



ISLAM, HUMAN RIGHTS AND SECULAR VALUES

EDITORS: AHMET YILDIZ & MURAT TUMAY

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About Authors

Dr. Andrzej Bisztyga is a lawyer, professor, and academic teacher in the Faculty of Law and Administration, at the University of Silesia and in Katowice School of Economics, Poland. His research interests are in the areas of constitutional law, and human rights law. He is the author of some books and numerous articles in Polish, Russian and English. He has been the Editor-in-chief of *Humanistic Scientific Fascicles – Human Rights* since 1994. He is also a member of Human Rights Advisory Council of the Foreign Minister 2002-2004, a Parliamentary Foreign Affairs Committee Advisor 2003-2004, and a Parliamentary Expert on the Senate Legislative Committee (since 2008). He has been the author of opinions and responsible for expert appraisements in the Prime Minister's Office, and Minister of Justice of the Republic of Poland, as well as the Foreign Office's Department of Strategy and Planning of Politics, the Parliamentary (Sejm) Legislative Committee, and the "Solidarity" Miners Trade Union. Finally, he is a commentator on constitutional issues in the *Gazeta Prawna* newspaper.

Prof. Dr. Mustafa Erdoğan is Professor of Constitutional Law and the Dean of the Law Faculty at İstanbul Ticaret University. He previously worked at the Department of Political Science and Public Administration at Hacettepe University. He has published more than ten books in the field of constitutional law and political theory. The selected ones are: *Constitutionalism, Parliamentarism and Military* (1993), *Liberal Society - Liberal Liberal Politics* (1998), *Democracy Secularism Official Ideology* (2000), *Constitution and Freedom* (2002), *Constitutions and Politics in Turkey* (2003), *Constitutional Democracy* (2005), *Enlightenment Modernity and Liberalism* (2006), *Constitutional Law* (2007).

Dr. Michaela Moravčíková is Director of the Institute for State-Church Relations in Slovak Republic. She deals with problems of human rights, problems of religious liberty, financing churches and religious societies, development of state-church relations in the Slovak Republic and world-wide.

Eugenia Relaño Pastor is Doctor in Law and Graduated (BA) in Political Sciences and in Sociology from University of Granada. Professor of Law and Religion in University Complutense (Madrid). Currently, he is a legal advisor to the Spanish Ombudsman (High Commissioner of Human Rights) at the Immigration and Foreign Affairs Department. She has been selected as legal advisor trainer for the strengthening of Kazakhstan and Armenia Ombudsman. She has undertaken PHD research and postdoctoral research in different universities and institutions, among them: University of Ottawa (Canada), University of California at Berkeley (USA), Norwegian Institute for Human Rights (Norway), Harvard Law School (USA), Institute of Comparative Law and European Law, Oxford University (UK). Her main publications pertain to the areas of religious minorities, international religious freedom, multiculturalism and immigration. She is member of ODIHR (OSCE's Office for Democratic Institutions and Human Rights) Panel of Experts on Freedom of Religion or Belief and member of Minority Research Network (MRN).

Prof. Dr. Gerhard Robbers is one of the most distinguished experts on State - Church relations. Since 1989 he is Professor for Public Law at the University of Trier. He is Director of the Institute for European Constitutional Law and Director of the Institute for Legal Policy. He serves as judge at the Administrative Court of Appeals Rhineland-Palatinate. His main areas of work are the law on religion, constitutional law and international public law. He is advisor to several national governments and international organizations.

Assoc. Prof. Dr. Bilal Sambur currently works at Yıldırım Beyazıt University in Ankara. He is specialised in philosophy and psychology of religion. He received his Ph.D from Birmingham University in UK. Some of his selected publications are: "Is Interfaith Prayer Possible? A Muslim View," *World Faith Encounters* 23, 1999: 25-31; "Islam in Today's Global City," *Hamdard Islamicus* no. 3, 2000: 23-31; "Prayer, Dialogue, and Human Unity," *Beyond Boundaries* 1(2), 2000: 5-6; "A Humanist Framework for Islamic Doctrine and Practice," *Islam and The Modern Age* (31)2, 2000: 21-39; "Al-Ghazali on Spiritualism and Ritualism," *Islamic Quarterly* 44(4), 2000: 565-573; "Forgiveness in Islam," *Islam and Modern Age* 32(1), 2001: 55-68; "From the Dichotomy of Spiritualism/Ritualism to the Dichotomy of Insider/Outsider," in M. Stringer and E. Warwick, (Eds.), *Insider-Outsider Problem in Religious Studies*, Birmingham: the University of Birmingham, 2001: 20-35.

Assoc. Prof. Dr. Haluk Songür (LLB, MA, PhD) works at the Faculty of Law, Süleyman Demirel University, Isparta/Turkey. From 1995-2001, he studied for a PhD in Islamic Law, at the University of Süleyman Demirel University, Social Sciences Institute, Isparta, Turkey. In 2009 he was Associate Professor of

Islamic Law at the University of Suleyman Demirel. Currently he is a Visiting Research Fellow at Tirinity University College, Carmarthen, UK. He is the author of *Crime and Its Theoretical Basis in Comparative Law: Objectives of Punishment in Islamic Criminal Law*, Soğüt Yay, Istanbul, 2009. (in Turkish), and (2008), *Payment in Inflationist Period in Islamic Law*, Isparta. (in Turkish). His main areas of research include, Islamic Law, Islamic Jurisprudence, Early Development of Islamic Law, Crime and Punishment in Islamic Law, Human Rights and Democracy in Islam, Women Rights in Islam, and Comparative Law.

Prof. Javier Martínez-Torrón is professor of Law, Complutense University of Madrid (Spain), Member of the OSCE/ODIHR Advisory Council of Experts on Freedom of Religion or Belief, Vice-President of the Section of Canon Law and Church-State Relations of the Spanish Royal Academy of Jurisprudence and Legislation. This paper has been written within the context of the research projects DER2008-05283, of the Spanish Ministry of Education, and S2007/HUM-0403, of the Autonomous Community of Madrid; and within the research group 940091 de la Universidad Complutense

Dr. Murat Tümay graduated from Ankara University Law Faculty and completed his LL.M. on International Human Rights Law at Essex University. Then he received his PhD from Leicester University. He worked as Research Fellow at Leicester University, Durham University and Glasgow University. In 2005 he worked as a Trainee Lawyer at European Court of Human Rights. He is currently working at Selçuk University Law Faculty as Assistant Professor of General Public Law. His research interests are European Convention on Human Rights Case Law, Constitutional Law, Fundamental Rights and their restrictions and state, individual and democracy.

Prof. Marco Ventura is professor of Law & Religion, Università degli Studi di Siena, Siena, Italy. Professor Ventura teaches courses in canon law, ecclesiastical law, and law and religion at the University of Siena in Siena, Italy. He studied at the Universities of Pavia and Perugia in Italy, and at the University of Strasbourg in France, where he earned his doctorate in law. He has held research or faculty appointments at the Universities of Bari, Foggia, and Perugia, and since 2001 has been professore ordinario at the University of Siena. He visited the University College of London, the University of Oxford and held the International Chair at the Université Libre de Bruxelles. Professor Ventura has published numerous articles in English, French, and Italian, including three books.

Assoc. Prof. Dr. Ahmet Yıldız received his bachelors degree in Political Science and International Relations Department from Bogazici University. He got

his Masters degree at Political Science Department of Bilkent University in 1991 and received his Ph.D degree from same Department in 1998. In 2006 he became an Ass. Professor in the field of Political Thoughts. He currently works as Director of Research Centre at the Grand National Assembly of Turkey. "To whom who may say I am happy to be a Turk! Establishment of Ethno-Secular National Identity in Turkey (1918-1938) (2001)" and "Power is not Everything" (2004) are his two published books. His other selected publications include: "Turkey," Jørgen S. Nielsen (ed.), *Yearbook of Muslims in Europe*. Leiden: Brill, 2009, pp. 351-361; "Three styles Politics of Kurdish National Movement: Kemalism, Islamism and the Left," *Political Thought in Modern Turkey*, C: 9, Istanbul: İletişim Yayınları, 2009, pp. 545-558; "Problem- atizing the Intellectual and Political Vestiges: From 'Welfare' to 'Justice and Development', in *Secular and Islamic Politics in Turkey: The Making of Justice and Development Party*, ed. Ümit Cizre, Oxon: Routledge, 2008, pp. 41-61; "Transformation of Islamic Thought in Turkey since 1950," in *Blackwell Companion to Contemporary Islamic Thought*, USA:Blackwell Publishing, 2006, pp. 39-54; and "Politico-Religious Discourse of Political Islam in Turkey: The Parties of National Outlook," *Muslim World*, Vol:93, No:2, Spring 2003, pp. 187-210.

THE MAIN AIM OF THIS COLLECTION of essays is to contribute to the ongoing debate in Turkey and in some EU member states about the challenge of reconciling Islamic and secular values in the public realm. What can Turkey learn from the European experience and what insight can she provide for the EU is the first starting point. In attaining this goal, this work brings together various scholars from all over Europe, who reflect on whether there are any lessons for Turkey from Europe, and vice versa, in relation to the accommodation of Islamic beliefs and secular values in the 21st century. The contributors to this volume are selected from a variety of different backgrounds (e.g., academic and non-governmental) and represent a varied range of traditions (e.g., law, theology, Islamic studies, philosophy) for exploring the relationship between Islamic and secular values in post 9/11 Europe signaling the rise of latent and manifest Islamophobia.

Introduction

Ahmet Yıldız

The book consists, essentially, of revised papers presented in the workshop entitled “East Meets West: Islam, Human Rights and Secular Values” under the auspices of the European Science Foundation (ESF), held in Istanbul in 6 -8 November 2009. The volume also includes some new contributions not addressed in the workshop. The papers fall under three different headings: first, Human Rights, Sharia and Islam; second, Europe, Citizenship and Islam; and third, Europe’s institutions and the protection of religion and secularism in the 21st century.

RELEVANCE OF THE TOPIC “ISLAM, HUMAN RIGHTS AND SECULAR VALUES”

One of the most controversial and emotive issues today in Europe is the way in which national legal systems deal with matters of cultural diversity. From Islamic minarets in Switzerland to headscarf issue in France, the relationship between secularism and Islam in the public sphere remains controversial. Yet, within Europe, it is hard to think of a polity where such issues generate more controversy than in Turkey. For example, in Turkey, a Muslim majority country, the practice of the secularist interpretation of the constitution imposes curbs on the display of the Islamic headscarf by public employees and students. What is more, during the so-called coup by memorandum of February 28, the Constitutional Court in Turkey dissolved a lawfully elected political party, The Welfare Party (which was at the time governing the country), on the basis that this party’s programme and political agenda was incompatible with Turkey’s secular constitution. The military and the higher judiciary, in their joint venture to tame Islamic political visibility

and participation, brought another closure case against the ruling Justice and Development Party and took such measures as forbidding the Quranic education for children under the age of 12. With the deepening of democracy in Turkey however, the issue of Islam and secularism has entered a new phase of co-habitation. Given all this, in terms of the challenges of reconciling secular international human rights norms with religious values in general and the tenets of Islam in particular, Turkey seems to be a highly appropriate venue.

ORGANISATION OF THE BOOK

In the first article of the chapter on Human Rights, Sharia, and Islam, Prof. Mustafa Erdoğan, a reknown liberal intellectual, discusses the relationship between liberalism and Islam from the liberal-democratic vantage point. He argues that the ability of Turkish polity to live together in a peaceful way is closely related to the grasp of this issue. This fact cannot be ignored neither by liberal democrats nor Islamic-minded intellectuals. Thus, the concepts of “liberal Islam” and “Islamic liberalism” may be placed to the core of the issue.

Prof. Erdoğan suggests that contrary to the prevailing assumption in Turkey that a reconciliation between Islam and liberal democracy is not possible, a liberal interpretation of Islam is both possible and necessary. Political liberalisation in the Middle East requires the emergence of a liberal Islam. The liberal Islam can be justified on the grounds of both liberal premises and Islamic injunctions. There is no inherent contradiction between being “liberal” and “religious” simultaneously. Prof. Erdoğan concludes his argumentation confidently

that the historical experience of the Turkish society provides a suitable basis for a peaceful coexistence between liberalism and Islam, which may contribute to the deepening of democracy in Turkey.

Dr. Bilal Sambur reflects upon the same theme of the possibility and practical manifestations of conciliation between liberal democracy and Islam by fathoming the Islamic teachings, and their liberally inspired, democratic interpretations. In his article “Islam and Freedom,” he argues that Islam as a source of political legitimacy has been misused to justify all sorts of antidemocratic practices in the Muslim world. Sambur claims that liberty and human dignity are among the main pillars of Islam. He explicates the relationship between Islam and many contentious issues, inter alia, freedom, individual freedom, freedom of expression, women rights, minority rights etc. He concludes that Islam is compatible with democracy and the freedoms the democratic society entails.

In a similar vein, Dr. Murat Tumay explores the compatibility of Islam with democracy and human rights. Islam might seem incompatible with either liberalism, civil society, and hence democracy, especially when we look at social, cultural and political structure in some Muslim countries. Although there are unprogressive Muslim scholars who have difficulty in finding the compatibility of Democracy and Islam, it is important to realise a tradition in Islamic scholarship that favors democracy. In order to understand the Islamic law’s positioning regarding democracy, it would be useful to discuss the matter in detail before labelling Islam as undemocratic. The state, in an Islamic discourse, cannot even be termed Islamic, specifically because the Quran contains no reference to an Is-

lamic state with a particular kind of structure or ideology. Islam and democracy are not only compatible, their association is inevitable. There are a number of very important concepts that could be regarded as foundations for an Islamic concept of democracy. The Islamic law binds all believers including the rulers. Some writers incline to ignore the crucial distinction between Islam and Islamism, or Islam as a religion and tradition, and Islamist ideology. Given the availability of interpretations, Dr. Tümay concludes that Islam is not incompatible with democracy and Human Rights.

In his contribution to this part, Dr. Haluk Songur looks at the relationship between human rights and Islam by comparing the farewell address of the Islamic Prophet and the Magna Carta. Dr. Songur explores the thoughts on human rights comparatively in western and Islamic worlds. He critically evaluates different approaches to human rights. He uses the method of historical survey and searches for trace of human rights issues in historical texts of the western and Muslim world. Dr. Songür points out to the methodological problems of these approaches. Two selected texts with regards to human rights, the Farewell Address of the Prophet and Magna Carta of the British -as claimed to be the first documents of human rights in history- are compared to. Upon the deductions he draw from this comparison, Dr. Songür suggests that every historical concept and document must be understood and analysed within its contextual time and space, otherwise it will be inevitable to draw anachronistic conclusions.

The second chapter deals with the issue of Europe, Citizenship and Islam. Dr. Andrzej Bisztyga in his paper “Polish Tatars (Muslims) – An Example of Successful Co-Existence of Two

Nations and Two Religions,” points at the difference between the Muslim populations in Poland and in other European countries. In most of the European countries the Muslim population is composed of migrations and/or domestic conversions. However, in Poland the Muslims are indigenous Polish Tatars. Dr. Bisztyga in his paper finally covers the contribution of Polish Tatars to Poland history and their contemporary legal status.

In his contribution in “Islam in the Public Sphere,” Prof. Gerhard Robbers expresses that Islam in public life is a rather new phenomenon in most of the European countries. It faces long standing traditions in the relationship of religion and the secular sphere in a great variety of countries. Some states have integrated Islam for long, based on special developments of history; this is the case e. g. for Austria, where a substantial Muslim minority has been present since the times of the Ottoman-Turkish expansion into central Europe in the 15th-17th centuries. Other countries such as Germany face substantial presence of Islam as a completely new development. Further complexities result from the differences of state and religion relationships in the European states. Nevertheless, some common features have emerged in the challenges and the approaches in the field of Muslim presence in Europe.

Religious communities in Germany form an integral part of the general political system. On the whole, they are accepted as a factor in the democratic process, and they have accepted democracy as the best option to structure the political system. In election campaigns, religious communities usually do not take sides for specific political parties or candidates; they do, however, call for active participation in the elections.

In general, people are free to wear religious clothing or symbols. The headscarf as a religious garment is not prohibited nor is the burqa. Students in public schools and universities are free to wear the headscarf or other religious symbols. However, covering of the whole face in school is not permitted for educational reasons. An employer must accept the right of a Muslim woman employee working, for example, as a sales person in a perfume shop, to wear the Muslim headscarf. Following intense public debate, a number of Länder (Baden-Württemberg, Hessen, Bremen, Berlin, Lower Saxony, Bavaria, Saarland, North Rhine-Westphalia) have introduced specific laws to prohibit teachers and other public officials from wearing specific religious symbols.

Prof. Robbers states that Muslim associations have begun to play a role in German politics. The most important of these associations is the Islam Conference, which was created by the Federal Minister of the Interior. The Conference is a platform to discuss and develop the integration of Muslims into German society. The Islam Conference has 30 permanent participants, 15 of whom are representatives of the German government and 15 of whom are representatives of Muslims living in Germany. In conclusion, Prof. Robbers argues that Islam should be given the possibility to be seen in public for an opportunity of interaction and knowing each other.

The issue of “Church-State Relations and Islam” is addressed by Prof. Marco Ventura. Prof. Ventura looks at the link between Islam and the transformation of relationship between churches and states in Europe. Contemporary Europe is facing two simultaneous changes: the first is the transformation

of European society into a multicultural society; and the second, the transformation of the interaction between states and churches, between religion, society and the law. The two changes are tightly interlinked and Islam is quintessential to both. He argues that, with regard to the relationships between churches and states, the issue is twofold. Firstly, Islam as a religious law challenges the understanding of the law of the land as the predominant law. Secondly, Islam as a universal bond challenges the understanding of the law of the land as the domestic law.

Prof. Ventura looks at the threefold role played by Islam in the general picture. First of all, Islam *amplifies* the tensions and the contradictions already existing in the system. Secondly, Islam *catalyses* the tensions and contradictions through a sort of scapegoat effect. For secularists, Islam is the worst example of religious backwardness and bigotry. Islam enables secularists not to look at their own bigotry. For the pro-religion front, Islam is the worst example of an irrational, aggressive, pre-modern religion. According to Ventura, defensive approach of Muslim communities, the financial tools in order to strengthen ties within the community, the rigidity with family matters, all forms of Muslim presence in western society become a reference for many in religion as well as in politics.

Prof. Ventura concludes that all over Europe, governments are tempted to enact restrictions or actually do enact restrictions specifically aimed at appeasing or controlling Muslims. Courts are inevitably activated to protect or attack the measures. Formal or informal Islamic courts, supranational European courts, national courts—these will be the crucial actors, more and more in charge of “rendering unto Islam that which is Islam’s.”

In the same line of “State, church and Islam” relations, Michaela Moravčíková in her contribution entitled “State-Church Relations and Islam in the Slovak Republic,” gives an historical outline of state-church relations in Slovak Republic starting from the Methodius’s Nomocanon dating back to the period of the Great Moravian Empire. The absolutist state control of churches that started in 18th century gave way to a more relaxed relationship starting from 1848. Moravčíková details out an account of what happened in between 1848 and 1918. All the consecutive events she mentions culminated in emancipation of church from state. During the said period the relationship between church and state was one of equality and parity. After the Second World War and the re-establishment of the Czechoslovak Republic, the course of events headed towards suppression of the natural influence of churches in the public life, and the whole process culminated in coup d’état by the Communist Party in 1948. Hence, the current development of state-church relations was forcibly terminated, to be restored only after November 1989. Under the communist rule, the religious life – as well as churches themselves – was forcibly and systematically suppressed. This corresponded with the status of churches and religious societies, which existed as subordinate subjects without possibility to freely govern their cult or social and charitable activities. Moravčíková concludes her paper by touching upon the legal status of Muslims in Slovak Republic and some of the activities the Muslim countries such as Libya undertake in Slovak Republic.

The third and last part of the present volume problematizes European institutions and the protection of religion and secularism in 21th century. Dr. Ahmet Yıldız in his article on

the “Laicite as an issue in the process of Turkey’s accession to EU,” explores the issue of laicite (secularism) in the Turkish accession process to European Union (EU) membership. Yıldız argues that conceiving Turkish modernization in the form of westernization as a delicately engineered process designed for the full secularization of Turkish polity brings the question of the secularity of this process inevitably to the fore and become one of the main underlying matrice of the process. Accordingly, the conception and structurization of Turkish secularism along the EU line is a major challenge for Turkish democracy. As a corollary of still an ongoing discussion, when a value-based approach assumes precedence, it necessarily involves the question if Turkey is able to guarantee religious liberties, hence the democratic and pluralist capacity of the Turkish *laïcité*. This is in a sense the central question in the context of *laïcité* as an issue area in EU-Turkish relations. In terms of the eligibility of Turkey during the accession process, the way EU and member states deal with religion, if the EU has any obligatory mandate over the member states in this regard, the implications thereof for Islam-*laïcité* binary in Turkey, and overall impact of all this on the accession process are the main determinants.

Dr. Yıldız goes on arguing that to some, the increasing visibility of Islamic symbols and practices in Turkey is a corollary of the country’s current EU reform process, rather than a sign of Turkey’s deviation from its political and societal modernization process. For the hardline secularists, however, all the instances of Islamic visibility, from headscarf to the Quran courses and religiously inspired political organisations, are the indicators of the risk of the islamization of the state and

society, a situation that clearly justifies all non-democratic interventions, including the militarist ones, to the polity. EU reform process functions as a protective umbrella that needs to be removed. Thus, democratization of Turkish secularism that the reform process requires, for them, is the victory of Islamists over secularists. An European perspective, on the other hand sees Turkish EU reform process and a possible membership as the ultimate end a channel to make EU peace with Muslims and views this as a fundamental contribution to the EU identity formation in evolution.

Dr. Yıldız states in conclusion that, from the EU vantage point, democracy and secularism are intertwined and cannot be separated, hence the safeguarding of secularism in fact means to safeguard democracy, that is, if you protect democracy, this means that you protect secularism. To conceive secularism without democracy is sheer anachronism. Therefore, an authoritarian style secularism by definition is troublesome because secularism is not about inherently secularising the society by the state imposition; rather it is about securing the freedom of plurality for citizens in their belief systems in terms of convictions and practices they hold, could be made possible through the autonomous organisation of both state and society from each other. The nature of this autonomy and the extent of religious freedom are subject to a constant and vigorous debate both in EU member states and elsewhere. The accession process in this regard means the participation of Turkey in this debate via EU norms, and not only through the norms set by the founding ideology of the Republic, i.e., Kemalism. Democratization functions as a mechanism of normalisation of state-politics pattern of relations. Kemalist

ban on total confinement of religion to the conscious is not compatible with the notion of fundamental rights given the role of religion in politics in many member states. What can be problematized is the state control pressured on Islam, and not vice versa. The guardian of secularism is not the military in democratic societies and accordingly, the role of military in this regard has to be curbed. The accession process, with the exception of some decisions of ECHR regarding headscarf, religious education and religiously inspired political parties, is a clear testimony to this effect. Islam in Turkey is powerful enough not to resort to violent means to express herself, and too weak to control and dominate by itself the whole political process. Turkish polity is truly plural and Turkey's accession process to EU may become a proper channel of manifestation for the reflection of this.

The integration of religion including Islam into the secular socio-political framework is also the key question raised in the paper of Eugenia Relano Pastor entitled "Religious Pluralism in Liberal Democracies: Towards An Inclusive Citizenship". Pastor examines a two-fold framework from which most religious Muslim claims arise. He explicates the two-fold framework as follows: First, a multicultural and multireligious society wherein the duty of state authorities to legislate for the general good inevitably produces conflicts with individual beliefs. Second, a principle of neutrality which lies on an ideological and cultural meaning of secularization. In his paper he gives a detailed account of what multicultural citizenship means and the liberal understanding of religion. He concludes by vindicating a form of cross-cultural engagement

based on an ethic of “understanding” and respect over a minimal engagement and *modus vivendi*.

The last article by Prof. Javier Martinez Torron focuses on the issue of increasing concern about how to deal with Islam from a legal, political and cultural perspective. These concerns have been resulted from the ever increasing presence of Muslim immigrants in Europe which raises some doubts about how to promote a better – and often not easy – integration of immigrants and about how to sort out the ‘visibility’ of Islamic personal religious symbols within a public sphere frequently dominated by a secular approach – or by a predominantly Christian religious atmosphere. He provides an overview of the ‘Islamic cases’ decided by the ECHR in order to draw some general conclusions. In the last decade, the ECHR has decided a number of cases dealing with such important issues as religious autonomy, religious education in public schools and conflicts between freedom of expression and freedom of religion. Some of these cases, one way or other, concerns Islam or Islamic communities.

In a number of cases, Islam has received from the ECHR the same treatment as any other religion, and provided an interesting element of contrast with other cases, certainly controversial, in which the Court has been highly deferential towards certain limitations on fundamental freedoms by national authorities – particularly in Turkey and in France – that were allegedly justified by the protection of the constitutional principle of the secularism. There are, however, two exceptions to the equality of treatment of all religions by the ECHR. One could be described as Islam in Turkey or, to be more precise, certain expressions of Islamic faith – individual

or collective— that have been understood as a threat to secular democracy in a country whose population is almost one hundred per cent Muslim and is presented as the only example of Western-style liberal democracies in the Islamic world, thanks to the preservation of the secularity principle. Apparently, in some cases the attitude of the Court, and its interpretation of the State margin of appreciation to impose limitations on fundamental freedoms, have been influenced by the argument of the defence of the secular State and the rule of law against the dangerous stream of Muslim extremism.

In conclusion, Prof. Torron argues that, in any event, when we try to identify the main coordinates of the ECHR's case law with particular reference to restrictions imposed by national laws on the wearing of the Islamic headscarf, it is significant that, until now, almost all cases in which the Court has justified those restrictions, in Turkey or in France, refer to the school environment. Can we extrapolate these judicial principles or should we rather understand that the Court's endorsement of this notion of secularism is applicable exclusively to the realm of public education? It is still too soon to know it. At the moment, what is also significant is that this line of judicial thinking has risen numerous and strong critics among jurists of many countries and of diverse ideological positions.

This collection of essays problematizes the relationship between Islam, democracy, secular values and human rights. The contributions in this book do make a potentially significant contribution to the field of studying the relationship between Islam and human rights for it is important to show that there are points where all of the contributions seem to be in agree-

ment. From the essays in this volume it could be concluded that religion has a role to play in public life in contemporary Europe; that the issue of *Human Rights, Secularism, Democracy and Islam* is an important topic that should be further examined; and finally, in relation to the protection of human rights in Turkey, the European Court of Human Rights has tended to take an overly conservative approach to the protection of religious freedom.



PART 1

HUMAN RIGHTS, SHARIA, AND ISLAM

A. INTRODUCTION

THOUGH IN A LIMITED CIRCLE, such concepts as “liberal Islam” and “Islamic liberalism” have been used with a hesitant approach for some time. Whether these attempts reflect a meaningful search or not preoccupies the minds of at least some of us. If such a search has become a part of our agenda, this must not be only a matter of theoretical interest or intellectual curiosity. In fact, this is a serious interest stemming from a real need of Turkey. Because it is a country the majority of whose population is Muslim, what place Islam has within a social-political system having a liberal-democrat character is especially important for Turkey. Moreover, it looks like that the most decisive factor in the emergence of such a problem is the traditional prevalence among the intellectuals of the idea that the religion of Islam is not compatible with a liberal democratic order due to its -alleged- character.

1

Islam and Liberalism

Mustafa Erdoğan

Interestingly, in contemporary Turkey, besides those who consider attempts of seeking accommodation between Islam and liberalism as valuable and useful efforts, there are those who are not in favour of the idea that reconciliation between the two is possible at least at a minimum level; and the latter constitute the majority. Some of them cannot even put up with hearing such words as “liberal Islam,” etc. It might be said that those who have a tendency toward liberalism generally constitute the main group who are pleased to hear that a “liberal” interpretation of Islam is possible. The liberals in general consider such a possibility as a gain for “the condition of humanity,” and more specifically, they think that it will increase the possibility of deepening the libertarian/pluralist socio-political system in Turkey. As Leonard Binder points out rightly, it is highly unlikely that efforts of political liberalisation in the Middle East (and specifically in Turkey) will succeed unless a strong liberal Islam emerges.

On the other hand, the efforts of reconciling Islam with liberalism attract the reaction of various sections that are considerably different from each other in Turkey. Among the more prominent ones are the socialists who emerged in the path paved by “progressive” Kemalism and who feel an uneasiness even on mentioning Islam together with any “modern” thought. According to them, religion itself means “backwardness,” therefore, the humanity can be humanised only by freeing it from religion. Freeing oneself from religion as an effort of humanly exaltedness is possible only by entering the path of rationalist “enlightenment” and by holding fast to “science” and surrendering to its message. Those who think in this way actually do not like “liberalism” either; they find it risky to use

A. INTRODUCTION

MUSLIM WORLD LONGS FOR freedom deeply. Unfortunately, Muslim world is not a free world, it is a world, which has been dominated by various types of authoritarianism, militarism, totalitarianism and all other types of oppression. Muslim countries have the lowest scores of freedom in the globe.¹ Furthermore, Islam has been used to justify oppression, violence, totalitarianism and authoritarianism. The justification of authoritarianism, militarism and totalitarianism through Islam makes situation worse. As a result of authoritarian and totalitarian states in the Muslim world, some Western writers claim that Islam itself is incompatible with the institutions of free societies, such as the rule of law, constitutional democracy and free market economy.² In contrast to this claim, Islam does not support any type of oppression and totalitarian-

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Islam and Freedom

Bilal Sambur

ism, because the core values of Islam are human dignity and liberty. Human liberty is the natural outcome of human dignity. One cannot be considered without the other. Human dignity and liberty must be emphasized together as central human values. The transformation of Islam from a religion and a moral code into a foundation for fundamentalism and political oppression is the greatest obstacle, that prevents the development of human liberty in Muslim societies.

Authoritarian and totalitarian states, like Iran and Saudi Arabia, do not want the promotion of human liberties in the Muslim world. Muslims want to make freedom as the chief quality of their lives, but their states do not allow freedom to be a central part of their lives. As Sadıki says, “the abode of Islam is not blood-thirsty but freedom-thirsty.”³ Muslims want freedom, but their states are against freedom. According to Norman Barry, “It is Muslim states have done so much to discredit Islam, not the least because they have corrupted its true message by infecting it with some of the now most discredited social doctrines of Western intellectuals (including, of course, socialism).”⁴ States are the greatest violators of freedom in the context of the Muslim world. Therefore, the question is not the compatibility of Islam with freedom. The challenging question is how human liberty can be protected against the aggression of state.

The relationship between Islam and liberty is the key issue of Muslim thought today. Every question revolves around this relationship in Muslim thought. This question is not only a theoretical matter, but it is also a practical necessity. Dealing with the issue of liberty with a fresh and new perspective

A. INTRODUCTION

THIS PAPER EXPLORES THE compatibility of Islam with democracy and Human Rights. The problem today is that there is no sufficient awareness about Islamism, which is a recent social and political phenomenon, from Islamic law, or sharia, which is comprised of the enormous and complex literature of jurisprudence assembled over the centuries by Islam's great jurists. However, in order to understand the Islamic law's positioning as regards to democracy, it might be useful to discuss the matter in some detail, as in the following sections in this paper.

B. SHORTCOMINGS IN UNDERSTANDING THE ISLAM-DEMOCRACY RELATIONSHIP

“The answer by most observers of question as to why pluralism, liberalism and democracy have been rela-

3

Islam and Democracy

Murat Tumay

tively weak in Muslim World seems is mistakenly directed to Muslim culture and more particularly Islam.¹ This can directly be inferred from Strasbourg decision, which made explicit determinations that support for a regime based on sharia was incompatible with respect for democracy and human rights. Although it might be accurate to say that, according to some interpretations of Islamic requirements, individual rules of sharia law become incompatible with democracy, it would be grossly misleading to put forth the generalization that “the rules of sharia” are incompatible with democracy, as if all elements of the vast corpus of sharia law were inherently against democracy. There is considerable variation in the interpretations of religious law advanced by Muslim scholars and theologians. However, among these are expressions of support for democracy which insist that openness, tolerance and progressive innovation are well represented among traditions associated with the religion, and thus democracy is entirely compatible with Islam.² Therefore, the Strasbourg Court’s argument that Islam is incompatible with democracy was unnecessary at a sensitive time. It seems that the Court was affected by prevailing opinion in the Western World in such politically difficult times, which inclines toward the view that Islam is not compatible with the requirements of modernity and democracy. However, this essentially depends upon interpretation and attitude. Islam might seem uncompromising with either liberalism or civil society thus democracy, especially when we look at social, cultural and political structure in Muslim countries. However, this may be misleading as the acts of Muslim states that have done so much to discredit Islam do not necessarily prove that Islam itself is responsible for the failure of democracy, civil society and rule of law in these countries.³

A. INTRODUCTION

IN THIS PAPER I WILL EXAMINE DIFFERENT approaches to human rights and then critically analyse some of the main approaches. I will especially try to point out the methodological problems in dealing with this vast issue. Furthermore, I will examine both texts (the Farewell Address of the Prophet Muhammed and the Magna Carta) as historical human rights documents.

During the last two centuries, Muslims have been repeatedly asking the same question: what are the main reasons for the underdevelopment of the Muslim World? During these last two centuries, many answers have been offered. This question is still at the heart of an ongoing debate amongst Muslims and even amongst non-Muslim intellectual circles. In recent years, the United States of America has taken it upon itself to establish

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Human Rights and Islam

An Attempt to Compare
the Farewell Address
of the Prophet and the
Magna Carta

Haluk Songur

human rights and democracy in Arab/Muslim countries. It is believed that popular movements in favour of human rights and democracy will end the various problems of the Muslim countries. However, scholars are divided into two parts over the evaluation of human rights. The first faction assumes that human rights are not compatible with Islam. Whilst the second group claims that human rights are not in opposition to Islam but rather correspond with Islamic teachings. However, this paper argues that neither of these approaches is sound since they seem to be comparing two distinct concepts.

The Muslim world has usually accepted and assimilated many Western institutions and concepts, without any critical analysis. Such a view concurs with the now widespread perception of Muslims as backward and always in need of assimilating “Western” cultures and values to keep up the pace with modernity and progress.

On the other hand, it is argued that Islam is a religion which was revealed and human rights form some of the basic principles of the revealed law. Therefore these two concepts can not be directly compared. Furthermore, human rights are not just an empty concepts which do not contain a specific value. Consequently, if we want to speak about human rights in comparison to Islam, we must explain the concept of human rights, their meaning and historical background and try to understand their contextual Western birth. Only after that can we begin to see similar or resembling principles within Islam.

In the current climate many publications entitled “Islam and Human Rights”, “Islam and Democracy”, “Islam and so on and so forth” are very popular. These kinds of publications



PART 2

EUROPE, CITIZENSHIP, AND ISLAM

A. INTRODUCTION

THE PRESENCE OF ISLAM IN Europe and the European Union is a fact. The number of Islam believers in EU countries has considerably risen in recent decades, and reached the level of millions. This is a consequence of both the migration of Islam believers to EU countries and some domestic conversions. In this respect the situation in Poland seems to be remarkably different from the situation in some other EU countries. Basically, Poland is not a destination of immigrants from Islamic countries. According to different estimations, the number of Muslims in our country ranges from 5 and 40 thousand and is not constant.

They include both Muslims residing permanently in Poland and persons treating Poland as a transitory country and staying here only temporarily. As a result of Islamic immigrants treating Poland as a mere stop on their

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Polish Tatars (Muślims)

An Example of Successful
Co-Existence of Two
Nations and Two
Religions

Andrzej Bisztyga

way to other EU countries, we observe a flexible and dynamic nature of this situation and find it difficult to say exactly and thoroughly how many Islam believers are staying in Poland at one particular moment. However, our native “hardcore” Islamic community in Poland are Polish Tatars (*Muślims*) who permanently reside within the territory of Poland.

The relatively modest number of Muslims residing in Poland as well as many centuries of experience of Christians and Muslims coexisting in Poland are reasons why we do not observe basically any negative phenomena such as tensions between Muslims and non-Muslims and tensions between Muslim and non-Muslim systems of values.¹ Various conflicts inflicted by such tensions, which happen in Germany, France, Switzerland or the UK, are not seen in Poland.

What is particularly interesting, Poland has a glorious tradition of longstanding coexistence with Muslims. This can be supported by an example of Polish and Lithuanian Tatars. They were once seen and they are still seen as loyal and devoted citizens of the Republic of Poland and its faithful soldiers. In historical terms, they are seen as “brethren of different faith” by Polish non-Muslim neighbours. They show a high level of assimilation. I believe this may be a positive argument in the European-Islamic dialogue. Within Poland’s contemporary borders there live about 5-6 thousand Tatars.² Polish Tatars profess Islam³ in its Sunni variation. Nowadays they have their historic mosques in Bohoniki and Kruszyniany in Podlasie – an eastern region of Poland. They are gathered in Poland’s leading Muslim organisation, Muslim Religious Association, which is a Sunni community. This association has a rich tradition. It has acted continuously since 28 December

A. INTRODUCTION

Muslims have come to Western and Central Europe in larger numbers only in recent times. Islam in public life is a rather new phenomenon in most of the European countries. It faces long standing traditions in the relationship of religion and the secular sphere in a great variety of countries. Some states have integrated Islam for long, based on special developments of history; this is the case e. g. for Austria, where a substantial Muslim minority has been present since the times of the Turkish expansion into central Europe in the 15th-17th centuries. Other countries such as Germany face substantial presence of Islam as a completely new development. Further complexities result from the differences of state and religion relationships in the European states. Nevertheless, some common features have emerged in the challenges and the approaches in the field of Muslim presence in Europe.

6

Muslims in the Public Sphere

Gerhard Robbers

The following preliminary remarks take Germany as one example and try to add features of other countries in order to give a more comprehensive picture of the situation. An outline on the more general basic structures of religion in the public sphere aims to describe the situation in which Muslims find themselves in the public sphere.

According to a recent representative study initiated by the German government's Islam Conference, there are about 4.2 to 4.5 million Muslims in Germany. This has been somewhat a surprise because previous surveys had counted only 3.1 to 3.4 million Muslims in Germany. There are about 1.0 to 1.1 million Muslims of German nationality.¹ The figures (from 2009) are based in in-depth studies, while the previous calculations were based on rough estimates, since there is no register. The numbers are calculated primarily on the basis of immigration from Muslim countries such as Turkey (about 2.5 million), Bosnia-Herzegovina (190,000), Iran (130,000), Morocco (124,000), Afghanistan (96,000), Iraq (95,000), Lebanon (70,000), Pakistan (50,000), Tunisia (44,000) and Syria 43,000). About 2.5 million are Sunni, between 400,000 and 700,000 Alevis, 200,000 Twelver Shi'is, and according to their own statement, 40,000 Ahmadis. The Muslim population is spread throughout Germany, but in some major cities such as Berlin (220,000), Cologne, Hamburg, Stuttgart and Munich there are substantial Muslim concentrations. While there has been a small Muslim presence for centuries, immigration of large numbers of Muslims as 'guest workers' began in the 1960 s. Initially expected to return home after finishing work, many of them have stayed in Germany.

A. INTRODUCTION

Render unto Islam that which is Islam's.

"This whole Allah thing is a total red herring. Al-Qaeda is a political organization, not a religious one. People bang on about fundamentalist Islam and religious fanatics, but it's obvious no one is inspired by Bin Laden for religious reasons." "Aren't they?" Jean asked.

Zoë Heller, *The Believers*, 2008

Contemporary Europe is facing two simultaneous changes. The transformation of European society into a multicultural society is the first. The transformation of the interaction between states and churches, between religion, society and the law, is the second. The two changes are tightly interlinked. Islam is quintessential to both.

This paper explores the link between Islam and the transformation of relationships between churches and states in Europe. The issue is usually approached through the following question: Are European systems of

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Church-State Relations and Islam

Marco Ventura

relationship between churches and states adequate to address Islam? This formulation of the question is based on the underlying assumption that Islam is the problem and that relationship patterns between churches and states are the solution. Do we need more secularism or more cooperation? Should we operate through the acknowledgment of personal statutes or through the reinforcement of the law of the land? Should a perfect neutrality be observed, or rather should we stress our Christian heritage? Whatever we stand for, the pattern remains the same: we rely on our traditional tools and principles in order to cope with Islam. Islam is the problem; our church and state systems are the source from which the solution will spring forth. This paper will challenge this underlying assumption and will suggest a different interpretation and approach.

Is Islam problematic? Yes, of course. Are church and state relationships problematic as well, regardless of Islam? Yes. If Islam is problematic, can we be sure that the European church and state systems are not themselves part of the problem? Are we sure that the problem with Islam is not at the same time the problem with our church and state systems? I intend to prove that church and state relationships in Europe are not simply the solution, but are indeed part of the problem.

The paper will examine the issue and demonstrate my thesis in five parts. The first part will illustrate the correspondence between problematic aspects of Islam and problematic aspects of the broader picture of relationships between church and state systems in Europe. The second part will develop the correspondence between Islam and church and state issues as far as the transformation of principles and mechanisms is concerned. The third part will focus on what I see as the crucial

A. INTRODUCTION

Religion has always been playing an important role on the territory of the contemporary Slovak Republic. The Christianity used to be a welding element in Central Europe and contributed significantly to the spiritual shaping of this geographical area of unusual diversity, in spite of many reprisals, which its (not only) institutionalised forms had gradually experienced in various state formations. The fundamentals of the Slovak law defining the relations of the state towards religion had been laid many centuries ago. Let us mention Methodius' *Nomocanon* dating back to the period of the Great Moravian Empire, or *Corpus Iuris Hungarici* from the era of the Kingdom of Hungary, which also comprised *Corpus Iuris Canonici*, applicable both to the State and the Church; we also have to refer to the practice and laws of the Austrian Monarchy.

8

State-Church Relations and Islam in the Slovak Republic

Michaela
Moravčíková

In the 18th century, the ruling Habsburg Dynasty started to exercise its dynastic absolutism as enlightened absolutism. This was also manifested by the change in its approach to the state Catholic Church. The earlier partnership was replaced by absolutist interferences of the State in the life of the Church. Maria Theresa introduced State supervision over the administration of church and monastic property. Revenue of church foundations was predisposed to the benefit of the army and public schools. Joseph II sought to affect the church life, too, and he even issued regulations concerning liturgy matters. He abolished contemplative monasteries and direct effect of canonical regulations on the secular sphere. The Patents of Tolerance by Joseph II were a notable achievement. They, however, enabled only a partial and limited religious tolerance and preserved the privileged status of the Catholic Church. The Patent of Tolerance of 1781 granted free exercise of religion to the Evangelical Church of the Augsburg and Helvetic Confessions, the Jewish Religious Community and the Orthodox Church.

The emancipation of individual churches was accomplished between 1848 and 1918. The model of absolutist state guardianship of churches was substituted by a system of parity and equality. The Constitution of 1848 guaranteed the freedom of religion and conscience and the autonomy in church and property matters. While up to then, official registers had been run by Catholic parish offices only, new decrees of the Ministry of Interior enabled to run registers by non-Catholic churches, too. The process of emancipation of the Catholic Church and the Protestant churches started. The process included the Concordat of 1855, by which the Catholic Church gained considerable autonomy in dealing with its own issues, as manifested e.g. by



PART 3

EUROPE'S INSTITUTIONS AND PROTECTION OF RELIGION AND SECULARISM IN 21TH CENTURY

A. INTRODUCTION

Joining to the European Union (EU) as a full member is one of the most ambitious initiatives of Turkish modernization history that is still going on. Turkey has increased her efforts of integration with the EU following recognition of her as a candidate country eligible for accession negotiations in October 2004. The EU membership is in a way the peak point of Turkish modernization process modelled along the western lines. Conceiving Turkish modernization in the form of westernization as a delicately engineered process designed for the full secularization of Turkish polity, the question of the secularity of this process inevitably would come to the fore and become one of the main underlying matrices of the process. Accordingly, the conception and structurization of Turkish secularism along the EU line is a major challenge for Turkish democracy. What emerges from this

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Laïcité as an Issue Area in the Turkey-EU Accession Process

Ahmet Yıldız

challenge may be casted from the Turkey's vantage point as follows: Is Islam an impediment for Turkish membership? What do the EU and Turkey understand from secularism? Are these understandings identical or if they differ, to which extent? Can we talk of secularism as a major area of interest for the EU prerogatives for Turkey or is it a negligible one? Is Turkey ready to reconceptualise its conception of secularism that may best be expressed as laïcité along the French 3rd Republic style? Or, alternatively, does the process of the accession require the redefinition of Turkish laïcité and its way of practice? Who are the parties in Turkish polity regarding the historical tension accumulated around the issue of laïcité? What are the implications of the laïcist-religious divide in Turkish polity for the accession process? What have been the practical manifestations of the question of laïcité since the start of accession negotiations and the implications thereof?

From the European vantage point, the Turkish accession to the EU has become one of the most politically contentious issues ever since. It figured prominently in 2004 elections to the European parliament, and most European political parties have upheld a position on the issue. The issue of Turkish membership surfaced as an important consideration during referenda on the Constitutional Treaty. Christian Democrats, and especially the far right political movements all over the Europe have fiercely opposed Turkish membership to the EU along historically inspired and presently reflected fears and arguments that signal a special political mind claiming Turkey to be the "other" of what the EU represents today. One of the main issues surrounding the question of Turkish membership thus can be said to be linked to the definition of the "New Europe,"

A. PRELIMINARY REMARKS

It is instructive to begin with some preliminary remarks to identify the background of the following work. This paper is written in the context of the “Exploratory workshop about Islam, human rights and secular values in Europe” held in Istanbul in November 2010. Islam was intended as the main topic, the theme which all presentations were to address. However, this paper will not study the so-called “Islamic question” by assessing the latest legal developments of freedom of religion for Muslims communities, nor will it analyze the recent case law regarding religious minorities. Rather, it will examine the framework and the context from which most religious Muslims claims arise.

This framework is two-fold: one, a multicultural and multireligious society wherein the duty of state authorities to legislate for the general good inevitably produces conflicts with

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Religious Pluralism in Liberal Democracies

Towards an Inclusive
Citizenship

Eugenia Relaño
Pastor

individual beliefs; and two, a principle of neutrality which lies on an ideological and cultural meaning of secularization. A common denominator of Western European countries is their tendency to consider the sacred as misplaced within the civic context.¹ The idea that religion cannot play a role in the general well-being of societies is common throughout Europe. However, Islam's arrival has reopened a case previously considered "closed", that of the relationship between the State and religions, as it has also called into question the neutral and secular role of the State.

In considering this issue, it is important to note the existence of non-Muslim religious groups who also call into question mainstream secularism. In Germany, for example, there has been considerable debate over Christian values in the public sphere, while in Italy the display of the crucifix in the classroom has sparked frequent controversy. However, the main streams of European public culture are highly secularized, tending to ignore religious dimensions meaningful to some segments within the society. The consequence of such a tradition of secularism is that various manifestations of Islam within Europe are perceived as troublesome. Ongoing controversy related to the wearing of a hijab, frequent outcries over magazine cartoons, radical preaching in mosques, the demand for separate Muslim religious education, the use and growth of sharia courts, and more recently, the Swiss initiative to prohibit the construction of minarets, all shed light on the tension between Islamic claims and European conceptions of secularism.²

Throughout Europe, the presence of Islam continues to call into question the norms of the dominant culture. The new visibility of established Muslim minorities alongside continu-

A. INTRODUCTION

It is no secret that in Europe –as in other parts of the West– there is an increasing concern about how to deal with Islam from a legal, political and cultural perspective. One of the factors that have contributed to create this concern is the ever-growing presence of Muslim immigrants in Europe, especially in the richest EU countries, which raises some doubts about how to promote a better –and often not easy– integration of immigrants and about how to sort out the ‘visibility’ of Islamic personal religious symbols within a public sphere frequently dominated by a secular approach – or by a predominantly Christian religious atmosphere.¹ Another factor is the gradual emergence of Turkey as an important actor in European politics and economy, being a country with more than seventy million people whose vast majority are Muslims (mostly Sunni and Alevi), which is al-

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The ‘Islamic’ Cases In The Court Of Strasbourg

Javier Martínez-
Torrón

legedly based upon the constitutional principle of secularism (*laïcité*), presented as an essential safeguard to prevent Muslim extremism from undermining democracy.

These factors are a cause of concern because of some characteristics of Europe. First, the fact that a substantial part of the core values embedded in the European legal, moral and political culture come from a Judæo-Christian heritage, submitted to a secularization process, above all in the last two-and-a-half centuries. In this context, the historical presence of Islam in Europe has been traditionally perceived by Europeans as marked by its continuous tension and wars with the Christian kingdoms (from the perspective of the Muslim conquest of the Iberian Peninsula as well as of the Eastern invasions of Europe).² In the second place, this historical diffidence about Islam has been contemporarily reinforced by a widespread fear of Islamist terrorism and violence, for obvious and well-known reasons. This, together with the frequent lack of a real democracy in many Muslim countries, has disseminated the suspicion that it is not easy –perhaps impossible– to reconcile Islam and democratic freedoms; or, to put it in other way, the idea that the Muslim religion might not be fully acceptable from the point of view of the standards that secular democracies must require from all religions.

The foregoing factors may be analyzed from very different perspectives, but no doubt they form part of the social backdrop against which the European Court of Human Rights (hereinafter 'ECHR' or 'the Court') has to operate when interpreting the European Convention on Human Rights (hereinafter 'ECHR'). In the last decade, the Court has decided a relatively significant number of cases regarding Islam one way or

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