the fact that administrative authorities do not have the function to stop particular activities and to close such unions and confederations constitutes an insurance with a view to the protection of the freedom of association.

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[43] *Fevzi Şahlanan*, Sendikaların İşleyişinin Demokratik İlkelere Uygunluğu, Istanbul 1980, p. 45.

3. The approach of current unions to religious subjects

As demonstrated above[44], the creation and activity of unions and confederations based on religious principles is out of the question. However, it is not legally empeachable that the organizations in question and their directions have different approaches to religious subjects which constitute their bases at the same time.

a) On the working class

We can see three different workers' confederations at the level of the working class. One of them is the Confederation of Turkish Trade Unions (Türk-İş), a superordinate institution established in 1952 which has the most significant number of workers as members. The Türk-İş aims to protect and develop the rights and profits of workers in the understanding of the secular State, pluralistic and liberal-democratic rules and Atatürk's principles (Article 2 of the Statute of Türk-İş).

The Türk-İş is composed of working class members, generally conservatives, but is not putting forward religious elements. The main reason for this is that the Türk-İş adopted a politics which tends to stay neutral towards political powers and the phenomenon named "politics above political parties".

However, this politics has resulted in the establishing of the Confederation of Progressive Trade Unions (DISK). In this respect, DISK is a trade union whose main principle is to ensure solidarity between workers without distinguishing in terms of beliefs, religion or sect (Article 3 of the Statute of DISK).

On the other hand, Hak-İş (the Confederation of Turkish Real Trade Unions), which was created in 1976, has embraced the working class, which fights for freedom, giving utmost importance to religious elements.

Despite all these separations and divisions Türk-İş continues to be the most powerful trade union in Turkey nowadays.

b) From the employer's side

aa) The tendency of the employing professional associations

There is only one organization in terms of employing professional associations, which is the Turkish Confederation of Employer Associations (TISK). The TISK, which was established in 1962, has adopted as a basic principle the utmost encouragement of secularity and of the liberal parliamentary democratic regime[45].

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[44] See V 2 above.

[45] http://tisk.org.tr/tr/Tisk-Temel-ilkeleri.

There is no evidence of any problem on the part of TISK as regards religious issues. The reason for this, as demonstrated below[46], is that the employer class (capital) – which gives importance to religious elements and uses this as a relationship opportunity – is active in voluntary associations of entrepreneurs.

bb) The approach of employing associations

(1) Associations of voluntary entrepreneurs

Employing associations which play an important role in working life are the Turkish Industry and Business Association (TUSIAD), the Independant Industrialist and Businessmen Association (MUSIAD), the Anatolian Lions Businessmen Association (ASKON) and the Confederation of Businessmen and Industrialists of Turkey TUSKON). One of the organizations mentioned, TUSIAD, represents important capital regarding the size of the entreprises of the members. We can say that the members of the other organizations represent rather medium and low capital.

One of these organizations, the Turkish Industry & Business Association (TUSIAD) established in 1971, aims to create and develop a collaborative organization adopted by the secular State of law in addition to other principles (Article 2 of the Statute of TUSIAD). It has been observed that, in response to this, the prominent characteristics of the members of MUSIAD composed of industrialists and businessmen are especially religious.

(2) The relations between the government and the business world

The first step of Turkish industrialization has developed in the industry and commerce chambers, membership of which is compulsory for industrialists and merchants. Regarding this step, the principal particularity of the business world is that the relations between the government and the managers of the chambers are based on representation of profit. Along with the development of the private sector, the associations of voluntary entrepreneurs started to gain influence in the 1970s. One of them, which has preserved its particularly active role and importance, TUSIAD, is not unrivalled and new (other) entrepreneurial organizations have come to compete in the business world.

However, the relations between the government and the entrepreneurs in question are undergoing a particular evolution today. In reality, since the growing influence of political Islam from the 1990s onwards, the government has developed close relations with some of these voluntary employer associations. In this respect, MUSIAD kept close relations with the only party representing

[46] See V 3 b bb (2) below.

political Islam in the 1990s. Whereas ASKON and TUSKON are two further organizations of entrepreneurs established later, their members – who form part of the political Islamic class – have been maintaining close relations with the government. Besides, President Erdoğan announced recently that he will no longer participate in TUSIAD meetings[47].

These three organizations, which focus on the element of religion in their relations with the government, are set against TUSIAD which aims at the creation of a secular law order. The use of religion as a reference in economic and political relations has led to a highly polarized business life. Accordingly, the new capitalism in Turkey has to take into consideration religious relations from now on with regard to all business relations[48].

4. Collective bargaining in relation to religion

The parties of the collective labour agreements (partners) can, usually within the framework of the autonomy of establishing general labour agreements that has been granted to them, include in the collective labour agreements provisions concerning religion or considering religious elements. However, the collective labour agreement cannot contain provisions in contradiction with the statutory legal provisions and the provisions of the Constitution (Article 33/V of the Act on Unions and Collective Labour Agreement).

Besides, the regulation on the dresscode of public workers[49] stipulates its provisions as indispensable and impossible to be amended via collective labour agreements. Accordingly, it is not legally possible to adopt provisions in contradiction with the provisions of the regulation in question, not even with the consent of the public sector employer and the trade union. The reason for this is that the regulation in question prohibits the establishment of provisions in contradiction with the provisions of the former (Article 13/I of the Regulations on Dress Code). This absolutely compulsory regulation concerning the dresscode became important due to a collective labour agreement between a military naval shipyard command and a trade union whose managers were close to a religious class. The penalty rules relevant to this collective agreement accepted that a public worker who wears a beard is not subject to penalties and increasingly not subject to a justified termination of the employment contract. However, the Court of Cassation, which debated on this, has considered the termination of the employment contract as unjustified[50] without mentioning the mandato-

[47] http://www.hurriyet.com.tr/ekonomi/27863705.asp.

[48] *Ayşe Buğra/Osman Savaşkan*, Türkiye'de Yeni Kapitalizm, Istanbul 2014, p. 34.

[49] See IV 4 above.

[50] Court of Cassation, 9th Div., 6 February 2001, 2000–18594/1750 – Kazancı Hukuk Otomasyon 2.0, İçtihat Bilgi Bankası.

ry provision of the regulation with regard to the dresscode of public workers (Article 13/I)[51].

Apart from that, there is no legal interdiction for the parties of the collective labour agreement to consider the period of Friday prayer or daily normal prayer periods as free times or midday break, or for them to decide that no one shall work during religious feast days, or for them to grant social help by giving extra remuneration to fasting persons who do not eat at work during the month of Ramadan, or for the employer to provide a prayer room or to designate places at work intented for such purposes in the collective labour agreement.

VI. The importance of religious communities with respect to social law

1. Religious foundations

Apart from intra-familial solidarity and professional organizations (guilds) during the Ottoman Empire, other charity organizations have also played an important role concerning the protection of the poor. These organizations are mainly based on religious rules and customs. For instance, thanks to donations and handouts like zakat and fitre (special islamic charity) we can say that the religion of Islam helps the poor through the help of the wealthy. Apart from this individual form of social solidarity, associations which were common in the Ottoman Empire have assumed the function of organization for this kind of social help. These organizations, which owe their emergence and development to the appeal of Islam to kindness and charity, have not only established the public services but also helped the poor in case of disease or in other difficult situations[52].

As there is no church tax or similar fee in Turkey, and as the financial resources of the Religious Affairs Presidency are limited[53], the old islamic tradition has been continued by keeping up the religious activities via the foundations. However, the religious foundations of the Republic period have been under the control of the State within the framework of the law[54].

The religious foundations mainly focus on the maintenance of mosques and the organization of religious schools in terms of Qur'an courses; they also encourage religious and cultural activities.

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[51] *Sevimli*, op. cit., p. 268.

[52] *Güzel/Okur/Caniklioğlu*, op. cit., p. 30.

[53] See for the social activities of the Religious Affairs Presidency: http://www.diyanetvakfi.org.tr/5/ faaliyetler/yurtici-ve-yurtdisi-yonelik-hizmetler/hayri-ve-sosyal-hizmetler.

[54] *Rumpf*, op. cit., p. 152.

2. Community Foundations

The present Community Foundations are charity foundations constituted by the non-Muslim Turkish people before the establishment of the Republic. These foundations are various public legal entities (Article 4 of the Foundations Act) managed by the rules fixed by a direction selected by their own members (Article 6 of the Foundations Act). However, as it is not legally possible to create a foundation in order to support a particular community, it is also not possible to create a new Community Foundation. The Community Foundations which were created earlier, as sother foundations in Turkey, are monitored by the General Directorate of Foundations and the number of these foundations is still at 166[55]. However, as the creation of such a foundation is not possible and considering the efforts to change the inflexibility of previously established foundations, we cannot speak of functions of social help and solidarity on the part of the Community Foundations.

VII. Examination and assessment

1. The secular nature of the Turkish law system

We can see that the protection of freedom of religion and the place of religious elements in working life have a different meaning in Turkey compared to European countries. There are two main reasons explaining this situation.

The first is the impact of the Turkish Revolution. In reality, the Turkish Republic – which sought to draw a line under the Ottoman Empire and to adopt the European system – tried to isolate the law system from religious elements for the sake of secularity. However, the emergence of the secular system in Europe is different from developments in this context in Turkey. Therefore, the Turkish Revolution is not the result of a movement from the base up but constitutes a top-down movement of modernization – whereas the secular system in Europe developed from the bottom to the top[56]. That is the reason why the higher authorities (i. e. the law system) in relation to the secularity issue in Turkey have always felt the need to take measures against religious elements in order to prevent the risk of moving back into the past. Accordingly, Turkey is oscillating between the occidental Christian world customs and the social realities of the Islamic world customs[57].

Secondly, the different approach to secularity on the part of the Turkish law system is due to the content of the religion of Islam. This is because the religion

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[55] http://www.vgm.gov.tr/db/dosyalar/webicerik241.pdf.

[56] *Demir*, op. cit., pp. 25–26.

[57] *Rumpf*, op. cit., p. 22.

of Islam, apart from worship, also contains religious principles that are related to mundane issues like the management of the State and other community issues. Christian religion, by contrast, is mostly disconnected from mundane issues or has merely suggestive power as regards mundane tasks.

That is the reason why in Turkey, secularity has always been considered to be opposing Islam. In fact, Turkey – which tends towards the European secular system – has kept far from the principles of the law system of the religion of Islam. The secular law system in Turkey is not against the religion of Islam and has merely been trying to separate community life and State government from the principles of the religion of Islam.

2. *Purification of Turkish labour and social law from religious elements*

The attempt to purify the Turkish law system from religious elements is also noticeable in labour and social law. However, while labour and social law legislation provides for the right to freedom of religion, defending the right to express one's religious views and fighting against sect discrimination and the interdiction of worship, it does not contain legal regulations which would permit the actual practice of freedom of religion. All regulations of these issues are in fact left to the collective labour agreement between the employer and the trade union.

Concerns regarding the move from secularity back into the past were intended to be dissipated firstly by way of limitations at work and the establishment of interdictions. In this respect, one typical example is the change of the holiday of the week from Friday to Sunday and the interdiction of making religious policies to labour unions. However, along with the growing integration of secularity and democratic thinking within the Turkish community, the possibility of giving up these doubts and getting rid of them is getting strong today. Accordingly, we can keep in mind that as a political party which uses religious elements as a reference, the AKP (Justice and Development Party), especially during the last 10 years, has been governing and is controlling the direction of business regulations in Turkey.

Hence, religious elements which keep women out of reach of working life are still perfidiously effective nowadays, namely under the guise of positive discrimination and the expansion of women's rights. However, the protection of women and the granting of more rights to them in our modern, globalized world discredits the continuity of women's employment in Turkish working life. In this respect, the Turkish lawmakers should see that granting excessive rights to women and isolating them from male workers in a way directly restricts the employment of women, which will result in the fact that the latter continue to be cloistered at home.