

## # A REVIEW ON THE PRINCIPLE OF LAICISM AND TURKEY (LAİKLİK İLKESİ VE TÜRKİYE ÜZERİNE BİR İNCELEME)

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### ÖZ

*Modern devletin belirli nitelikleri vardır. Bu şartlardan birisi de laikliktir. Bu makalede laiklik, modern devletin ve modern devletin anayasa yoluyla garantörü olduğu insan hak ve özgürlüklerinin bir ön şartı olarak değerlendirilmiştir. Bu bakımdan laiklik çeşitli anlayışlarıyla ele alınabilmektedir. Biz ise laikliği operasyonel bir ilke ve kurum olarak nitelendirmekteyiz. Gerçekten de laiklik ilkesi anayasal özgürlükçü anlamıyla uygulandığında, dinsel inanışların modern devlet ve hak ve özgürlüklerin özerinde bir iktidar talebi olarak ortaya çıkamayacağını varsaymaktadır. Türkiye için biz laikliği operasyonel görmekle birlikte, laik devletin tarafsızlığının, siyasal ve hukuksal adalet kurallarını dinsel olana ya da devletin vatandaşları tarafından benimsenen dinsel anlayışlara uygulayacağını öngörmekteyiz. Bu kurallar ise özgürlük, eşitlik gibi olup, gerek formel gerek maddi fonksiyonel değerlere işaret etmektedir. Bu politik yaklaşımımızla din, Türkiye toplumunun gerçekliğini ve kültürel mirasının bir parçası olarak kabul edilebileceğini belirtir. Böyle olmakla din, mantıksal olarak Türkiye’de bir praksis oluşturabilir. Siyasal ve hukuksal olana yönelmeden varlığını ve gelişimini sürdürebilir. Biz kategorik olarak dinseliliğin kültürel bir değerler bütünü olarak değerlendirmekteyiz. Dolayısıyla da dinsel olana kategorik olarak karşı çıkmamaktayız. Ne var ki, Türkiye’deki dinsel anlayışın bir iktidar ve hukuki formülasyon taleplerinin olduğunu dikkate aldığımızda dinsel olana politik ve hukuki anlamda daha dikkatli yaklaşmamız gerektiğini söyleyebiliriz. Tam bu noktada da makalede Türkiye için operasyonel özgürlükçü laikliği anayasa yapıcı siyasi elitlerin dikkatlerine sunuyoruz.*

**Anahtar Kelimeler:** Din, Devlet, Laiklik, Anayasa, Hak ve Özgürlükler

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## ABSTRACT

*The modern state has certain characteristics. One of these conditions is laicism. In this study, laicism is reviewed as a prerequisite for the modern state and human rights and freedoms that a modern state guarantees with the constitution. In this context, laicism may be analysed from various perspectives. And we describe laicism as an operational principle and institution. Indeed, when the principle of laicism is applied from the perspective of constitutional libertarian, it is assumed that religious beliefs may not emerge as a demand for power above the modern state and rights and freedoms. While we see laicism as operational for Turkey, we foresee that the impartiality of the secular state will apply the rules of political and legal justice to the religious or to the religious understandings adopted by the citizens of the state. These rules, on the other hand, are like freedom and equality and point to both formal and material functional values. With this political approach, religion indicates the reality of Turkish society and that it may be accepted as a part of its cultural heritage. Therefore, religion may logically form a praxis in Turkey. It may maintain its existence and development without turning to the political and legal spheres. We categorically consider religiosity as a cultural set of values. Therefore, we do not categorically oppose the religious. However, when we consider that the religious understanding in Turkey demands a power and legal formulation, it would not be wrong to suggest that we should approach the religious more carefully in terms of politics and law. At this point, in this study, we bring the operational libertarian laicism for Turkey to the attention of the political elites that make the constitution.*

**Keywords:** Religion, State, Secularism, the Constitution, Rights and Freedoms

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## Introduction

In examining the changing dynamics of religious phenomena in postmodern societies, legal studies invented or imported a significant number of terms that offer solely the illusion of scientific certainty. Great words that evoke a sense of immediate acceptance and security include:<sup>1</sup> equality, non-discrimination, freedom and laicism. However, after this pleasing first impression, a legal expert should undertake a closer

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<sup>1</sup> Rafael Palomino, "Religion and Neutrality: Myth, Principle, and Meaning", Brigham Young University Law Review, 2011, 657-688, p. 657  
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examination to assess the scope, the final results, and the specific implications such terms entail in reality.

This study analyses the religion-state relations and its position in Turkey, and it is assumed that the religious may not be associated with impartiality. Strictly speaking, we can say that neutrality is a myth when the relation of the religious with the state is considered. It will eventually put forward its religious political and legal demands and make concrete demands. Therefore, the claim of impartiality of religiosity in religion-state relations is also nuanced, as it is significantly incompatible with the modern legal principles.

The religious is an attractive target of complexity. Indeed, the phenomenon of religion, which, so to speak, builds castles in the air and achieves a significant success in abstraction, can create ostentatious and convincing models and produce results contrary to modern legal principles and the modern state designed in this context. Undoubtedly, it is possible to say that impartiality becomes valuable as it becomes a positive principle regulating fundamental rights and freedoms, including the freedom of religion. In this sense, impartiality<sup>2</sup> refers to a complex meaning that synthesizes elements such as non-discrimination, impartiality of public authorities, segregation of the state and religious beliefs and even laicism or extra-religiosity.

However, it would not be an exaggeration to say that the functional value of this neutrality displayed by the modern state will be ineffective against the power and legal demands of the religious. Based on this idea, we can argue that the neutral position of the state may be misleading in Turkey, especially in terms of liberal theory. We should say that the relationship between religion and the state in Turkey is not yet shaped as it should be in a healthy and democratic state of law. Therefore, although impartiality is not the essence of the state and it can be said that certain sensitive areas of social life are necessary for the action of the state, it is also seen that this is not yet possible when the political and legal demands of the religious culture in Turkey are considered.

Thus, it seems essential for secularism in Turkey to have an operational identity until democratic institutions become established. In this context, in this article, first, the institution of laicism as a sign of the modern state is analysed, then the functional value of laicism in a democratic state of law is

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<sup>2</sup> Palomino, a.g.e., s. 687

determined and evaluations are made by considering comparative law in Turkey.

### **A. Precondition: Laicism as a Sign of a Modern State**

The core of a secular state is the separation of state and religious principles and institutions. Therefore, it becomes mandatory to regulate these two institutions based on the state's religious impartiality with this reference in any circumstances; thus, consider both political sphere and religious sphere with this libertarian approach. In this way, secularism reveals an important character of the modern state. Laicism is a fundamental attempt to define the nature of the modern state.

Laicism is a technique specific to the modern state in the organization and legitimation of political sovereignty and justification. In this respect, the modern state historically rests on foundations based on many conditions and methods.

In our opinion, the modern state directly constitutes an important part of the secularization process. Secularization means that the political order is immune from its own spiritual-religious determination and shaping, that it breaks away from a predetermined religious-political wholesale universe and attains its own worldly designed political goal and legitimacy, and that it finally separates from religious beliefs, which are the conditioned basis and essence of the political order.<sup>3</sup> In this context, secularization may be considered as the emergence of the state from the will and administration of the religious or, more generally, the sacred. The shadow and oversight of the religious on the political sphere was gradually withdrawn, and in this context, a transformation process was experienced.

In the West, the independence of the state from the church was coordinated with the independence of the church from the state. This process, in which secularization was put into practice as a macro perspective, actually started with the conflict<sup>4</sup> of authority, which led to the gradual separation of spiritual and secular authority from each other in the 11th century, and thus the dissolution of the Christian political world description, which encompasses politics and religion in a holistic way. As such, the separation of church and state became conceivable for the first time.

<sup>3</sup> For the matter of religion after enlightening, see. Hermann Lübbe, *Religion nach der Aufklärung*, 3. Auflage, 2004, p. 257 etc.

<sup>4</sup> Hierzu Karl Heussi, *Kompndium der Kirchengeschichte*, 18. Auflage, 1991, p. 187  
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However, it may be suggested that the modern state emerged at the beginning of the new era, especially based on sects. Accordingly, although the institution of sovereignty was separated from the religious in formal terms, it could not get rid of religiousness in terms of its material content. Whereas the rule of "whose realm, his religion" (*cuius regio, eius religio*) kept the potential<sup>5</sup> for conflict between the religious and institutional domination high. However, post-Reforms Europe destroyed this motto, and the religious fragmentation of sovereignty was eliminated rather than religious freedom.<sup>6</sup> In this way, only the sovereignty was separated from the religious and ensured a stable institutionalization.<sup>7</sup>

So, who will rule when we stripe the religious of the sovereignty? (*Quis iudicabit?*) For this purpose, we can show its power to shape the invention of modern law and its sovereignty both in terms of its formal and material content. As a matter of fact, as Hobbes emphasized,<sup>8</sup> it comes from the fact that it deals with a worldly law state that allocates an independent characteristic, which includes the demand for supremacy, constitutes the most important basis of the modern state, based on the theory of legitimation of the state. Indeed, the religious isolation of the will and administration of the modern state has been made possible by justifying the de-theology of law.

As such, the condition for the formation of the modern state is the institutional separation from the religious and the independence of politics from religion through the law. Beyond any doubt, this is not a departure from religious beliefs in a cultural sense; in fact, the internal laicism of the state, that is, the neutrality of religion and freedom of religion, continued to develop after<sup>9</sup> the formation process of the modern state came to an end. Thus, we can say that laicism constitutes an important problem of constitutional theory and practice, starting from the hypothesis of a course based on the modern state and state theory.

### **B. Functional Value of the Constitutional Laicism**

In essence, the modern state was designed in such a way that it does not represent a mystical structure. The modern state, which was not organized

<sup>5</sup> Carl Schmitt, *Die vollendete Reformation*, *Der Staat* 4, 1965, p. 51

<sup>6</sup> Cristoph Möllers, *Staat als Argument*, 1. Auflage, 2000, p. 215

<sup>7</sup> Hasso Hofmann, *Recht, Politik und Religion*, 1. Auflage, 2003, p. 377

<sup>8</sup> See Schmitt, *ibid*, p. 65

<sup>9</sup> Klaus Ferdinand Garditz, "Laiklik ve Anayasa", *Çev. Hilal Kafkas, içinde Anayasa Teorisi*, Ed. Otto Depenheuer ve Christoph Grabenwarter, *Çev. Ed. İlyas Doğan*, Lale Yayıncılık, 2014, p. 171

as an end in itself, was created in a way that established the security-freedom balance to improve the basic living conditions of the individual and prepared the conditions and the ground that would make welfare possible.<sup>10</sup>

The secular main goal of security is more than simply securing it from individual selfishness in the "state of need and understanding" because security makes peace, freedom, and thus the distribution of rights and, ultimately, social balance possible.<sup>11</sup> The ability to make democratic decisions about how to live freely is in itself a value that can only be enjoyed under certain conditions, namely in a libertarian and thus necessarily a secular state.<sup>12</sup>

Considering this aspect, the constitutional laicism seems essential for the structuring of the state as the power and its decision-making mechanism. Because the potential for conflict and conflict in the relationship between the state and religion is a matter of dominance shaped around the power struggle in which both sets of facts and institutions conditionally formulate themselves.

Indeed, almost every religion is based on a demand for absolute validity, that is, a truth that cannot be limited in terms of its subject matter and that will embrace believers for their eternal salvation.<sup>13</sup> When this demand for truth takes over the political sphere, it emerges in the form and claim of institutional legal formulation. However, the modern state also claims to be the highest worldly decision-making power. Here are the two superiority claims: If the religious, in particular, spread their demands for truth to worldly matters and directly oppose the behaviour obligations of the state, they may have to conflict with each other.

As such, religious truth and its demand for rules and institutions may be explained and resolved solely by justifying the dominance of the state in the worldly sphere. Therefore, in the state-religion struggle, all institutions, especially the law, which constitute the movement capability of the modern state, should be equipped with the understanding of laicism, that is, the rule of law over religious doctrines should be stipulated. However, let us point out right away that the modern state is obliged to provide a welfare environment for the society, especially in the cultural sense, by making it liberal and democratic by secularizing its own laicism demand and set of institutions.

<sup>10</sup> Ernst-Wolfgang Böckenförde, *Ders Staat als sittlicher Staat*, 1. Auflage, 1978, p. 18

<sup>11</sup> Böckenförde, a.g.e., p. 21

<sup>12</sup> Garditz, *ibid*, p. 175.-176.

<sup>13</sup> Garditz, *ibid*, p. 176

In laicism, then, the hypothesis<sup>14</sup> of the fundamental right to freedom in the history of modern human rights remains. A secular state does not require its citizens to have a uniform mentality. The state only demands outward observance of legal norms; ‘this includes unconditionally protecting the secular legal order even in private matters.

However, the secular state does not interfere with the conscience of the individual, does not demand a positive opinion towards the principles of the society, and does not want to be the faith magnet of the secular religion. Precisely by this self-limitation, the mortal God is undoubtedly associated with a dark cataclysmic prophecy that states that Leviathan will be disposed of in favour of private faith, by the separation of the outer from the inner—that is, the separation of faith from confession—spiritually directed from the inside out. The main common fear that stands in the way of this individual freedom and is perceived only as a weak point is that the modern state should ultimately reject its laicism as such, that is, it will re-equip the state with theological elements.<sup>15</sup>

In our opinion, in this respect, the state should neither rely on an external religious belief nor attempt to produce an internally institutional religion in order to get rid of such fears and hallucinations. The modern state must not undergo any internal or external mystification. After all, the modern state that emerged with such a claim and action gains a totalitarian character, the society imposed by internal or external religious belief moves away from welfare, thus accelerating the collapse of the state. The modern libertarian state gains institutional stability to the extent that it moves away from the phenomenon that can arise from these two directions.

Consequently, laicism constitutes a subject matter of the meaning of modern constitutional law theory. Therefore, the state, which is an important operator of modern constitutional law, should abandon the formulas of order based on religious belief and put forward only laicism in order to fulfil its principled and institutional demands regarding freedom and democracy. As a single formal or material maxim for the cultural field is not possible in a liberal, democratic and secular state, it is inevitable that value-based truth becomes privatized and therefore relative.

### **C. Democratic State of Law and Laicism**

The principle of laicism rarely presents a concrete normative appearance in constitutions. However, despite this, libertarian constitutions, on the one

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<sup>14</sup> Georg Jellinek, *Die Erklärung de Menschen –und Bürgerrechte*, 4. Auflage, 1927, p. 46

<sup>15</sup> Garditz, *ibid*, p. 177

hand, contain fundamental rights and freedoms, and on the other hand, they comply with democracy in principle and institutionally in the organization of the state, so they are a priori secular.

The democratic state of law guarantees religious freedom as a conditioning and as such, directs it to the individual or cumulative social sphere in the fulfilment of the requirements of religiousness. Thus, religious beliefs cease to be a code that defines the state. Democracy, on the other hand, exists as the guarantor and operator of individual freedom in the sovereign organization of the state,<sup>16</sup> as Kelsen stated.<sup>17</sup>

Indeed, democracy presupposes the existence and, accordingly, diversity of competing personal or social relative truths. In this respect, democracy maintains its neutrality against the religious as an operator of current and potential views. As a matter of fact, the ECHR states the following in one of its decisions:<sup>18</sup> *“The inseparable pluralism from democratic society, which has been won at great cost for centuries, depends on it. This freedom includes, inter alia, the freedom to hold religious beliefs and to practice or not practice a religion.”*

In this respect, pluralism, tolerance and open-mindedness are the hallmarks of a “democratic society”. Although individual interests must at times be subordinated to the interests of a group, democracy does not merely mean that the views of the majority must always prevail; a balance must be struck that ensures fair and appropriate treatment of minority people and prevents any form of exploitation. Pluralism and democracy must also be based on dialogue and a spirit of reconciliation, which rightly necessitates various concessions on behalf of individuals or groups of individuals in order to preserve and advance the ideals and values of a democratic society.

As such, democracy does not necessarily reveal an objective and independent truth. This also applies to the religious. Here, it takes a supra-religious position only in terms of the legitimacy foundations on which political sovereignty is based. Democracy cannot be a priori conditioned by all other supra-positive values, including the religion. However, there may still be tensions and conflicts between the religious and the secular democracy, which demands a supra-sensuous truth. In this respect, the epistemology and practice of democracy often confronts the ontology of the

<sup>16</sup> Hans Kelsen, *Vom Wesen und Wert der Demokratie*, 2. Auflage, 1929, p. 4

<sup>17</sup> See. Hans Kelsen, *Democracy: Its Nature and Value*, Dost Yayinevi, Ankara 2019, p. 89 etc.

<sup>18</sup> *Leyla Şahin v. Turkey Decision*, p. 104  
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religious. This is due to the fact that the religious one transcends the social and includes political and legal demands and these are put forward.

One of the most fundamental characteristic features of a secular constitution is the positive ontology and application ability of law. However, the principle of laicism does not exclude the existence of supra-positive legal principles in modern law. Nevertheless, thanks to the principle of laicism, the constitution and the constitutional state, guarantee not to be conditioned both formally and materially by the religious, that is, by a supreme and timeless validity.

At this point, a constitution based on the principle of laicism answers the question of “who will judge” (*Quis iudicabit*), which points to an important tension between the state and religious institutions, as positive law. Laicism, as an invention in modern law, defends positivity since it has brought law out of the shadow of trans-commodity bases and liberates the judiciary as well as the legislative and executive powers from the state powers. This autonomy and positivity of law also lays the groundwork for a state of law that develops on a worldly basis. As such, the democratic state of law is not immune from the material content of the law constructed in the context of the positivity of law and assumes secularism both in form and in content.

For this reason, the double-sided laicism of positive law requires as much freedom as possible in terms of legal theory. Beyond any doubt, there may be some privileged and culturally religious conditions of law and state. The laicism of positive law, however, is immune from normatively entrenched religious value judgements in the process of law making or interpretation. In this respect, although Schmitt<sup>19</sup> states that the power (*pouvoir constituant*) constituting the constitution makes a political decision based on moral, religious, philosophical and state theory priorities and says that he is not legally bound by it, a secular constitution in modern law is by no means an idealized one. It does not include commitment to the worldview, to the religious

In conclusion, let us cite the full version of Kelsen's evaluation:<sup>20</sup> *“The actual big problem is as follows: Can one know the facts and learn absolute values? The opposition regarding the world and life philosophies, including the opposition of democracy and autocracy, depends on this question: Belief in the existence of absolute truths and values reveals the foundations of a metaphysical and especially mystical-religious understanding of the world.*

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<sup>19</sup> Carl Schmitt, *Verfassungslehre*, 7. Auflage, 1989, p. 75

<sup>20</sup> Kelsen, *Democracy*, p. 91

*The denial of this principle, the thought that human knowledge can only reach relative truths and values, and that every truth and value - like the individual who finds them - should be ready to step aside in the face of other truths and values at any moment leads to the world understanding of criticism and positivism. By criticality and positivism here, it should be understood the direction followed by philosophy and science, which starts from the positive, that is, from the given, perceptible, ever-changing and ever-changing experience, that is, rejecting the idea of an absolute transcendent to this experience. This opposition of world philosophies coincides with the opposition in philosophies of values and especially in basic political attitudes. On the one hand, there is a connection between an absolutist-metaphysical understanding of the world and an attitude in favour of autocracy, and on the other hand, between an attitude in favour of democracy and a critical-relativistic understanding of the world.”*

#### **D. Distinct Characteristic of a Secular Constitutional State**

In fact, although there is an understanding and approach as to what kind of characteristics a secular state has in the legal sense, let us state that there is no standard normative constitutional engineering in this regard. However, some generally accepted features are included in the doctrine, based on the etymology of the concept of laicism, its emergence and the constitutions of the countries listed in the secular category. It is useful to present these features in the form of two components.<sup>21</sup>

##### **1. The Principle of Institutional Separation of Religion- State Affairs**

Here, the prerequisite for the realization of the state's impartiality towards religions and beliefs is the separation of state and religion relations, which can be described as institutional laicism. As a matter of fact, as the Constitutional Court stated,<sup>22</sup> laicism is a constitutional principle that ensures the impartiality of the state against religions and beliefs, and determines the legal position, duties, powers and boundaries of the state against religions and beliefs. A secular state is a state that does not have an official religion, maintains an equal distance from religions and beliefs, establishes a legal order in which individuals can freely learn and live their religious beliefs in peace, and guarantees freedom of religion and conscience. Apart from being a requirement of freedom of religion and

<sup>21</sup> For more extensive discussions, see. Ömer Anayurt, Anayasa Hukuku Genel Kısım, Seçkin Yayınları, 4<sup>th</sup> Edition, Ankara 2021, p. 353.-359.

<sup>22</sup> E. 2012/65, K. 2012/128, K.T. 20.9.2012.

conscience, the separation of state and religion is also necessary for the protection of religion from political interference and for maintaining its independence.

At this point, the following elements are essential in order to meet this requirement:

- a. There should be no official state religion. Although the importance of this feature for a secular state is not disputed, let's say that it is not used as a basic indicator in determining this feature of states. As a matter of fact, as we will mention below, there are states that are in the category of secular states, although they have an official state religion. Therefore, it is necessary to know whether religion is a cultural religion or whether it has an impact on the source and use of political power.
- b. The state should not discriminate positively or negatively against a certain religion or sect group just for this reason. In this respect, it is imperative that public authorities should not prefer any religion over the other and should not consider one superior to the other.
- c. State and religious institutions should be separated from each other.
- d. The state should not define religion and belief and should not grant religious superiority or privileged status to anyone.
- e. State and the law should not be regulated according to religious rules and references. In this respect, the law should have a positive identity.
- f. The exercise and framework of rights and freedoms should not be based on religious rules.

## **2. Guarantor Principle of the Religious Freedom**

A secular constitutional state is not just about the institutional separation of religion and state from each other. Undoubtedly, this principle is necessary; but it is not enough. Because the freedom of religion of individuals should also be guaranteed by the state. In a country where this guarantee cannot be provided, it is not possible to talk about the secular nature of the state. For example, in a secularist state that is based on anti-religion or that sees religion entirely as conscientiousness and cuts off all ties from public life, it is naturally possible to talk about the separation of religion and state institutions. However, we can say that such states cannot be described as secular states. Therefore, the fact that the state guarantees freedom of religion is an element that distinguishes the secular state from other state orders.

In this context, laicism imposes negative and positive obligations on the state. The negative obligation requires the state not to adopt a religion or belief officially and not to interfere with the freedom of religion and conscience of individuals unless there are compelling reasons. The positive obligation, on the other hand, brings with it the duty of the state to remove the obstacles to the freedom of religion and conscience, to provide a suitable environment in which people can live as they believe, and to provide the necessary opportunities for this.

On the other hand, two dimensions of freedom of religion may be mentioned. One of them is freedom of belief or conscience, and the other is the existence of freedom of worship as a requirement of belief. In this context, the European Court of Human Rights states:<sup>23</sup> *"As guaranteed in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. In its religious dimension, it is one of the most vital elements that make up believers' identity and understanding of life, but it is also a valuable asset to atheists, agnostics, sceptics, and the apathetic. The pluralism inseparable from democratic society, which has been won at great cost for centuries, depends on it. While freedom of religion is primarily a matter of personal conscience, it also implies the freedom to "profess one's religion," among others. Witnessing in words and deeds depends on the existence of religious convictions. Pursuant to article 9, the freedom to manifest one's religion can be asserted not only in community, "publicly" and in the circle of those with whom one shares his beliefs, but also "in solitude" and "in private"; it also includes, in principle, the right to try to persuade one's neighbour, for example by "teaching", otherwise the "freedom to change religion or belief" guaranteed in Article 9 would probably make no sense."*

As the European Court of Human Rights has emphasized in its various decisions, the state is subject to positive obligations on the one hand and negative obligations on the other, as in other rights and freedoms, in the face of freedom of religion and belief. These two obligations essentially point to the legal position of the secular state. In this context, the state cannot formally identify a particular person or belief; cannot reference it in its operations and actions. This is the sine qua non of the negative obligation of the state. On the other hand, the obligation to equip individuals with the means and means to live the necessities of their beliefs constitutes their positive obligations.

<sup>23</sup> Kokkinakis v. Greece Decision, p. 31  
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## **E. A Review on Turkey**

### **1. Religion-State Affairs in the Constitutions of the European Union Member States**

Let's say right away that there is no standard model adopted by the European Constitutions on the regulation of religion and state affairs.<sup>24</sup> Some constitutions include the official religion or established religion model, other constitutions stipulate the separation of religion and state. The only constitution in the second group that directly states that the state is "secular" is the French Constitution.

The well-known religious model has been adopted by the constitutions of Greece, Iceland, Denmark and Finland. According to the Greek Constitution (art. 3), the "predominant religion" in Greece is the Eastern Orthodox Church. The same article stated that it is among the duties of the Autonomous Church of Greece and the Great Church in Istanbul to ensure that the text of the Bible is preserved without being modified. Although the Greek Constitution also states that all known religions are free (art. 13), it does not include any guarantees regarding the organization of other religious communities. Again, although it is stated that freedom of religion and conscience is "inviolable", proselytism is prohibited (art. 13).

However, we can say that other examples of the recognized religion model are more pluralistic than the Greek Constitution. As a matter of fact, the Constitution of Iceland (art. 62) stipulates that the Evangelical Lutheran Church is the state church of Iceland and that it will be supported and protected by the state in this capacity. It is also stated that this provision can be changed by law, but it must be submitted to a public vote (art. 79). However, the existence of the state church does not prevent the establishment of other religious communities (art. 63) . Pursuant to Article 64 of the Constitution, religious differences cannot be a reason for treating people differently. But everyone has to pay a tax to finance their religion.

The Evangelical Lutheran Church is the official church of Denmark (art. 4). The status of the church is determined by law (art. 66). The King of Denmark must be a member of this church (art. 6). In addition, members of faith other than the official church may also establish their own religious institutions (art. 67), the rules regarding these are specified in a separate law

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<sup>24</sup> For the basis of the information provided hereunder, see. Mustafa Erdoğan, "Avrupa Birliği Anayasalarında Devletin Temel Nitelikleri", *Liberal Düşünce Dergisi*, Y. 6, S. 23, Yaz 2001, 29-35, p. 32.-34.

(art. 69). No one can be compelled to contribute to an institution other than his own religious institution (art. 68).

Finland is also one of the examples of the recognized religion model. As a matter of fact, while Article 11 of the Finnish Constitution guarantees the right of everyone to be a member of a religious community as an element of freedom of religion and conscience, it also states that the provisions regarding the organization and management of the Evangelical Lutheran Church will be indicated in the Church Law in Article 76.

However, there are more examples of the "separatist" model: France, Italy, Spain, Belgium, Portugal, Luxembourg, Germany.

Among these, Article 2 of the French Constitution clearly defines the state as "secular" and states that it respects all faiths.

The Italian Constitution stipulates the separation of the state and the church in Article 7, and the equality of all denominations before the law in Article 8.

The Spanish Constitution (art. 16) states that no religion is the state religion, and all religious beliefs are guaranteed. It is also envisaged that the public authorities will take into account the religious beliefs of the Spanish community, in this regard, they will maintain cooperative relations with the Catholic Church and other denominations.

The Portuguese Constitution also states that churches and religious communities are separate from the State and can freely organize and perform their own rites and worship (art. 41/4).

Pursuant to the Separatist Belgian Constitution (art. 44), the state will respect religious belief, but will not support any religion; each religion or sect will have the right to manage its own affairs, acquire and dispose of property and establish institutions for religious or charitable purposes. In addition, the state will not seize the property of religions or sects or educational institutions, except when it is necessary for the public interest and payment is made.

According to the Luxembourg Constitution (art. 22), the state's intervention in the administration of religious affairs and the rules on the relations between Church and State are subject to agreements that must be approved by the Chamber of Deputies.

The Federal Constitution of Germany states that Articles 137 and 138 of the 1919 (Weimar) Constitution will apply to religion-state relations. According to the said article 137, there is no state church in Germany and religious institutions are free to organize without any restrictions. Every religious community has an equal right to regulate its affairs autonomously

without external interference. These institutions or communities shall have legal personality in accordance with the general provisions of the civil law. In addition to those that have existed so far, other religious communities can also be established if they apply. These communities and the associations they may form will be treated as public institutions. These institutions are authorized to impose taxes. Likewise, according to Article 137 of the Weimar Constitution, associations formed to spread a philosophical doctrine are also subject to the same status as religious communities. The Dutch and Swedish constitutions do not contain provisions regarding the official recognition of any religion or church.

Let's provide the relevant regulations in the constitutions of some countries in the form of a table.<sup>25</sup>

Constitution	Regulation	Article
Denmark	The Evangelical Lutheran Church is the traditional Church of Denmark and is supported by the State.	4
	The King must be a member of the Evangelical Lutheran Church.	6
	Citizens may establish all kinds of congregations for the purpose of worship, provided that nothing contrary to good morals and public order is taught or practised.	67
Greece	The Orthodox Church of the Nativity of Christ is the dominant religion in Greece. (...)	3
Norway	The Evangelical	.

<sup>25</sup> See. Anayurt, a.g.e., p. 360

	Lutheran Church is recognized as the Norwegian National Church and enjoys State support. All relations between the State and the Church are determined by law. The state supports other religious and philosophical communities in equal measure.	
Bulgaria	Religious institutions are separate from the State. The Eastern Orthodox Church is considered the traditional religion in the Republic of Bulgaria.	13/2 13/3
Iceland	The Evangelical Lutheran Church is the official church of the State of Iceland, and as such it is maintained and supported by the state.	62
Liechtenstein	The Roman Catholic Church is the State Church and as such enjoys the full protection of the State; other faiths are authorized to fulfil their creeds and participate in religious ceremonies to the extent that they are	37/2



	compatible with morality and public order.	
Malta	Malta's official religion is the Roman Catholic Apostolic Church.	2/1
Georgia	The State recognizes the extraordinary role of the Georgian Orthodox Church in the history of Georgia and its independence from the State, as well as freedom of belief and worship. The relationship between the Georgian State and the Georgian Orthodox Church is determined by a constitutional agreement in full compliance with the universally recognized principles and norms of international law in the field of human rights and freedoms.	8
Finland	The rules regarding the establishment and functioning of the Evangelical Lutheran Church are regulated by law.	76
Armenia	The Republic of Armenia recognizes the exceptional place and function of the Armenian Apostolic	18/1

	Holy Church as a national church in the spiritual life of the Armenian people, in the preservation of their national culture and identity.	
Vatican City State	Catholic religion is the official religion of the Vatican City State.	MONTH

## 2. An Alternative Secularism Proposal Specific to Turkey: Operational Laicism

Considering the principle of laicism, whose standard discussion and determinations we outlined above, in terms of Turkey, the question is: What does laicism mean politically and legally for Turkey? Considering that the religion of Islam is politically and legally productive and makes demands, the question becomes justified.

In this respect, our opinion consists of two intertwined propositions. First of all, we must transfer the principle of laicism to the normative application area. Thus, the modern state, conditioned by laicism, becomes an institution that is immune from religion but is a guarantor within the framework of the paradigm of compatibility with religion. This premise can openly accept both democracy and the religion of Islam. As a result, both the state and religion can be restructured in terms of modern law. We think that such a line of reasoning has its upsides.<sup>26</sup> Thanks to this argument, we predict that apart from the democratization of Muslims, the state can achieve democracy. Indeed, one of the reasons we attach importance to normative laicism is based on Turkey's anthropological history and understanding of society. Here, action is always kept above the intellectual. Thanks to laicism, society can realize itself politically and philosophically. We can call this the dynamic interaction provided by laicism.

Secondly, we need to question the concept and functioning of democracy. As it is known, a modern pluralistic understanding of democracy has not yet prevailed in Turkey. Therefore, when questions such

<sup>26</sup> For contrary opinion, see. Irfan Ahmad, "Democracy and Islam", içinde Toward Democratic Imaginaries, Ed. Seyla Benhabib ve Volker Kaul, Springer, Switzerland 2016, 125-136, p. 127

as which Islam are asked, we should also question Turkey's democratic understanding and direction. Here, the general question of whether Islam is compatible with democracy must be privatized for Turkey. The right question is: Is the understanding of Islam in Turkey compatible with democracy? We can say that recently, political Islam has become radicalized on the axis of polarization in Turkey, embodying its ideological form. As such, we see that Turkey's Islam has become alienated from the principles and institutions of democracy. This argument requires us to transcend methodological laicism. This makes operational laicism essential for Turkey.

So, it is helpful to raise the following question: Can democracy become religious if laicism is not adopted as an established political institution for Turkey?<sup>27</sup> Or can the religious belief reconcile with democratic institutions in Turkey? In our opinion, just like the Christian teachings, Islam has been badly attracted to worldly power and domination throughout its long history. In this respect, the rising political Islam in Turkey provides this proposition. Therefore, Turkey, without wasting much time; It should bring forward a proposal for a constitution that will strengthen its democratic character without cancelling religious belief, that is, without a rigid interpretation of laicism.

Religiosity, that is, religion subjected to ideological conditioning, is a multidimensional phenomenon. However, here we have to question the "legal-constitutional" position of religion rather than its social and political nature. The principle of laicism is a very important set of principles exported to Turkey in the West. The role of the principle of laicism in the construction of both the modern state and modern law in Turkey is undeniable. Indeed, internalizing the principle of laicism and putting it into practice with its rules and institutions is closely related to the development of law in Turkey.

The issue of freedom of religion or the existence of religious beliefs in Turkey is a political issue rather than a legal issue. So much so that we are in a position to determine the nature of the political regime from the way secularism is practiced with its institutions and rules. In this respect, the principle of laicism acts as a litmus paper.

Indeed, the loose attitude of the political regime towards freedom of religion, which goes beyond strict or constitutional limits, turns freedom

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<sup>27</sup> For a similar question, see. Fred Dallmayr, "Whither Democracy? Religion, Politics and Islam", içinde *Toward Democratic Imaginaries*, Ed. Seyla Benhabib ve Volker Kaul, Springer, Switzerland 2016, 149-160, p. 149

into a problem. Freedom of religion inevitably connects the nature of the regime in terms of the meaning that politics ascribes to the principle of laicism. In the current system, the meaning attributed to freedom of religion in Turkey is unfortunately not understood as a freedom issue, but as a means of political reckoning.

In other words, freedom of religion in Turkey is not specifically seen as a human right that is "depending on the personality of the person, indispensable, inviolable and inalienable". However, while freedom of religion is embodied as a right in the context of the principle of laicism, it is considered by political elites as a matter of political engineering and regime, regardless of colour.

The phenomenon of religion, especially religious beliefs in its ideological form, has the potential to transform law as well as social and political life. In the face of this potential of religion, it can be said that laicism in the sense of separating religion from the state will be dysfunctional in our country. Of course, it is obvious that laicism responds to an important need in terms of separating religion from the state; however, we believe that this alone is not sufficient.

Because laicism is an understanding that brings many principles as a modernization tool in our country. Indeed, the only guarantee of the separation of powers and pluralistic democracy brought about by constitutionalism, especially the rule of law, which aims to protect human dignity, has been laicism in our country.

At first, the principle may seem negative as it is. Namely, there may be many nuance points where believers may object to this principle. Believers may envision a social, political and even legal order woven with religious beliefs. However, we have to question what this desire corresponds to in a religiously divided society like Turkey. It would not be difficult to foresee that a social environment designed according to a belief will not remain as it is but will also have political and legal demands.

Based on all the above, we should say that religion sometimes appears as a power centre and sometimes as a power tool. It is essential in a democratic state of law that religion remains abstract from these functions. Otherwise, due to the nature of religion, religious anarchy may damage or even abolish all other rights and freedoms of the society. In this respect, the existence of the principle of laicism in constitutions is inevitable. Here, the principle of laicism is also important in terms of legal pluralism, that is, the recognition of various social identities and the establishment of a healthy ground in

Turkey in the context of the problem of legitimacy<sup>28</sup> of the relationship between religion and politics.

In conclusion, as Tanör and Yüzbaşıoğlu stated, laicism has a dimension specific to Turkey. Because laicism constitutes the essence of the foundation and existence philosophy of the Republic. This aspect can be expressed in the shortest way with the concept of “modernization”.<sup>29</sup> Therefore, laicism is of great importance for Turkey and from the very beginning it functions as a founding principle of the modern Republic, emphasizing an operational quality.

### Conclusion

The religion-state affair has not yet been resolved by modern law. At this point, religiosity, as an ideological form, wants to cease to be a social base and puts forward legal demands.

At this point, the following observations of Sajo are remarkable:<sup>30</sup> *“Constitutional regulations today are challenged by powerful new forms of religion, ostensibly to reconquer the public sphere. The strategies of these movements typically include Trojan horses designed to introduce religion into constitutional law, arguing that the takeover of a democratically achieved legislature with the aim of imposing divine order is not constitutionally suspect. The constitutionalism, presented in terms of the free practice of religion and pluralism, seems vulnerable to certain claims of strong religion. As a first step towards a more robust constitutional theory of secularism, it is necessary to review some of the inherent difficulties of the concept. Constitutionalism is based on the use of human reason and popular sovereignty. The first thought becomes the duty of giving public advice in law and denies the acceptability of divine causes; second, it precludes any source of law other than secular. A solid concept of secularism enlivened by these ideas can patrol the borders of the public arena.”*

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<sup>28</sup> Nader Hashemi, “Rethinking Religion and Political Legitimacy Across the Islam-West Divide”, içinde Toward Democratic Imaginaries, Ed. Seyla Benhabib ve Volker Kaul, Springer, Switzerland 2016, 161-170, p. 161

<sup>29</sup> Bülent Tanör ve Necmi Yüzbaşıoğlu, 1982 Anayasasına Göre Türk Anayasa Hukuku, Beta Yayınları, 19. Edition, İstanbul 2019, p. 106.

<sup>30</sup> Andreas Sajo, “Preliminaries to a Concept of Constitutional Secularism”, I-CON, C. 6, 2008, 605-629, p. 605

As Depenheuer points out,<sup>31</sup> the existential meaning of religious beliefs, the inclusive and unexceptional moderation of religious demands in the coexistence of humanity in the world, should be carefully considered in political matters. Reflecting the reality of religious beliefs as an eternal and inviolable divine order -according to the logic of religious reality- should be decisive in the world and for the world. Accordingly, what is religious cannot be wrong, and what is religiously wrong cannot be right in a worldly environment. As such, everything has a specific place, function and law in the world considered as the model of the divine order. In this understanding of thought, since there is imperativeness in God and his revelations in both the spiritual and worldly realms, it does not seem theoretically possible for the worldly to be contrary to the divine order.

The entire idea may be said to begin with assumptions and "fundamental motives" that are "religious" in nature, in the sense that people inevitably interpret their empirical reality and direct their thoughts and actions on the basis of a more or less conscious commitment. The success of any belief system depends on its ability to provide an acceptable explanation for fundamental questions of existence as well as a reasonable normative framework for human behaviour. Based on this view,<sup>32</sup> the modern distinction between sources of knowledge such as religion, science, philosophy, or ideology is simply an intellectual construct, devoid of any real ontological or epistemological significance.

Considering Turkey, we can put forward an opinion that the separatist and operational laicism model should be applied. Because this model aims to prevent the effects of state life on religion, to neutralize the state and to minimize its influence in this area. Thus, the adoption of John Locke's understanding of religious freedom based on the moral and rational autonomy of individuals comes into question.

So, as a result, there is a state-religion relationship as an important problem waiting for Turkey in the new constitution. In our opinion, the shadow of the religious on the formation and functioning of the state should be abandoned when considered in a secular and liberal spirit through public debate. We can undoubtedly say that the religious has a natural place in

<sup>31</sup> See. Otto Depenheuer, "State and Religion: Models Between Powers with Sovereignty Claim", Translation. İlyas Doğan, Gazi University Faculty of Law Journal, C. X, S. 1-2, 2006, 417-432, p. 420.-421.

<sup>32</sup> Jonatas E. M. Machado, "Freedom of Religion: A View From Europe", Roger Williams University Law Review, V. 10, N. 2, 2005, 451-535, p. 451  
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public deliberation.<sup>33</sup> However, what should be here is that the arguments built on religious themes do not dominate politics and the law in the whole mass.

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