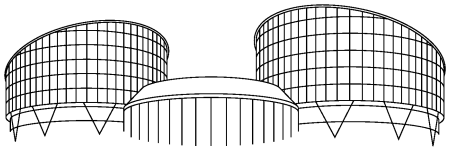

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF İZZETTİN DOĞAN AND OTHERS v. TURKEY

(Application no. 62649/10)

JUDGMENT

STRASBOURG

26 April 2016

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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In the case of İzzettin Doğan and Others v. Turkey,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Dean Spielmann,
András Sajó,
Işıl Karakaş,
Josep Casadevall,
Mark Villiger,
Ledi Bianku,
Julia Laffranque,
Helen Keller,
André Potocki,
Paul Lemmens,
Johannes Silvis,
Faris Vehabović,
Robert Spano,
Iulia Antoanella Motoc,
Jon Fridrik Kjølbro,
Yonko Grozev, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 3 June 2015 and on 22 February 2016,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 62649/10) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by 203 Turkish nationals, whose names are annexed to the judgment ("the applicants"), on 31 August 2010.

2. The applicants were represented by Mr N. Sofuoğlu (a lawyer practising in Istanbul), Ms İştar Savaşır (expert), Ms Serap Topçu, Ms Fadime Kara, Ms Jülide Sucuoğlu Gönen and Mr İlyas Şahbaz (lawyers practising in Istanbul), and Mr Mehmet Aydın (expert). The Turkish Government ("the Government") were represented by Mr Hacı Ali Açıkgül, Head of Department in the Ministry of Justice, Mr Harun Mert, Director-General in the Ministry of Justice, Mr Ahmet Metin Gökler, Ms Ayça Onural, Mr Sami Arslan Aşkın, Mr Bekir Karaca and Mr Mustafa Çiçek (Ministry of Justice), and Mr Hikmet Yaman (expert).

3. Relying on Article 9, taken alone and in conjunction with Article 14, the applicants contended that their right to manifest their religion had not been adequately protected in domestic law. They complained in that connection of the refusal of their requests seeking, among other matters, to obtain for the followers of the Alevi faith, to which they belong, the same religious public service hitherto provided exclusively to the majority of citizens, who adhere to the Sunni branch of Islam. They maintained that this refusal implied an assessment of their faith on the part of the national authorities, in breach of the State's duty of neutrality and impartiality with regard to religious beliefs. They further alleged that they had been the victims of discrimination on grounds of their religion as they had received less favourable treatment than followers of the Sunni branch of Islam in a comparable situation, without any objective and reasonable justification.

4. The application was assigned to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 7 May 2013 the Government were given notice of the application. On 25 November 2014 a Chamber of the Second Section composed of Guido Raimondi, President, Işıl Karakaş, András Sajó, Helen Keller, Paul Lemmens, Robert Spano, Jon Fridrik Kjølbro, judges, and Stanley Naismith, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment within the time allowed (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined in accordance with Articles 26 §§ 4 and 5 of the Convention and Rule 24.

6. The applicants and the Government each filed written observations on the admissibility and merits of the case.

7. A hearing was held in public in the Human Rights Building, Strasbourg, on 3 June 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr H.A. AÇIKGÜL, *Agent*,
Mr H. MERT, *Counsel*,
Ms A. ONURAL,
Mr S.A. AŞKIN,
Mr M. ÇİÇEK,
Mr B. KARACA,
Mr H. YAMAN, *Advisers;*

(b) *for the applicants*
Mr N. SOFUOĞLU,
Ms İ. SAVAŞIR, *Counsels*,
Ms S. TOPÇU,

Ms F. KAMA,
Ms J. SUCUOĞLU GÖNEN,
Mr İ. ŞAHBAZ,
Mr M. AYDIN, *Advisers.*

Mr İzzettin Doğan, one of the applicants, also attended.

The Court heard addresses by Mr Açıkgül, Mr Sofuoğlu and Ms Savaşır, and their replies to the questions put by Judges Villiger, Laffranque, Motoc, Sajó, Karakaş, Spano and Lemmens. It also heard replies from Mr Yaman and Mr Doğan.

8. Each of the parties also submitted written observations on the questions put to them by the judges at the hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants, whose names are listed in the Annex to the present judgment, are followers of the Alevi faith.

A. The background to the case

10. On 22 June 2005 the applicants individually submitted a petition to the Prime Minister, the relevant parts of which read as follows:

> "1. ... I am a citizen of the Republic of Turkey and adherent of the Alevi-Islamic (Alevi, Bektashi, Mevlevi-Nusayri) faith. The Alevi faith is a Sufi and rational interpretation and practice of Islam based on the unity of Allah, the Prophecy of Muhammad and the Koran as Allah's Word ...
>
> 2. Freedom of conscience and religion is recognised by Articles 2, 5, 10, 12, 17 and 24 of the Constitution, and by Articles 9 and 14 of the European Convention on Human Rights and Article 2 of the additional Protocol, which take precedence over domestic law by virtue of Article 90 of the Constitution ... The State is required to take the necessary measures to guarantee the effective exercise of the right to freedom of conscience and religion. It must comply with that obligation by ensuring that everyone can effectively exercise those freedoms on an equal footing. In the constitutional order this obligation is regarded as a public service and this concept is enshrined in the Constitution.
>
> 3. Under the terms of Article 136 of the Constitution, '[t]he Religious Affairs Department ["the RAD"], which is part of the general administration, shall carry out the functions assigned to it under the special law by which it is governed', in conformity with the principle of secularism, while remaining detached from all political views or ideas and with the aim of promoting national solidarity and union. The RAD was set up with a view to achieving those objectives.

Section 1 of the RAD (Creation and Functions) Act ... provides that 'the RAD, operating under the Prime Minister, is responsible for dealing with matters of Islamic beliefs, worship and moral tenets and administering places of worship'.

Under the terms of that Act, the RAD is invested with powers to manage all matters relating to Islam as a religion and is also responsible for administering places of worship.

In practice, the RAD confines itself to cases concerning only one theological school of thought [*mezhep*] pertaining to Islam and disregards all the other faiths, including ours, which is the Alevi faith. Although the State has an obligation under the Constitution and supranational provisions to take all the necessary measures to ensure that the right to freedom of conscience and religion can be freely exercised, the rights of Alevis are disregarded, their places of worship, namely the *cemevis*, are not recognised as such, numerous obstacles prevent them from being built, no provision is made in the budget for running them, and the exercise of their rights and freedoms is subject to the good will of public officials.

To date, all the demands made by the Alevi community with regard to practising their religion have been rejected as a result of the RAD's biased approach, which is divorced from scientific and historical fact and based on one theological school of thought alone. As has been emphasised by the European Court of Human Rights, 'the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.'

...

In the light of the foregoing, we request that

a. services connected with the practice of the Alevi faith constitute a public service,

b. Alevi places of worship (*cemevis*) be granted the status of places of worship,

c. Alevi religious leaders be recruited as civil servants,

d. special provision be made in the budget for the practice of the Alevi faith,

..."

11. On 19 August 2005 the Prime Minister's public relations department sent the applicants a letter in reply saying that it was impossible to grant their requests. The relevant parts of the letter read as follows:

"1. ... The services provided by the Religious Affairs Department in accordance with the legislation in force are available to everyone and are general and supra-denominational. Everyone has a right to benefit from these general religious services on an equal footing.

2. Having regard to [the current legislation] and to the courts' case-law, it is impossible to grant the status of place of worship to *cemevis*.

3. Everyone has the right to be recruited as a civil servant, in accordance with the provisions of the relevant legislation. In that regard no group of persons can be granted a privilege on the basis of their faith or beliefs and be recruited according to those criteria. As the functions carried out by the Religious Affairs Department constitute a public service, its staff are recruited on the basis of nationality and objective criteria.

4. It is impossible to make provision in the budget for services that are not provided for in the Constitution or the law."

12. Following receipt of that letter, 1,919 people, including the applicants, lodged an application with the Ankara Administrative Court ("the Administrative Court") for judicial review of the decision refusing to grant their requests. The relevant parts of their notice of application are worded as follows:

> "... It is estimated that there are currently between twenty and twenty-five million followers of the Alevi faith (Alevi, Bektashi, Mevlevi-Nusayri) in our country. Up until the 1950s almost all Alevi citizens lived in rural areas. Subsequently, they started migrating to the towns and began practising their faith there.
>
> With regard more particularly to *cemevis*, before migrating to the towns, Alevis, who led a reclusive lifestyle, practised their religious worship in the largest house in their village ...
>
> Mass migration made it impossible to practise religious worship in houses ...
>
> Moreover, the *cemevis* which used to exist in the cities, for example in Istanbul, could no longer meet the growing needs of the community. Today's *cemevis*, which were built before the conquest of Istanbul, such as Karacaahmet Sultan Dergahı and Şahkulu Sultan Dergahı, could no longer meet the increasing demands of the Alevi community.
>
> ... [C]itizens of the Alevi faith have used their own funds to acquire land on which to build *cemevis*. However, these places of worship have given rise to numerous instances of arbitrary conduct. Whilst certain municipalities had made provision for the construction of *cemevis* in their urban development plans, many others rejected applications for planning permission, with the RAD continuing to consider that *cemevis* could not be regarded as places of worship. That attitude has been adopted not only by the municipalities, but by the administration as a whole.
>
> As a result of this arbitrary attitude on the part of the authorities, which is not based on any historical fact, *cemevis* have not been recognised as places of worship in the Republic of Turkey. Consequently, they are not eligible for any of the advantages linked to that status ...
>
> Citizens who have built their *cemevis* also pay the religious leaders whom they have recruited to officiate in these places of worship. These religious leaders, who follow a Sufi interpretation of Islam, train and teach the faith using their own means. Like all religious leaders, they play a crucial role in the moral and social progress of society. Yet the authorities do not contribute in any way towards their training ...
>
> As can be seen from the position briefly described above, the authorities almost completely disregard Alevi citizens; their places of worship – the *cemevis* – are regarded as cultural centres, with the result that they lack the status of places of worship and the attendant advantages. Likewise, the *semah*, which is one of the basic rituals of Alevi religious ceremonies, is reduced to a picturesque show. Thus, in determining the manner in which citizens must practise their religion, which places are considered as places of worship and the very nature of the faith itself (a belief or culture), the authorities are manifestly infringing the right to freedom of conscience and religion.
>
> Further, the Ministry of Education continues to disregard the Alevi faith and to offer religious education based on one particular Islamic theological doctrine. In doing so, it undermines peaceful co-existence and encourages discrimination from a very young age.

In conclusion, no service is provided to citizens of the Alevi, Bektashi or Mevlevi-Nusayri faith, which constitutes a serious oversight ...

...

According to the Constitution and the relevant legislation, the RAD carries out the functions assigned to it under the special law by which it is governed (a) in conformity with the principle of secularism, (b) while remaining detached from all political views or ideas, and (c) with the aim of promoting national solidarity and union.

In that connection, if regard is had to the RAD (Creation and Functions) Act (Law no. 633) it can be concluded that this body was set up not only for the needs of the Muslim religion (the majority religion), but for those of all religions. However, the present application sets out to challenge the practice of the authorities, of which the RAD is an integral part, with regard to the Muslim religion.

...

The principle of equality requires that no distinction be made between users regarding either access to public services or the benefit of those services. Where a public service is concerned, equality must be observed in every sphere ... Otherwise, it is a privilege and not a public service ...

Under section 1 of Law no. 633, the RAD is responsible for (a) dealing with matters of Islamic beliefs, worship and moral tenets, (b) enlightening society about matters pertaining to religion, and (c) administering places of worship.

It should be pointed out in this regard that the legislature did not seek to legislate for one particular branch of Islam or one theological doctrine or movement within Islam, but for the Muslim religion as a whole. Accordingly, the RAD is responsible for providing a public service to all citizens who are followers of Islam.

...

We now come to the facts regarding the practices of the RAD ... The RAD employs approximately 113,000 people, administers some 100,000 mosques and *masdjids* [prayer rooms for religious practice] and has a budget of several billion Turkish liras set aside in the general budget to carry out the functions assigned to it. In carrying out its functions, the RAD, although its powers encompass the Muslim religion as a whole, confines itself to the demands of the Sunni schools of thought, and in particular the Hanafi school, while disregarding all the other movements and branches of Islam. The general budget is funded mainly by revenue from the taxes paid by all citizens. No distinction on grounds of religion or membership of a religious movement is made where tax collection is concerned. On the contrary, this is based on nationality. However, the RAD, which receives billions of Turkish liras from the general budget, offers a public service only to the followers of one particular theological school of thought ...

It is entirely normal for a religion to encompass several different theological doctrines, movements, beliefs ..."

Referring to the case-law of the European Court of Human Rights, the applicants further contended that, contrary to the position of the RAD describing the Alevi faith as a cultural asset and considering mosques as the only place of Muslim worship, *cemevis* were places of worship where *cems*, that is, Alevi religious ceremonies, were conducted. In their submission, it

was not for the RAD to decide whether *cems* were or were not religious ceremonies. Relying on examples taken from speeches by the Head of the RAD, they submitted that it was a matter exclusively for followers of the Alevi faith, and not for a State body, to determine what should be regarded as a religious ceremony.

13. On an unspecified date the Prime Minister's Legal Department submitted its memorial in reply. It disputed, first of all, the standing of the applicants to act, submitting that they could not lodge an application on behalf of all Alevis. They observed in that connection that, according to some sources, the number of Alevis in Turkey varied from between four to five million and twenty to twenty-five million and that there was no uniform approach regarding either the definition of the faith or the demands of its followers.

With regard to the merits, the Legal Department went on to dispute the claimants' arguments. The relevant passages of its memorial read as follows:

> "Law no. 677 ... prohibits the bearing of certain religious titles such as *sheikh*, *dedelik* [an Alevi religious leader], *dervichlik*, and so forth, the practices connected with those titles, and the designation of a venue for ceremonies conducted by Sufi orders (*tarikat ayini*). Failure to comply with these prohibitions is punishable by a term of imprisonment and a fine. Moreover, the same Law orders the closure of *tekke* and *zaviye* and their conversion into mosques or *masdjids*...
>
> The Department carries out its functions in accordance with Articles 10, 136 and 174 of the Constitution and Laws nos. 633 and 677. In carrying out its functions, it encompasses all Islamic beliefs, modes of worship and moral tenets and extends to all people on an equal footing. It is accordingly incorrect to claim that the Department, which carries out its functions in a supra-denominational manner, confines itself to the Sunni branch of Islam ... It is impossible to offer a service to banned Sufi orders (*tarikat*); this would also be contrary to the principle of secularism and national solidarity.
>
> Article 3 of the Regulation implementing the Law governing the wearing of certain dress defines places of worship as follows:
>
> 'Places of worship (*mabedler*) are closed areas created in accordance with the relevant procedure and designed in the case of each religion for the practice of religious worship' ... Having regard to the foregoing, a place cannot be regarded as a place of worship unless it is associated with a religion. In that regard, churches, synagogues and mosques or *masdjids* are the places of worship of the Christian, Jewish and Muslim faiths respectively. It is clear that everyone has the right to practise his or her faith in private at his or her own home or elsewhere. Accordingly, there is no prohibition or obstacle preventing Alevi citizens from saying their prayers, the *zikir* or the *semah* in *cemevis*. However, the creation, in addition to mosques and *masdjids*, of places of worship for the followers of a particular interpretation or movement of Islam is not in conformity with religion. Furthermore, an application for designation of a place of worship, appointment of religious functionaries and allocation of a budget on the basis of belief in an opinion or interpretation of the Muslim religion or adherence to a particular theological doctrine would inevitably create an insoluble problem and chaos within that religion ... Moreover, history has shown that the *namaz* [five compulsory prayers] are never said collectively in the

> *tekke*, *dergah* and *zaviye* [Dervish monasteries], but that they are said in the mosques or *masdjids* that are invariably located alongside such places ...
>
> As specified in the notice of application, the Alevi faith (*Alevilik*) ... is an interpretation and practice of Islam. The Alevi and Bektashi faith is a Sufi interpretation superficially containing elements pertaining to belief in twelve imams and mystical elements (*batini*). In the past it was practised in *dergah* in towns. As there were no *dergah* in the villages, the most appropriate house was chosen. Nowadays, places such as *Şahkulu Sultan* and *Karacaahmet Sultan* are the *dergah* of the Bektashi, that is, *tekke* ...
>
> To recognise *cemevis* as places of worship would be contrary to Law no. 677 ... Moreover, a development of that kind would lead to the legalisation of other Sufi orders and many of them that are banned (*Naqshbandi*, *Qadiri*, *Rufai*, *Cerahi*, and so on) would request legal status ... A number of sectarian groups would then be likely to start appearing around a sheikh ...”

14. On 4 July 2007 the Administrative Court dismissed the preliminary objections of the authorities and examined the application on the merits. It dismissed the application on the grounds that the refusal by the respondent authorities was in conformity with the legislation in force.

In its reasoning, referring to Articles 2, 90, 136 and 174 of the Constitution and to Laws nos. 633 and 677, and also to the international instruments concerning freedom of religion and the prohibition of discrimination and to the judgment in *Hasan and Eylem Zengin v. Turkey* (no. 1448/04, 9 October 2007), the Administrative Court observed at the outset that the Alevi faith attained a certain level of cogency, seriousness and cohesion and, as an interpretation of Islam, enjoyed the protection of Article 9 of the Convention. It considered, further, that the object of the application did not relate solely to the State’s negative duty of non-interference but that the applicants were also claiming privileges which, in their view, were granted to the Sunni branch of Islam (allocation of a budget, status of civil servant for Alevi religious leaders, recognition of *cemevis* as places of worship). It stressed the importance of the principle of neutrality in public services. However, the court found that it had not been established that all Alevis supported the claims submitted by the applicants. Moreover, in the court’s view, the provision of a public service to all interpretations of Islam could hardly be reconciled with the principle of secularism.

The Administrative Court also found that the allocation to the RAD of funds from the general budget was not contrary to the law, as it would be unrealistic to link the payment of general taxes to citizens’ convictions or beliefs. In that connection it stressed that the European Court of Human Rights had not judged it contrary to the Convention to allocate a budget to the secular activities of a church (keeping registers of marriages and deaths, and so forth) or to levy a general tax without specifying how it would be used. The relevant parts of the judgment read as follows:

"... It is clear from the examination of the file that the Administrative Court is being asked in the present case to set aside the Prime Minister's refusal of the request made in a petition of 22 June 2005 to have religious services provided to Alevi citizens in the form of a public service; to have the *cemevis*, where Alevi citizens practise their faith, granted the status of places of worship; to have a sufficient number of competent individuals, recognised as such by Alevis, recruited as civil servants for the purpose of the religious rites required by the Alevi faith; to have funds set aside in the general budget to pay for the services required in that regard; to have provision made in the Finance Act for the funds concerned, while taking the necessary action to that end; and to take all the necessary measures in order to grant the requests set out in the above-mentioned petition.

Assessing the case in the light of the relevant provisions of domestic law, it can be seen that part of the general budget is allocated to the Religious Affairs Department created under Law no. 633; that the Department does not *establish*, but rather *administers*, the mosques ... recognised as '*places of worship*'; that the staff assigned to manage them are religious leaders who are recruited and paid as civil servants to administer religious services in connection with the beliefs, worship and moral tenets of the Muslim religion; and that application of the prohibitions introduced by Law no. 677 is guaranteed by the Constitution.

Hence, it is clear from the interpretation of the provisions of Law no. 633 and Article 128 of the Constitution that it is not possible to recognise a place other than a mosque as a 'place of worship' ..., to recruit civil servants for the purpose of the religious rites required by the Alevi faith, or even to make provision in the Finance Act for the funding of the services to be provided in that regard. This would be contrary to the statutory provisions governing the civil service and it is therefore not possible, in accordance with the only statutory provisions of domestic law in force, to grant the requests made in that connection without amending the legislation.

Nevertheless, under the terms of Article 90 of the Constitution, the issue must also be examined from a legal standpoint in the light of the provisions of the international conventions to which the Republic of Turkey is a Party ...

[Reference is made to Article 18 of the United Nations Universal Declaration of Human Rights].

In principle, freedom of religion and belief – which may be defined as adherence to a religion or belief (internally) and the observance, in the place of the individual's choosing (externally), of the precepts of that religion or belief, alone or in community with others, in so far as this does not disturb public order – is governed by the above-mentioned Articles 10, 14 and 24 of the Constitution of the Republic of Turkey ..., which must be interpreted in a manner consistent with the provisions of the international treaties.

Thus, it must be assessed to what extent Laws nos. 633 and 677 which are in force in Turkey, and existing practices as regards freedom of religion and belief, which are at issue in this case, can be said to be consistent with the judgments of the European Court of Human Rights concerning Article 9 in similar cases.

...

In the present case it [is generally accepted] that the Alevi faith [enjoys the protection afforded] by Article 9. There can be no doubt in this regard, especially in the light of the practice prevailing in Turkey (see *Hasan and Eylem Zengin v. Turkey*).

Further, while the European Court of Human Rights considers that the existence of a State Church system is not in itself contrary to the Convention, and while it does not require the State to treat the different religions and beliefs in absolutely identical fashion and does not criticise the existence of an official State religion (see *Kokkinakis v. Greece*), it nevertheless regards compulsory membership of such a church as a violation of the Convention (see *Darby v. Sweden*).

The Administrative Court is of the view that, where criticism of or attacks against a religion or belief attain a level liable to jeopardise the exercise of freedom of religion and belief ..., indifference in this regard on the part of the public authorities engages the responsibility of the State. Furthermore, where those same authorities restrict the freedom to manifest one's religion or belief in the public sphere, the restriction in question must be examined in the light of the following criteria: whether there was interference and, if so, whether the measure in question was lawful, pursued a legitimate aim and was necessary in a democratic society.

There is no provision of the Constitution establishing a State religion. Moreover, in the present case, no specific examples have been provided suggesting that Alevis encounter obstacles in exercising their right to freely manifest their religion or that they are subjected to pressure to adopt a different form of belief.

As to the issue of taxpayers contributing to the funding of the religious activities of a church to which they do not belong, the European Court of Human Rights considers it contrary to Article 9 to collect a tax which directly benefits a church to which the taxpayers do not belong. However, it has found there to be no such violation where the tax is used to fund the church's secular activities (the keeping of registers of marriages and deaths, and so forth) (see *Kustannus Oy Vapaa Ajatellija AB and Others v. Finland*, no. 20471/92, Commission decision of 15 April 1996, DR 85, p. 29) or where it is levied as a general tax without it being clear how it is to be used.

Furthermore, a portion of the revenue collected in general taxation from the citizens of the Republic of Turkey is allocated to the Religious Affairs Department. Accordingly, not only can there be no question of any contradiction or inconsistency with the Court's judgments, but also, if the applicants' request had to be granted, persons opposed to armaments, war, nuclear power or technology because of their beliefs could not be taxed individually, as it would be impossible to determine who was liable for the tax and public order could no longer be ensured.

As to the argument that the officials recruited by the State to deal with religious matters are not the same individuals as the religious leaders whom other belief communities have themselves chosen, the European Court of Human Rights has held that the State is the ultimate guarantor of the freedom to manifest a religion or belief and that in a situation of this kind the State in a pluralist democracy has a duty, in view of the tensions that are liable to arise, to promote tolerance between the parties and may not subject the different groups to pressure or interfere with their rights and freedoms (see *Serif v. Greece*, *Hasan and Chaush v. Bulgaria*, and *Kokkinakis v. Greece*).

As is clear from the provisions of the above-mentioned international treaties and from the judgments of the European Court of Human Rights, the State, fundamentally and ideally, has a negative obligation in the sphere of freedom of religion and belief to refrain as far as possible from hindering those freedoms. In other words, the ideal system is one in which the State is neutral. Accordingly, seeking to achieve equality does not mean eliminating differences but rather preventing privileges from being granted to certain groups. In the present case, however, the applicants are claiming a number of measures of positive discrimination on behalf of the Alevi community by

arguing that, although they are Muslims, Alevis interpret and practise Islam in a different way, and are requesting the Religious Affairs Department to grant them the privileges which, they contend, are granted to Sunni Muslims. There is no doubt that Alevism is a serious and coherent set of beliefs, that it is an interpretation of Islam, and that a large section of the population claims adherence to it. However – and bearing in mind also the general principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – while it is true that there are indeed differences amongst Alevis as regards the forms of belief and practice and the manner in which they define themselves, and while the applicants also recognise this, there is no specific evidence that all Alevis support the claims made in the present case. Accordingly, from the perspective of freedom of belief, this court reiterates that the ideal is a neutral State which undertakes to protect individuals against being forced to participate against their will in the religious activities of a religious group to which they do not belong.

In the light of all these considerations, examination of the facts from the standpoint of the constitutional principles of the Republic of Turkey demonstrates that

- as regards freedom of religion and belief seen from a normative viewpoint, Articles 10, 14, 15 and 24 of the Constitution were drafted in a manner consistent with the provisions of the relevant international treaties, since no provision of the Constitution of the Republic of Turkey establishes a State religion;

- a portion of the revenue in the general budget is allocated to the Religious Affairs Department, which is part of the general administration;

- the Religious Affairs Department is generally acknowledged to carry out its administrative functions pertaining to matters of Islamic belief, worship and moral tenets by taking as its basis the shared identity of all Muslims and, in accordance with the Constitution and the principle of secularism, while remaining detached from all political views or ideas and with the aim of promoting national solidarity and union; and

- as regards the State practices complained of, the European Court of Human Rights has held in its judgments that these are not contrary to the above-mentioned applicable legislation, which does not overstep the limits of Article 9.

Further, if the State were to respond to all expectations and demands by providing the corresponding public service, for instance by recognising places of worship for groups professing forms of belief linked to the various Islamic schools of law (*mezheb*), the various Sufi orders (*tarikat*) and the various understandings and interpretations of Islam that have emerged in the course of history, granting the status of civil servants to the religious leaders of those groups, setting aside a portion of the budget for them and placing them under the authority of a public body, there would be a risk not only of engendering debate on the extent to which State action and the discretion exercised by the Religious Affairs Department in its activities in the public sphere satisfy the spiritual needs of the different groups of believers, but also of breaching the principle of State secularism by upsetting the balance to be struck between religious and legislative rule-making, and of exacerbating different forms of belief. This could ultimately lead to restrictions on freedom of religion and belief, and thus to an outcome that runs counter to the very aim which the applicants sought to achieve in lodging their claims, which were based precisely on their difference.

In these circumstances, the administrative decision refusing the applicants' requests ... cannot be said to be in breach of the statutory provisions."

15. The applicants appealed against the first-instance judgment. They submitted that provision of a public service exclusively to Muslims adhering to Sunni theological doctrines was incompatible with the constitutional principles of secularism and neutrality of public services. They rejected any suggestion that they were requesting the State to grant them positive privileges, arguing that the basis of their claims was the principle of equality. They added that the Turkish State could not be regarded as neutral with regard to religions as it took measures which favoured one religious interpretation to the detriment of others. In the applicants' view, the courts did not have the right to rule on the legitimacy of a belief or its practices. They furnished expert reports in support of their submissions.

16. In a judgment of 2 February 2010, served on the applicants on 24 March 2010, the Supreme Administrative Court dismissed the appeal and upheld the first-instance judgment as being in conformity with the procedure and laws.

B. Legal and historical background to the creation of a religious public service

1. The Religious Affairs Department

17. Although Turkey is a "secular State" according to Article 2 of the 1982 Constitution, the Muslim faith as practised by the majority of citizens enjoys special status for historical reasons.

18. In Turkey, after the proclamation of the Republic on 29 October 1923, separation of the public and religious spheres was achieved through a series of revolutionary reforms: on 3 March 1924 the caliphate – supreme institution of Muslims – was abolished; on 10 April 1928 the constitutional provision declaring Islam the State religion was repealed; and, lastly, on 5 February 1937 a constitutional amendment was passed according constitutional status to the principle of secularism (see Article 2 of the 1924 Constitution – as amended in 1937 – and Article 2 of the 1961 and 1982 Constitutions). Article 24 of the 1982 Constitution also guarantees the right to freedom of religion and conscience.

19. Following the abolition of the caliphate the Unification of Education Act (*Tevhidi Tedrisat*) was passed, abolishing the traditional religious educational institutions. In parallel, the Ministry of the Sharia and Religious Foundations (*Şeriye ve Evkaf Vekâleti*) and all the religious courts were abolished, and the *Diyanet İşleri Reisliği* (governing body of the Religious Affairs Department), as it was called at the time, was founded by Law no. 429 of 3 March 1924. By virtue of section 1 of that Law, this body, which was responsible for implementing "all the provisions relating to Islamic worship and faith and the administration of religious institutions",

was placed under the authority of the Prime Minister. The Law provided that this body had no powers in terms of religious education, which was transferred to the Ministry of Education.

20. In 1950 the administration of mosques and prayer rooms, which had initially been transferred to the Department of Religious Foundations in 1931, was brought back under the supervision of the governing body of the Religious Affairs Department.

21. The Religious Affairs Department (Creation and Functions) Act (Law no. 633) was enacted on 22 June 1965 and published in the Official Gazette on 2 July 1965 (see paragraph 46 below).

22. Section 36 of the Civil Servants Act (Law no. 657) of 20 July 1965 introduced a category of civil servants dealing with religious matters. That category includes all civil servants who have received religious training and carry out a religious function, namely the *muezzin* (those who call the faithful to prayer from the top of the minaret), *imam-hatip*, *vaiz* (preacher) and *mufti* (jurisconsult who interprets Muslim laws and Koranic law).

23. In its judgment of 21 October 1971 (E. 1970/53, K. 1971/76), published in the Official Gazette on 15 June 1972, the Constitutional Court held that the creation of a category of civil servants dealing with religious matters was compatible with the constitutional principle of secularism. In its reasoning it considered that secularism meant the separation between temporal power and spiritual power. Neither of those powers could interfere in the affairs of the other. The Constitutional Court found that the existence of a clergy and a religious service in the Catholic religion, and the acceptance by Catholics of the Pope as spiritual leader, had played an important role in that conception of secularism. However, in the Muslim religion there was no clergy and the staff responsible for places of worship had no spiritual power. Accordingly, the Constitutional Court held that, as the two religions were different, their religious functionaries could not have the same status. In that connection it observed that it was only in Christian countries that a separation could be imagined between religious functionaries and the State. In the Constitutional Court's view, the principle of secularism sought to promote the progress of the Turkish nation and did not allow the creation of religious movements pursuing aims that were incompatible with that purpose.

24. Consequently, and despite the "secular" nature of the Turkish State, the "Islamic religious service" is regarded as a "public service". In accordance with Article 136 of the Constitution, the RAD – which is in charge of this public service – is part of the general administration and is therefore endowed with public powers, despite not having the status of a public-law entity. According to the statistics published by the RAD (http://www.diyanet.gov.tr/tr/kategori/istatistikler/136), in 2013

– the number of civil servants assigned to the department was 121,845;
– the number of mosques was 85,412; and

– the number of Koranic schools (*Kuran kursu*) managed by the RAD was 13,021.

25. In Turkey there is no religious tax. Accordingly, since the RAD was created its revenue has always come from the State budget. In that connection, the documents submitted by the parties show that, in 2013, the amount allocated to the RAD was 4,604,649,000 Turkish liras ("TRY") (approximately 1,960,000,000 euros (EUR) on the basis of the exchange rate at the time). In 2014 the budget came to TRY 5,552,000,000 (approximately EUR 1,933,670,000). For the year 2015 a budget of TRY 5,743,000,000 (approximately EUR 2,036,524,800) was set aside. In their observations the applicants also provided information according to which the budget allocated to the RAD for the period 1996 to 2015 came to a total of TRY 37,275,900,000. The applicants submitted that, on the basis of the relevant exchange rate, that sum corresponded to 16 billion United States dollars (USD). Moreover, according to the data provided by the Government, 95% of the RAD's budget is allocated to staff expenditure. The Government also pointed out that mosques and district mosques were built on the initiative of volunteer citizens and through their efforts. Lastly, the Government stated that under section 6(3) of Law no. 6446, lighting costs for places of worship were met by the RAD. Thus, in 2014 the sum of TRY 38,529,463 had been set aside in the RAD's budget to pay the electricity bills of mosques, district mosques, churches and synagogues. No provision was made in the budget for places of Sufi practice such as *cemevis*, *mevlevi* houses (*mevlevihane*) or *qadiri* houses (*kadirihane*).

26. The RAD, as the administrative body responsible for matters pertaining to the Muslim religion in Turkey, has a sort of monopoly over these matters. In that connection, religious services pertaining to Islam are considered to fall within the legal framework governing the public service. This special status is explained, according to the Government, by the fact that the Muslim religion does not have an absolute religious authority or religious organisation comparable to the Church in the Christian religion, nor does it have a clergy or other privileged groups.

27. It emerges from the articles furnished by the applicants and written by specialists in administrative law that, although the legal framework governing the public service is based on the principle of neutrality, which is a component of the wider concept of a secular State, the attitude of the RAD towards other branches of the Muslim religion has been the subject of widespread criticism in Turkey. The RAD has responded by stating that, in accordance with the principle of secularism, it performs its tasks not by reference to the preferences or religious traditions of a particular faith or a particular religious group or order, but on the basis, among other things, of sources of the Muslim religion accepted by all Muslims. In its view, these traditions and sources are common to all Muslims and are spiritual rather than temporal. Likewise, the services it provides are general and

supra-denominational and are made available to everyone on an equal footing.

28. The applicants, however, relying on the articles referred to above, disputed the claim that the RAD's services were provided to everyone and were general and supra-denominational. They maintained that the RAD provided a religious service based on the Sunni-Hanafi understanding of Islam.

2. Status of the other religions

29. With regard to the status of other beliefs and religions, Turkish law does not provide for any specific procedure by which religious communities can obtain special status under public or private law or religious denominations can be recognised and registered. Consequently, religious communities, except those endowed with the status of recognised religious minority under the Treaty of Lausanne (especially the Greek, Armenian and Jewish communities) or other international treaties (especially the Bulgarian Orthodox community), can only operate as foundations or associations.

30. In their observations the applicants submitted that, in addition to the Alevis, numerous other religious groups were in the same unfavourable position, namely members of the Protestant churches, Jehovah's Witnesses, Yazidis, Syriacs and Chaldeans.

31. The absence of a clear legal framework governing unrecognised religious minorities causes numerous legal, organisational and financial problems. First of all, the religious leaders of these communities have no legal status and there is no appropriate establishment able to train staff involved in the practice of the religion or creed in question. Secondly, their places of worship do not have any legal status and do not enjoy any legal protection. The ability to build places of worship is uncertain and is subject to the good will of the central or local authorities. Arrangements for the upkeep of immovable property with a cultural heritage, which in some cases is literally falling into ruin, are complex. Thirdly, the communities in question cannot officially receive donations from members or State subsidies. Lastly, as they do not have legal personality, these communities do not have access to the courts in their own right but only through foundations, associations or groups of followers.

32. In addition, there are numerous legal obstacles for religious communities trying to operate as a foundation or an association. Whilst many communities have created their own foundations, under Article 101 § 4 of the Civil Code it is illegal to create a foundation "whose aim is to support ... a specific community" (see, for example, *Özbek and Others v. Turkey*, no. 35570/02, 6 October 2009). Furthermore, although many communities have created their own associations to serve their specific interests, Turkish law does not provide for any special form of religious association open to religious communities.

33. In its opinion on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "ecumenical", adopted by the Venice Commission on 15 March 2010 (CDL-AD(2010)005-f), the latter made the following observations:

> "32. The basic problem in Turkish law as regards religious communities is that they cannot register and obtain legal personality as such. There is no clear arrangement in the legal system for this, and no religious community has so far obtained legal personality. Instead they have to operate indirectly through foundations or associations.
>
> ...
>
> 34. Although the lack of legal personality in principle applies equally to all religious communities in Turkey, there is in practice a clear distinction between Muslims and non-Muslims. For Muslim activities, these are administered through the Presidency of Religious Affairs (the *Diyanet*), which is formally part of the administration and reports directly to the Prime Minister. The *Diyanet* has responsibility for regulating the operation of the country's 75,000 registered mosques and employing local and provincial imams, who are civil servants. For the Muslim communities issues related to representation are therefore handled through the *Diyanet*.
>
> 35. For non-Muslim religious communities, the *Diyanet* cannot be considered representative. They, therefore, do not legally exist as themselves. Instead, the model provided for under Turkish law is for their members to register foundations or associations, which may (to some extent) support the religious communities. Both these legal structures – foundations and associations – have clear limitations for religious communities, but both have recently been reformed, making them somewhat more usable."

34. Although this opinion concerns only the legal status of non-Muslim religious communities in Turkey, it provides an overview of the situation of religious communities in general.

3. Alevis, cemevis *and the Alevi initiative*

(a) Alevi faith

35. In reply to a question from the Court the applicants specified that the Alevi faith was a belief with particular features which distinguished it in many respects from the Sunni understanding of Islam. Alevis recognised Muhammad as their Prophet and the Koran as their holy book. They asserted that it was a faith which followed an esoteric interpretation of the Koran and believed in man's "divine essence", with no distinction being made between the divine being and human essence. Unlike Sunni Muslims, Alevi men and women practised their faith together in the *cemevis*.

36. The Government specified that there were no official statistics on the Alevi population in Turkey, as the population censuses did not include any questions concerning religious affiliation. However, referring to the report on Turkey prepared by the USCIRF (United States Commission on International Religious Freedom) (Turkey Chapter – 2014 Annual Report),

the applicants submitted that at least 15 to 25% of the total population of Turkey were followers of the Alevi faith, that is, approximately twenty million people. They added that many members of the Alevi community also avoided disclosing their own beliefs. They concluded that the total Alevi population in Turkey was somewhere between twenty-five and thirty million. They also submitted to the Court an extract from the statements made on 1 March 2014 by Mr Özpolat, a Member of Parliament for the CHP (People's Republican Party), according to which research into the Alevi population showed that

- there were 12,521,792 Alevis in Turkey;
- whilst Alevis lived nearly everywhere in the country, more specifically there were 4,388 areas in which Alevis were the majority population, including 3,929 villages, 9 districts and 2 cities.
- 60% of those people described themselves as "Alevis", 18% as "Kurdish Alevis", 10% as "Turkmen Alevis", 9% as "Muslims" and 3% as "atheists".

37. The Government stated that there were 1,151 *cemevis* in Turkey. The applicants submitted that it could be seen from the discussions in Parliament on adoption of the State budget in 2013 that there were 895 *cemevis* in cities and approximately 3,000 *cemevis* in villages.

(b) Status of the *cemevis*

38. *Cemevis* do not have the status of places of worship under Turkish law as they are not regarded as places designed for religious worship in the strict sense of the term (regarding the status of *cemevis* in Turkey, see in particular the judgment in *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, no. 32093/10, §§ 29-31 and §§ 44-52, 2 December 2014). In many opinions the RAD has said that it regards the *cemevi* as a sort of monastery (*tekke*), that is, not strictly speaking a place of worship but merely a place of assembly where spiritual ceremonies are held. In its view, the Alevi faith is an interpretation of Islam influenced by Sufism and with specific cultural features, and cannot be regarded as a religion in its own right or as a branch (*mezhep*) of Islam. Consequently, it associates the status of *cemevis* with that of the legal entity to which they belong.

(c) Alevi initiative and Alevi workshops

39. The Government stated that seven Alevi workshops (*Alevi çalıştayları)* had been organised in Turkey between June 2009 and January 2010, with a view to examining questions relating to the Alevi community in the context of the Alevi initiative (*Alevi açılımı*). The workshops were attended by more than 300 participants including Alevi spiritual leaders – among them the applicant Mr İzzettin Doğan, who is a *dede* (Alevi religious leader) – theologians, public figures sympathetic to the problems of Alevis and State representatives. In that connection, a special meeting was

organised in the county of Sivas, which had been the scene of bloodshed on 2 July 1993 when intellectuals and Alevis had been persecuted by right-wing extremists outside any legal framework.

40. During the workshops the issue of the status of the *cemevi*, affecting the teaching of the Alevi faith and the funding of religious activities, was also discussed. In the final statement adopted at the end of the workshops by Mr F. Çelik, Minister of State, and published on 31 March 2011, the wish was expressed to see the *cemevi* acquire official status. It was considered that such recognition would allow the Alevi community to take advantage of the many privileges granted to places on which that status was conferred.

41. According to the final report (*Alevi Çalıştayları Nihai Raporu* - hereinafter "the Final report") adopted following the workshops, the Alevi question had to be addressed on the basis of a conception of secularism that was compatible with the rule of law, and a solution had to be found without creating new forms of segregation. The report, which is over 200 pages long, addresses the various issues affecting Alevis (*Alevi sorunu*). The Government produced a copy of the report, the relevant parts of which are set out at paragraph 53 below.

42. The Government submitted that after the Alevi workshops, on 30 December 2010, the syllabus of the "compulsory religious education and ethics" classes had been changed in order to respond – to a considerable degree, according to the Government – to the demands of the Alevi religious leaders (see *Mansur Yalçın and Others v. Turkey*, no. 21163/11, 16 September 2014). On 14 March 2015 work had begun on building the *Hacı Bektaşi Veli* lower secondary school where, among other subjects, the Alevi faith would be taught. Furthermore, Nevşehir University had been renamed *Nevşehir Hacı Bektaşi Veli Üniversitesi*.

4. The Government's stance regarding the Alevi faith, and the academic opinion submitted by them

43. In their observations before the Court the Government submitted that the movements that had emerged in the Muslim world based on Islamic jurisprudence or faith or on the Sufi schools of thought (or Sufi orders) could not be accepted as the only correct forms of Islamic teaching. Consequently, there was no clear distinction between these schools of thought, unlike in the Christian faith. Hence, unlike Christians, the members of a Sufi brotherhood or movement, when asked about their religious identity, would define themselves first and foremost as Muslims without mentioning the fact that they adhered to Sufi beliefs or belonged to a Sufi order. Furthermore, Alevism – whose roots could be traced back thousands of years – could not be considered as a new religious movement.

The Government added that, in Muslim societies, there existed a kind of institutional Islam founded on the Koran and on the practices of the Prophet Muhammad. The differences that had emerged subsequently did not relate

to Islam itself, as generally understood, but to the way in which religion and religious life as a whole were perceived, and could not therefore be regarded as a schism within Islam.

44. In support of their argument the Government submitted an "academic opinion" (*Bilimsel Görüş*) signed by six professors of theology and a professor of sociology. According to the opinion, on the basis of the overall classification accepted by religious academics, religious groups comprised three primary structures, namely religions, sects and mystical groups. It went on to state that Sufi thought and practice, including the Alevi faith, represented the third category (mystical groups) within Muslim societies. Alevis adhered to Islam and acknowledged that the Koran was the last holy book and that Muhammad was the last prophet. The opinion further considered that prayer (*namaz*), fasting (*oruç*) and pilgrimage (*haç*) were rituals common to all Muslims irrespective of their adherence to a particular branch or theological doctrine. Alevi sources placed strong emphasis on prayer and on the Ramadan fast, and sociological research had found that, in various regions of the country, there were Alevis who practised these rituals. The opinion added that the Alevi faith should be regarded as a Sufi tradition or order tailored to a social system organised around "family groups" (*ocak*, a sort of tribal organisation), according to the divine trinity of *Haqq, Muhammad* and *Ali*. This meant that there was only one God (Allah), that Muhammad was his prophet and that Ali was his saint. Another central concept to the Alevi community was the term *Ahl al-Bayt*, which referred to the family of Muhammad.

According to the opinion, the term "Sunnism" referred to "Sunnah" or *Ahl al-sunnah*, representing the way of life of the prophet Muhammad. The term was generally considered to refer to the theological branches of Islam such as Salafism, Asharism and Maturidism and to the branches of the schools of law, namely Hanafism, Malikism, Shafiism and Hanbalism. According to scholars of Sunnism, in order to be able to draw precise conclusions from the *nasses* (dogma of Islam comprising rules from the Koran and the Sunnah) and find an answer to controversial questions, it was necessary to take solid verses from the Koran as a basis, to have regard to the undisputed *Hadiths* (prophetic tradition), to attempt to understand the *nasses* in their entirety and, in general, to subordinate rationality to revelation, by accepting the apparent meaning of the *nasses*.

The opinion also stated that it was technically incorrect to compare the Alevi faith to Sunnism or the status of *cemevis* to that of places of worship, in so far as *cemevis* were merely places where "customs and ceremonies" (*adap ve erkan*) were practised by followers of the Alevi faith. Consequently, Alevism could only be compared to other Islamic Sufi groups such as *Qadiriyya* or *Naqshbandiyya* (Sufi orders).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

45. The relevant provisions of the Constitution provide:

Article 2

"The Republic of Turkey is a democratic, secular and social State based on the rule of law that is respectful of human rights in a spirit of social peace, national solidarity and justice, adheres to the nationalism of Atatürk and is underpinned by the fundamental principles set out in the Preamble."

Article 4

"The provisions of Article 1 of the Constitution establishing the form of the State as a Republic, the provisions of Article 2 on the characteristics of the Republic, and the provisions of Article 3 shall not be amended, nor shall their amendment be proposed."

Article 10

"All individuals are equal before the law without any discrimination based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds.

Men and women have equal rights. The State shall ensure that such equality is achieved in practice.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all circumstances."

Article 14

"The rights and freedoms set out in the Constitution shall not be exercised with a view to undermining the territorial integrity of the State and the unity of the nation or abolishing the democratic and secular Republic founded on human rights.

No provision of this Constitution shall be interpreted in a manner that would grant the State or individuals the right to engage in activities intended to destroy the fundamental rights and freedoms embodied in the Constitution or to restrict them beyond what is permitted by the Constitution.

The penalties to which persons who engage in activities that contravene these provisions are liable shall be determined by law."

Article 24

"Everyone shall have the right to freedom of conscience, belief and religious conviction.

Prayers, worship and religious services shall be conducted freely, provided that they do not violate the provisions of Article 14.

No one shall be compelled to participate in prayers or in religious ceremonies and rites or to reveal his or her religious beliefs and convictions; no one shall be censured or prosecuted for his religious beliefs or convictions.

Education and instruction in religion and ethics shall be provided under the supervision and control of the State. Instruction in religious culture and in ethics shall be a compulsory part of the curriculum of primary and secondary schools. Other religious education and instruction shall be a matter for individual choice, with the decision in the case of minors being taken by their legal guardians.

No one shall exploit or abuse religion, religious feelings or things held sacred by religion in any manner whatsoever with a view to causing the social, economic, political or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal interest or influence thereby."

Article 136

"The Religious Affairs Department, which is part of the general administration, shall carry out the functions assigned to it under the special law by which it is governed, in conformity with the principle of secularism, while remaining detached from all political views or ideas and with the aim of promoting national solidarity and union."

Article 174

"No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws indicated below, which aim to raise Turkish society above the level of contemporary civilisation and to safeguard the secular character of the Republic, and which were in force on the date of the adoption by referendum of the Constitution:

...

(3) Law no. 677 of 30 November 1341 (1925) on the Closure of Dervish Monasteries and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles;

..."

B. The functions of the Religious Affairs Department

46. The relevant provisions of the Religious Affairs Department (Creation and Functions) Act (Law no. 633) of 22 June 1965 read as follows:

Section 1

"The Religious Affairs Department, operating under the Prime Minister, shall deal with matters of Islamic beliefs, worship and moral tenets, enlighten society about matters pertaining to religion and administer places of worship."

Section 5

"The Supreme Council of Religious Affairs constitutes the supreme decision-making and advisory authority. It is made up of sixteen members ...

It is competent to

(a) answer all questions concerning religion, give an opinion and take decisions on matters of religion while having regard to Islamic sources and methodology and to historical teachings ...

...

(c) analyse the various religious interpretations, socio-religious groups and cultural and religious groups both inside the country and abroad and carry out studies on these matters, undertake consultations and organise meetings and conferences;

... ”

Section 7

“The divisional units, functions and powers of the Religious Affairs Department are the following:

(a) the Directorate-General of Religious Services shall

(1) inaugurate and administer prayer rooms and mosques in order to allow the religion to be practised and provide religious services ...

...

(10) undertake activities aimed at the followers of various different religious interpretations, socio-religious groups and traditional cultural and religious groups adhering to the Muslim religion.

...

(d) The Directorate-General of International Relations

(1) In the context of international agreements and relations, shall provide religious services and arrange for the religious instruction of citizens resident abroad ... .

...”

Section 35

“Authorisation for the inauguration of mosques and prayer rooms for religious practice shall be obtained from the Religious Affairs Department, which will administer them. The administration of mosques and prayer rooms that have already opened with or without authorisation ... shall be transferred to the Religious Affairs Department within three months of their opening. The Religious Affairs Department shall appoint managers for these places in so far as resources allow ...”

47. Pursuant to sections 9 and 11 of this Act, RAD staff must satisfy the requirements laid down in the Civil Servants Act (Law no. 657) of 14 July 1965.

C. Status of places of worship in Turkish law

1. Regulation no. 2/1958 of the Council of Ministers

48. Article 3 of the Regulation enacted by the Council of Ministers on 18 February 1935 implementing the Law governing the wearing of certain dress defines places of worship as follows:

> "Places of worship (*mabedler*) are closed areas created in accordance with the relevant procedure and designed in the case of each religion for the practice of religious worship."

49. Turkish law does not lay down any specific procedure for granting the status of "place of worship" (*mabed* or *ibadethane*). In practice, the above-mentioned Regulation is interpreted as requiring the existence of a link between the place of worship and the practice of a religion. In the relevant legislation, only mosques (and *masdjids*), churches and synagogues are expressly classified as places of worship, for the Muslim, Christian and Jewish religions respectively.

Classification as a place of worship has a number of important legal implications. Firstly, places of worship are exempted from numerous taxes. Secondly, their electricity bills are paid out of an RAD fund. Lastly, when urban development plans are being drawn up, provision must be made for places of worship, the establishment of which is subject to certain conditions (see *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, §§ 20-28).

2. Decision no. 2002/4100 of the Council of Ministers

50. The relevant parts of Decision no. 2002/4100, adopted by the Council of Ministers and published on 23 May 2002 in the Official Gazette, read as follows:

Article 2

> "The persons or organisations listed below [connected to the electricity grid] shall be exempted [from the provisions] of section 1(1) of Law no. 4736 in the circumstances referred to in Article 3 of the present Decision
>
> ...
>
> (e) charities, associations, foundations, museums, State schools ...,
>
> (f) places of worship (mosques (*camii*), masdjids (*mescit*), churches, synagogues (*havra, sinagog*)) ..."

Article 3

> "The charges payable by the subscribers listed in Article 2 of the present decision shall be determined in accordance with the following rules
>
> ...

(e) The difference between the price charged to the following group of subscribers: charities, associations, foundations, museums, State schools ... and the price charged to other subscribers may not exceed 15 Turkish liras per kilowatt hour ...

(f) ... The electricity bills of places of worship shall be paid out of a Religious Affairs Department fund ..."

51. Under section 1(1) of Law no. 4736, published in the Official Gazette on 19 January 2002, certain public institutions are not eligible for exemption from payment of electricity bills.

D. Closure of the Dervish monasteries and abolition and prohibition of certain titles

52. Section 1 of Law no. 677 of 30 November 1925 on the Closure of Dervish Monasteries and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles reads as follows:

"Throughout the territories of the Turkish Republic, all *tekkes* and *zaviyes* (Dervish monasteries) established either as a foundation, or as the property of a *sheikh* or in any other way, shall be completely closed, subject to the owner's right of possession. Those which are still being used as mosques or prayer rooms in accordance with the statutory procedure shall remain operational.

In particular, the use of certain religious titles such as *Seyhlik, Dervichlik, Muritlik, Dedelik, Seyitlik, Celebilik, Babalık* ... shall be prohibited. Throughout the territories of the Republic of Turkey, tombs belonging ... to a Sufi order (*tarika*) or used for purposes of interest, and other tombs, shall be closed ... . Anyone who opens *tekkes* and *zaviyes* or tombs and begins carrying on these activities again, or anyone who provides religious premises, even temporarily, for Sufi practices and rituals, and who bears one of the above-mentioned titles or carries on the associated activities, shall be sentenced to a minimum term of imprisonment of three months and to a fine ..."

E. Final report issued following the Alevi workshops

53. The relevant parts of the final report issued following the Alevi workshops (see paragraph 41 above) read as follows:

"... Although it is wrongly proposed to compare Sunnism to Alevism, in reality Sunnism and Alevism are not identical and do not have comparable structural features ...

... Alevism is an original phenomenon (*özgün bir oluşum*) and part of the religious spirit deeply rooted in Turkish society and history, with its own theological features and its own particular tradition and practice, based on Muslim theology and terminology ... Whilst some researchers see it as a Sufi order, others view it as a branch (*mezhep*) of Islam. Then there are a number of minority views which regard Alevism as a religion. Sunnism ... is distinct from Alevism both in formal terms and in terms of its referential values ... [pp. 40-41].

Whilst Sunnism developed from formal and normative characteristics, Alevism came about through an oral tradition and has defined itself on the basis of those cultural tendencies and choices. Admittedly, Sunnism and Alevism have common

features. However, it is pointless to over-emphasise [these common points], because they are distinct from the point of view of belief, practice, customs, ceremonies and referential values. [On the other hand], similarities between Alevism and Sunnism can be inferred from their common features in terms of Muslim religion and culture ... [p. 41].

... The Alevi faith, which appeared during the Ottoman era, must be viewed as a community distinct from Sunnism ... . Today, the Alevism of Anatolia [*Anadolu Aleviliği*] can rightly be regarded as a structure having its own particular features ... [p. 42].

... The principal choices which led to the current structure of Alevism date back to the fourteenth century. At the beginning, Alevism distanced itself from the Shiite and Sunni interpretations of Islam. However, it has always maintained contact with those traditions. That relationship is in fact the main syncretic feature of this belief. At the same time Alevism has succeeded in combining pre-Islamic traditions with Islam. [Gradually,] the view that the parent branch was Islam has turned into a new belief open to various religious and denominational features [p. 45].

... At the workshops a consensus emerged around the idea that the Alevi faith was a form of belief and foundation (*inanç ve erkan yolu*) that was organised around the concepts *Haqq*, *Muhammad* and *Ali* in the Muslim religion [p. 91].

...

The main institutional problems facing the Alevis are the fact that *cemevis* do not have any official status and that *dedes*, [Alevi] religious leaders, are legally regarded as outside the law ...

As modern institutions, *cemevis* find their origins in the practice of *ayin-i cem* [*cem* ceremony], which is a fundamental ritual of the Alevi faith.

In the Alevi faith the most important religious activity is the *cem* meeting, run by Alevi religious leaders (*dedes* or *pir*) [p. 161].

Nowadays, although *cemevis* have no legal basis they continue to exist *de facto* [p. 164].

[Notwithstanding a decline in function due to the modernisation of the Alevi community], the role of the *dede* in the community is undisputable [p. 167].

[However, the institution of *dede*] is beset with serious problems. Firstly, the laws categorically deny all the roles and missions of that institution ... Consequently, the Alevi faith has been obliged to maintain its existence 'without *dedes* and without rituals' during the Republic [p. 168].

Alevis are deprived of trained leaders. Although the *dedes* [have relative authority] on account of their lineage ..., they do not have any role in the public-service structure [p. 169].

Alevis have stressed that their contribution in taxes should be taken into account in the provision of services by the RAD and have expressed their dissatisfaction that nothing has been done to respond to their specific situation. They have asked the State to take account of their specific needs on an equitable basis ... [p. 171].

On the other hand, the request for recognition of *cemevis* as places of worship finds strong resonance with Alevis. It should be acknowledged that nowadays Alevis do not practise their own rituals in mosques, [unlike] Muslims in general, but perform their *cem* ceremonies in *cemevis*. As the *cem* is their ritual (*ibadet*), they regard the *cemevis*

as their places of worship. Today, this approach is commonly accepted among Alevis, who have decided to regard the rituals carried out in the *cemevis* as a fundamental element of their religious practice [pp. 171-72].

For a Sunni Muslim, likening the *cemevis* to mosques is destructive both for Islam and for the Alevi faith ... However, account must be taken of the fact that there is no watertight distinction between monasteries (*dergah*) and mosques from the point of view of the Sunni orders. [In principle], Sunnis see no contradiction in the fact of frequenting both a monastery and a mosque ... However, barring a number of exceptions, the place of the mosque is still disputed in the approach prevailing among Alevis ... . Although Sunni Muslims seek to associate Alevis with the mosque ..., nowadays the reality emerging from the Alevi examples consists in acknowledging that the places which represent Alevis are *cemevis*, far more than mosques [pp. 174-75].

... In the light of the foregoing, [it is recommended that the Government] take into consideration the following points for the promotion of civil peace [pp. 189-94]:

I. The framing and definition of the Alevi faith must be entirely and exclusively a matter for Alevis ...

II. Alevis allege that they suffer discrimination in society and in their relations with the State. As a matter of urgency, and with complete transparency, the State must take measures to put an end to that perception ... In any event an end must be put to all discriminatory practices and the legal framework that institutionalises and promotes discrimination must be abolished.

...

IV. The Alevi question must be examined and resolved in compliance with the principles of secularism and the rule of law ...

...

X. Alevis must have the right to benefit from the services provided by the RAD on an equal footing with Sunni citizens within the common framework of the Muslim religion ...

XI. Studies must be carried out in order to ensure that the RAD, in its current structure, can provide a service to belief groups based on an understanding of Islam other than Sunnism ...

...

XIV. With regard to religious services, account must also be taken of the demands of the Alevis who do not want to establish relations with the RAD and they must be offered the possibility of creating an organisation which has regard to the needs of life in society and complies with the principle of secularism ...

XV. The Constitution must be amended in order to solve the problems that have arisen in practice as a result of compulsory religious education ...

...

XXII. Legal status must be conferred on the *cemevis* and their needs must be funded by the State in compliance with the principle of equality.

XXIII. A legal affairs committee must be set up to examine the demands of the religious groups which consider the service provided by the RAD to be insufficient or

which do not benefit from those services or, alternatively, do not wish to benefit from them ...

XXIV. The proposal to introduce a religious tax must be examined with regard to the social, religious and cultural dimensions.

..."

III. RELEVANT INTERNATIONAL MATERIALS

A. Council of Europe

1. Texts adopted by the European Commission for Democracy through Law (the Venice Commission)

(a) Guidelines for Legislative Reviews of Laws affecting Religion or Belief

54. The relevant parts of the document entitled "Guidelines for Legislative Reviews of Laws affecting Religion or Belief", adopted by the Venice Commission at its 59th plenary session (Venice, 18 and 19 June 2004, CDL-AD(2004)028), read as follows:

"Substantive issues that typically arise in legislation

...

2. *The definition of 'religion'*. Legislation often includes the understandable attempt to define 'religion' or related terms ('sects', 'cults', 'traditional religion', etc.) There is no generally accepted definition for such terms in international law, and many states have had difficulty defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counterexamples are classical Buddhism, which is not theistic, and Hinduism (which is polytheistic). ...

3. *Religion or belief*. International standards do not speak of religion in an isolated sense, but of 'religion or belief'. The 'belief' aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers. ...

B. Basic values underlying international standards for freedom of religion or belief

Broad consensus has emerged within the [Organization for Security and Co-operation in Europe] region ... on the contours of the right to freedom of religion or belief as formulated in the applicable international human rights instruments. Fundamental points that should be borne in mind in addressing legislation in this area include the following major issues:

1. *Internal freedom (forum internum)*. The key international instruments confirm that '[e]veryone has the right to freedom of thought, conscience and religion'. In contrast to manifestations of religion, the right to freedom of thought, conscience and religion ... is absolute and may not be subjected to limitations of any kind. Thus, for

example, legal requirements mandating involuntary disclosure of religious beliefs are impermissible ...”

(b) Joint Guidelines on the Legal Personality of Religious or Belief Communities

55. The Joint Guidelines on the Legal Personality of Religious or Belief Communities were adopted by the Venice Commission at its 99th plenary session, on 13 and 14 June 2014 (Venice, CDL-AD(2014)023). The relevant parts of these guidelines state as follows (references omitted):

“Part IV. Privileges of religious or belief communities or organizations

38. States may choose to grant certain privileges to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system or providing membership in public broadcasting agencies. It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory.

...

39. It is within the power of the state to grant such privileges, but in doing so, it must be ensured that they are granted and implemented in a non-discriminatory manner. This requires that the treatment has an objective and reasonable justification, which means that it pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the intended aim.

40. In particular, the existence or conclusion of agreements between the state and a particular religious community, or legislation establishing a special regime in favour of the latter, does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so. Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country’s history and society. A difference in treatment between religious or belief communities resulting in the granting of a specific status in law – to which substantial privileges are attached – while refusing this preferential treatment to other religious or belief communities that have not been acceded to this status is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups, to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status, and the criteria established are applied in a non-discriminatory manner.

41. The fact that a religion is recognized as a state religion, that it is established as an official or traditional religion or that its followers comprise the majority of the population may be an acceptable basis for according special status, provided, however, that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, or in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service or according economic privileges to members of the state religion or predominant religion, or imposing special restrictions on the practice of other faiths, are not in accordance with

the prohibition of discrimination based on religion or belief and the guarantee of equal protection.

42. The rights discussed in the second and third part of this document, including the freedom to manifest religion or belief in community with others and the right to legal personality, must not be seen as a privilege, but as a right which forms a fundamental element of the freedom of religion or belief. In particular, as noted above, the right to legal personality must not be abused as a means to restrict the rights of individuals or communities seeking to exercise their freedom of religion or belief by making their ability to do so in any way conditional upon registration procedures or similar restrictions. On the other hand, access to legal personality should be open to as many communities as possible, and should not exclude any community on the ground that is not a traditional or recognized religion or belief. Differential treatment relating to the procedure to be granted legal personality is only compatible with the principle of non-discrimination if there is an objective and reasonable justification for it, if the difference in treatment does not have a disproportionate impact on the exercise of freedom of religion or belief by (minority) communities and their members and if obtaining legal personality for these communities is not excessively burdensome."

2. European Commission against Racism and Intolerance

56. In its fourth report on Turkey, adopted on 10 December 2010 and published on 8 February 2011 (TUR-CBC-IV-2011-005), the European Commission against Racism and Intolerance (ECRI) stated, *inter alia*, as follows:

"100. The Alevi community has generally good relations with the majority population. However, religious education in primary and secondary schools (which is compulsory under Article 24 of the Constitution and Article 12 of Law No. 1739 on National Education) are of concern to Alevis. ...

101. Alevi representatives also complain of discriminatory treatment in that the state provides funding to certain faiths – for example, funding to cover the electricity bills of places of worship – but not to all. In particular, at present *cemevis* are not recognised as places of worship (although mosques, synagogues and churches are) and have therefore, with only isolated exceptions at local level, been refused state funding; nor are any Alevi high schools supported by state funds. The conduct in late 2009 of the funeral of an Alevi soldier according to Sunni rites also caused distress to some Alevis.

102. ECRI notes with interest that in 2009, the government organised a series of workshops with different groups within the Alevi community, in order to discuss issues of concern to them directly with the Alevi community and begin addressing these issues. It also notes with interest reports that the Turkish government intends to expand its democratic initiative to include Alevis.

103. ECRI recommends that the Turkish authorities take all necessary measures to implement the judgment of the European Court of Human Rights in the case of *Zengin Hasan and Eylem* fully and expeditiously, so as to align Turkish law and practice in the field of religious education with the requirements of the European Convention on Human Rights.

104. ECRI recommends that the Turkish authorities investigate the concerns of the Alevi community with respect to discriminatory treatment, in particular concerning

funding and issues related to places of worship, and take all necessary measures to redress any discrimination found.

105. ECRI strongly encourages the authorities to pursue their efforts to build a constructive dialogue and foster good relations with the Alevi community."

B. United Nations

1. International Covenant on Civil and Political Rights

57. The relevant provisions of the International Covenant on Civil and Political Rights read as follows:

Article 18

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 27

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

2. United Nations Human Rights Committee

58. In its General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights (freedom of thought, conscience and religion), adopted in 1993, the Human Rights Committee stated as follows:

"2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

...

4. The freedom to manifest religion or belief may be exercised 'either individually or in community with others and in public or private'. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad

range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. ... In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

...

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

3. Report of the United Nations Special Rapporteur of 22 December 2011 on freedom of religion or belief

59. The Special Rapporteur on freedom of religion or belief, Mr Heiner Bielefeldt, presented his annual report to the General Assembly of the United Nations on 22 December 2011 (A/HRC/19/60). The paragraphs relevant to the present case are worded as follows (references omitted):

"D. The issue of privileged status positions for certain religious or belief communities

59. Many States provide for a privileged status position to be accorded to certain religious or belief communities or – in most cases – to only some of them. Such a specific status position typically goes way beyond the general possibilities attached to the status of a legal personality and may include practical privileges, such as tax exemption, financial subsidies, or membership in public broadcasting agencies. The

term ‘recognition’ is often used with reference to such a privileged status position, which some denominations may enjoy while others might be excluded.

60. While States have a clear human rights obligation to offer the possibility for religious or belief communities to obtain a general status of a legal personality, the provision of a more specific status position on behalf of religious or belief communities does not directly follow from the human right to freedom of religion or belief. States have different options in this regard. There is room for a broad range of possibilities. Whereas many States have offered such a specific status position as part of their promotional activities in the field of freedom of religion or belief, other States have decided not to do so and to take different routes to discharge their obligation to promote freedom of religion or belief.

61. Should States provide for specific status positions on behalf of religious or belief communities, they should ensure that these provisions are conceptualized and implemented in a non-discriminatory manner. Non-discrimination is one of the overarching principles of human rights. It relates to human dignity, which should be respected for all human beings in an equal and thus non-discriminatory way. ...

62. Unfortunately, the Special Rapporteur has received a lot of information on existing discriminatory practices and policies of States when it comes to providing specific status positions and concomitant privileges to some denominations, while withholding the same position from others. In many cases, the criteria applied remain vaguely defined or are even not defined at all. In a number of other cases, general reference is made to the cultural heritage of the country in which some religious denominations are said to have played predominant roles. While this might be historically correct, one has to wonder why such a historical reference should be reflected in a legal text or even in a Constitution. Reference to the predominant historical role of one particular religion can easily become a pretext for a discriminatory treatment of the adherents to other religions or beliefs. There are numerous examples indicating that this is actually the case.

63. Moreover, quite a number of States have established an official State religion, a status position often even enshrined in State Constitutions. Although, in most cases, only one religion has been accorded such an official position, there are also examples of two or more State religions existing in one country. The practical implications of the establishment of a State religion can be very different, ranging from a more or less symbolic superior rank of one religion to rigid measures aimed at protecting the predominant role of the State religion against any denominational competition or against public criticism. ... Providing some denominations with a privileged status position or establishing an official State religion is sometimes part and parcel of a State policy of fostering national identity. Ample experience shows, however, that this harbours serious risks of discrimination against minorities, for instance, against members of immigrant religious communities or new religious movements.

...

IV. Conclusions and recommendations

...

72. Moreover, if States decide to provide for specific status positions connected with particular financial and other privileges, they should make sure that such a specific status does not amount to *de jure* or *de facto* discrimination against members of other religions or beliefs. With regard to the concept of an official ‘State religion’, the Special Rapporteur would argue that it seems difficult, if not impossible, to

conceive of an application of this concept that in practice does not have adverse effects on religious minorities, thus discriminating against their members.

73. From the above considerations, the Special Rapporteur would like to make the following recommendations:

...

i) When offering a privileged legal status position for certain religious or belief communities or other groups, such a specific status should be accorded in strict conformity with the principle of non-discrimination and should fully respect the right to freedom of religion or belief of all human beings;

j) Any specific status positions given by the State to certain religious or belief communities or other groups should never be instrumentalized for purposes of national identity politics, as this may have detrimental effects on the situation of individuals from minority communities."

IV. COMPARATIVE LAW

60. According to the information available to the Court concerning 34 of the 47 member States of the Council of Europe[1], no single model exists for the organisation of relations between the State and religious communities. The constitutional systems of the various States encompass a wide variety of arrangements, which can be divided into three categories:

(a) near-total separation between the State and religious organisations (as for instance in Albania, Azerbaijan, France – with the notable exception of Alsace-Moselle – Ukraine and some Swiss cantons);

(b) existence of a State church (as for instance in Denmark, Iceland, the United Kingdom as regards the Church of England, Sweden prior to 2000, and some countries of southern and eastern Europe where the Orthodox Church or other national churches have a special position, such as Armenia, Bulgaria, Georgia, Greece, Moldova, Romania and Serbia); and

(c) concordat-type arrangements. With this model, although a formal separation exists between the State and religious communities, relations between Church and State are governed by concordats or agreements between the two (this is the case in the majority of European countries).

61. Further, in the majority of countries[2] a method or procedure exists for having a religious denomination recognised. If the criteria are met, the religious community concerned is granted the corresponding legal status. In

1. Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Moldova, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine and the United Kingdom.

2. Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Moldova, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland (with the exception of two of the twenty-six cantons) and the former Yugoslav Republic of Macedonia.

order to obtain official recognition as a religious denomination, a religious community other than the majority religion must comply with a number of criteria laid down in the legislation, in the context of the procedures put in place. The legislation also imposes limits on freedom of religion comparable to those set forth in the second paragraph of Article 9 of the Convention. In most countries, if the most stringent criteria are met the religious communities in question may obtain a status comparable to that of the national church. Otherwise, they are granted a different type of status.

62. The funding of religious communities is a complex issue which depends on the historical, social and political evolution of the country. A general distinction is made in the literature between direct funding (for instance subsidies, a religious or church tax, or payment of the salaries of clerical and other staff) and indirect funding, which may take a variety of forms (for instance, preferential tax arrangements, deductibility of donations and upkeep of buildings and places of worship).

63. As regards direct funding by the State, a variety of approaches is adopted. In the majority of countries the State is directly involved in funding the expenditure of religious communities. The budgetary funds may take the form of a lump sum (for example, in Austria, Azerbaijan, the Czech Republic, Georgia and Lithuania) or be allocated for a specific purpose. Some countries have a religious or church tax (Germany and Switzerland, for example) or a church fee (Sweden, for example) which is collected by the State. In Alsace-Moselle (one of the exceptions to the system of separation applicable in France), and in Belgium, Luxembourg, some of the Swiss cantons and Serbia, the salaries and social-security contributions of religious ministers are paid by the authorities. In Italy, funding is made available to all denominations out of tax revenue. It is subject to the principle of secularism and may not infringe the principles of equality between citizens, State neutrality in religious matters, equal freedoms for all religious faiths before the law, or individual religious freedom. The Catholic Church and those religious communities which have entered into agreements with the State receive direct and indirect public funding.

In some countries, there is no possibility of direct funding for religious communities, which are self-financing. Nevertheless, there may be tax deductions or other forms of indirect subsidy (for instance, in Armenia, France – with the exception of some parts of the territory – Ireland, Latvia, Moldova, Portugal, the former Yugoslav Republic of Macedonia, Ukraine and the United Kingdom).

64. Among the criteria which determine eligibility for funding, recognition of legal status is key. In those countries which have different statuses for religious communities (for example, the Czech Republic, Germany, Hungary, Lithuania, Romania, Serbia and Spain), the funding varies depending on the importance of the community's status. In the case of churches whose historical role is emphasised in the Constitution,

concordat, agreement or other instrument, financial support may be automatic. In other cases, the public interest or social utility of the religious community is often taken into consideration.

THE LAW

I. ADMISSIBILITY

65. The Court observes that the Government did not raise any objection as to admissibility in their written or oral observations.

It notes that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court therefore concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

66. The applicants contended that their right to manifest their religion had not been adequately protected in domestic law. They complained in that connection of the refusal of their requests seeking, among other matters, to obtain for the followers of the Alevi faith, to which they belong, the same religious public service hitherto provided exclusively to the majority of citizens, who adhere to the Sunni branch of Islam. They maintained that this refusal implied an assessment of their faith on the part of the national authorities, in breach of the State's duty of neutrality and impartiality with regard to religious beliefs. They alleged a violation of Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

67. The Government contested that argument.

A. Preliminary remarks

68. The Court reiterates that, as guaranteed by Article 9 of the Convention, the right to freedom of thought, conscience and religion denotes only those views that attain a certain level of cogency, seriousness, cohesion and importance. However, provided this condition is satisfied, the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *S.A.S. v. France* [GC], no. 43835/11, § 55, ECHR 2014 (extracts), and *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, § 81, ECHR 2013, with further references).

In the present case the Court notes at the outset that neither of the parties disputed the existence in Turkey of a sizeable Alevi community (see paragraph 36 above), to which the applicants belong, and which is the country's second-largest faith in terms of the number of followers. Furthermore, as acknowledged by the Administrative Court and the Government, the free exercise by Alevis of their right to freedom of religion is protected by Article 9 of the Convention. The Court observes in particular that in its judgment in *Hasan and Eylem Zengin v. Turkey* (no. 1448/04, § 66, 9 October 2007), it held as follows:

> "As to the Alevi faith, it is not disputed between the parties that it is a religious conviction which has deep roots in Turkish society and history and that it has features which are particular to it ... It is thus distinct from the Sunni understanding of Islam which is taught in schools. It is certainly neither a sect nor a 'belief' which does not attain a certain level of cogency, seriousness, cohesion and importance ... In consequence, the expression 'religious convictions', within the meaning of the second sentence of Article 2 of Protocol No. 1, is undoubtedly applicable to this faith."

This approach has been repeatedly reaffirmed in the Court's case-law (see *Sinan Işık v. Turkey*, no. 21924/05, § 46, ECHR 2010; *Mansur Yalçın and Others*, cited above, §§ 71 and 74; and *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfi*, cited above, § 44). Article 9 is therefore applicable to the present case (see *Bayatyan v. Armenia* [GC], no. 23459/03, § 110, ECHR 2011; see also, *mutatis mutandis, Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 36, Series A no. 48, and, conversely, *Pretty v. the United Kingdom*, no. 2346/02, § 82, ECHR 2002-III).

69. The Court also observes that the case concerns a sensitive debate which is a source of controversy in the sphere of Muslim theology and on which it is not for the Court to express an opinion (see *Mansur Yalçın and Others*, cited above, § 70). Hence, in referring, for the purposes of its reasoning, to the Alevi faith and the community founded on that faith, the Court does not attach any particular significance to those terms beyond the finding that Article 9 is applicable to them.

70. In that connection the Court notes that the parties submitted numerous documents concerning the Alevi faith and the place occupied by the Sufi movements in the Muslim religion. Mindful of the subsidiary nature of its role, it will base its assessment of the facts of the case on the judgments of the domestic courts (see paragraphs 14 and 16 above), but will also attach particular weight to the Final report of the Alevi workshops (see paragraphs 41 and 53 above) which was submitted by the Government and the content of which is not disputed by the parties. It stresses in particular that, as stated by the Government, this report was drawn up following seven Alevi workshops held between June 2009 and January 2010 which were attended by over 300 participants including Alevi spiritual leaders, theologians, persons sympathetic to the problems of Alevis, and State representatives (see paragraph 39 above).

B. The parties' submissions

1. The applicants

71. Referring to the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (no. 45701/99, ECHR 2001-XII) and emphasising the State's duty of neutrality and impartiality towards religions, the applicants submitted that the assessment of their Alevi faith made by the domestic authorities in order to justify the refusal of their claims had infringed their right to freedom of religion. In their view, the lack of recognition of the Alevi faith as a religious denomination distinct from Sunni Islam amounted to a negation of the religious characteristics of their faith. Owing to this attitude on the part of the State towards their faith, the administrative authorities almost completely disregarded Alevi citizens. In particular, their places of worship, the *cemevis*, were regarded as cultural centres, with the result that they were deprived of the status of places of worship and of the attendant advantages. Likewise, the *cem* ceremony, which was one of the fundamental Alevi religious ceremonies, was reduced to a picturesque show. Thus, by conducting an assessment of the very nature of their faith, their beliefs and their culture, including their religious practices and their places of worship, the administrative authorities had manifestly infringed the applicants' right to freedom of conscience and religion.

72. The applicants further contested the Government's argument that the Alevi faith could be likened to a "tradition". In their view, the Alevi faith should be regarded as a belief and the *cemevis* as the places of worship of its followers. The State was attempting to define their faith in the light of the Sunni understanding of Islam; however, the State's duty of neutrality and impartiality was incompatible with any power on the State's part to assess the legitimacy of their religious beliefs. In that connection the State did not enjoy any margin of discretion with regard to religious beliefs and should

remain neutral and impartial in its relations with the beliefs and different branches within a religion. Accordingly, the role of State institutions was not "to consider one interpretation as superior to another, to oppress and put pressure on a divided community, or to compel a part of that community to adopt one particular interpretation against its own wishes".

73. Referring to the judgment in *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, the applicants complained of the fact that their places of worship, the *cemevis*, lacked the legal status enjoyed by other places of worship. The building of *cemevis* entailed insurmountable administrative obstacles on account of their lack of official status. Although some municipalities granted applications for planning permission to build *cemevis*, in many areas the local authorities refused such applications. Meanwhile, the authorities continued to build mosques in Alevi villages on the pretext that a request had been made by the local council. Hence, large numbers of mosques built in Alevi villages since 1980 were not in use.

74. The applicants further submitted that in its judgment of 4 July 2007 the Administrative Court had disregarded the State's duty of neutrality, contrary to the Court's judgments on the subject. In the applicants' submission, while it was true that States were not obliged to take positive measures to provide a public religious service, the Turkish State had decided of its own accord to provide such a service to a particular faith. It was therefore required to observe the principle of equality in providing that public service. However, in Turkey, only the Muslim religion as understood by the RAD enjoyed the advantages attaching to the public religious service (see paragraph 89 below). On the basis of one religious doctrine, namely Sunni Islam, the public religious service provided by the RAD obeyed the precepts of the Sunni Muslim faith.

75. Referring to the judgment in *Mansur Yalçın and Others*, cited above, the applicants further submitted that their children were required to attend compulsory classes in religious culture and ethics, notwithstanding the Court's judgments finding a violation in that regard.

76. Lastly, the applicants drew the Court's attention to the lack of any institution for training Alevi religious leaders or teaching the Alevi faith, despite the existence of numerous *imam-hatip* upper secondary schools and faculties of theology dedicated mainly to the teaching of Islamic theology.

77. In sum, the applicants submitted that the rejection of their claims had breached the State's negative and positive obligations under Article 9 of the Convention.

2. The Government

78. The Government submitted essentially that there had been no interference with the applicants' exercise of their rights under Article 9 of the Convention.

79. They maintained at the outset that the Alevi faith was not organised around a homogeneous structure and that there were many different points of view regarding the definition, resources, moral tenets, ceremonies and rules of that faith. In keeping with its duty of neutrality and impartiality towards religions, the State did not define the Alevi faith but took as its basis the definition provided by the applicants themselves, according to which the Alevi faith was a Sufi and rational interpretation and practice of Islam based on the unity of Allah, the prophecy of Muhammad and the Koran as Allah's word. Moreover, in the Government's submission, notwithstanding the lack of consensus on the definition of Alevism in Turkey, the free exercise by Alevis of their right to freedom of religion was protected by Article 9 of the Convention.

80. As to the applicants' demand to have the *cemevis* recognised as places of worship, the Government observed that a distinction had to be drawn between the places of worship (*mabed*) of a particular religion and the places in which the followers of, and groups adhering to, that religion carried on their mystical, academic, cultural and other activities. Throughout the history of Islam, the places where the Sufi movements and orders performed their rites and ceremonies had never been regarded as places of worship common to all Muslims, unlike the mosques.

81. The Government submitted that Article 3 of Regulation no. 2/1958 defined the term *mabed* (place of worship) as a closed building that was subject to certain rules and was reserved for all forms of religious practice. It was thus clear that the legislation in force in Turkey was based on the concept of a place of worship common to all believers. That was how the Jewish synagogues and temples, the Christian churches and the Muslim mosques and *masdjids* (*mescit*) were classified. The Alevi *cemevis*, like the places of assembly of the other Sufi orders, did not fall into that category. In other words, the habitual places of worship of a religion and the places belonging to the followers of Sufi interpretations of that religion were clearly not analogous.

82. The Government added that it was not the RAD's task to determine whether a particular place was reserved for religious worship. Placing the authority with competence to decide on this matter within the State administrative apparatus and empowering it accordingly was liable to be in breach of the State's duty of neutrality and impartiality in the exercise of its powers under Article 9. That was why decisions in this sphere were taken by independent judicial bodies, in accordance with the relevant domestic and international instruments. In that regard, the Turkish courts did not recognise the *cemevis* as places of worship.

83. As to the applicants' argument that the RAD did not provide any services in respect of the *cem* and did not recognise the *cemevi* as a place of worship for the purposes of the applicable domestic provisions, the Government submitted essentially that the RAD did not provide any

services in respect of the Sufi interpretations of Islam. Furthermore, there was no difficulty with regard to the building of *cemevis* in Turkey.

84. In their written observations before the Grand Chamber the Government specified that Law no. 677 prohibited the use of certain religious titles, notably that of *dede*, and the designation of places of worship for the performance of the Sufi rituals associated with those titles. Despite the restrictions imposed by the law, other religious groups - including the Alevis – were able to assemble freely. Hence, those groups could organise ceremonies and observe their spiritual practices. At the hearing the Government added, *inter alia*, that Law no. 677, which had been enacted in the wake of the proclamation of the Republic, was no longer applied nowadays.

85. The Government further submitted that numerous activities had been and continued to be organised in relation to Ashura and to the month of Muharram, two important events both for Alevis and for other Muslims. The Head of the RAD issued a personal message concerning these events, these topics were addressed in the RAD's journals and during preaching and sermons, and a ceremony (*mevlüt*) had been the subject of a live broadcast. Likewise, in parallel with the activities aimed at Alevi citizens living in Turkey, the RAD made arrangements to provide services to Alevis resident abroad, appointing Alevi functionaries inside the country and abroad to officiate at the major events in the Alevi calendar.

86. The Government stressed in particular that in its judgment rejecting the applicants' claims the Administrative Court had taken into consideration the rules of both domestic and international law. In particular, it had conducted its assessment on the basis of wholly objective criteria, without defining Alevism and without referring to the opinion of any public authority on the subject. In that regard the present case was to be distinguished from other similar cases; this, in the Government's submission, was a key point. In one similar case, that of *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı* (cited above, § 50), the Court had found that the domestic court had dismissed the claims of the applicant foundation by referring to the RAD's assessment of the Alevi faith. However, as stated above, the present case had been examined in the light of wholly objective legal rules.

87. Referring to the judgment in *Cha'are Shalom Ve Tsedek v. France* ([GC], no. 27417/95, § 84, ECHR 2000-VII), the Government further maintained that the national authorities must be allowed a wide margin of appreciation in establishing the delicate relationship between religions and the State.

88. Lastly, they submitted that, since the applicants defined their faith as a "Sufi and rational interpretation and practice of Islam", the precepts of the Muslim religion also had to be taken into consideration in determining the place of the Alevi faith within Islam. In that connection, referring to the

opinion written by some professors of Islamic theology and a professor of sociology (see paragraph 44 above), and to the judgment in *Fernández Martínez v. Spain* ([GC], no. 56030/07, ECHR 2014 (extracts)), they concluded that the Alevi faith could not be regarded as a religion in its own right or as a branch of Islam, but should be considered as a "Sufi order".

C. The Court's assessment

89. The Court observes that, in the domestic courts, the applicants made the following requests: for the administrative authorities to provide religious services to Alevi citizens in the form of a public service; for the *cemevis* to be granted the status of "places of worship", for Alevi religious leaders to be recognised as such and recruited as civil servants; and for the subsidies required for Alevi worship to be set aside in the general budget (see paragraphs 10 and 12 above). However, the applicants' claims were rejected by the domestic courts.

In view of the various aspects to the applicants' claims, the Court must first determine whether the case should be examined from the standpoint of the State's negative or positive obligations.

1. Whether the case should be examined from the standpoint of the State's negative or positive obligations

90. The applicants contended that the refusal of their claims had been in breach of the State's negative and positive obligations flowing from Article 9 of the Convention. They submitted that their right to manifest their religion had not been adequately protected in domestic law and, in particular, that the assessment of their faith made by the domestic authorities – to the effect that the Alevi faith was a "Sufi order" – in order to justify refusing their claims had infringed their right to freedom of religion.

91. While it is common ground between the parties that the Alevis continue to practise their religious faith in Turkey, the applicants take issue with the State's attitude towards their faith. In their submission, by claiming that the Alevi faith is a religious movement within Islam, more akin to the "Sufi orders", the domestic authorities have disregarded the specific characteristics of their creed, in breach of the State's duty of neutrality with regard to religious beliefs. According to the applicants, this mistaken assessment allows the authorities to ignore the religious needs of the Alevi community.

92. The Court observes that, given that no procedure exists in Turkey for the recognition of religious denominations, the applicants, in appealing to the Administrative Court against the rejection of their claims, made use of the only means by which they could assert their complaints under Articles 9 and 14 of the Convention before the domestic authorities. The rejection of the applicants' claims by the Turkish authorities amounts essentially to a

lack of recognition of the religious nature of the Alevi faith, resulting from an assessment of that faith. According to the national authorities, the Alevi faith, which is to be likened to a "Sufi order", is simply a Sufi interpretation and practice of Islam. In practice, as the applicants correctly observed, this assessment amounts, in particular, to denying that Alevi religious practices – namely the *cem* ceremony – constitute a form of religious worship and to depriving Alevi meeting places (*cemevis*) and religious leaders (*dedes*) of legal protection (see paragraphs 29-34 and, especially, paragraph 53 above).

93. It should be observed that religious communities traditionally exist in the form of organised structures. They abide by rules which are often seen by followers as being of divine origin. Religious ceremonies - including religious worship – have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules (see *Hasan and Chaush*, cited above, § 62). In that regard the right of a religious community to an autonomous existence is at the very heart of the guarantees in Article 9 of the Convention (see *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 79, 31 July 2008). That autonomous existence is also indispensable for pluralism in a democratic society. It directly concerns not only the organisation of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Were the organisational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become weakened (see *Hasan and Chaush*, cited above, § 62, and *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 136, ECHR 2013 (extracts), with further references).

94. The Court further observes that it has previously examined under Article 9 of the Convention decisions refusing to recognise an applicant Church as a church (see *Metropolitan Church of Bessarabia and Others*, cited above, § 105) and to recognise a religious organisation as a legal entity (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 74, ECHR 2006-XI). In arriving at the conclusion that there had been interference with the rights guaranteed by Article 9, the Court had regard to the repercussions of the decisions in question on the continued practice of the applicants' religion (see *Metropolitan Church of Bessarabia and Others*, cited above, § 105) and to the importance of the right of religious communities to an autonomous existence (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, §§ 79-80). In its judgment in *Kimlya and Others v. Russia* (nos. 76836/01 and 32782/03, § 85, ECHR 2009), it observed that a religious group without legal personality was deprived of the associated rights. Similarly, in three cases against

France, the Court also acknowledged that measures taken by the French authorities (the taxation of "gifts from hand to hand" (*dons manuels*)) in relation to the practices and places of worship of the religion in question amounted to interference with the exercise of the rights protected by Article 9 of the Convention (see *Association Les Témoins de Jéhovah v. France*, no. 8916/05, § 53, 30 June 2011; *Association Cultuelle du Temple Pyramide v. France*, no. 50471/07, §§ 34-35, 31 January 2013; and *Association des Chevaliers du Lotus d'Or v. France*, no. 50615/07, §§ 33-34, 31 January 2013).

95. In the present case the Court notes, in the light of its case-law outlined above, that, in practice, the assessment made by the domestic authorities of the Alevi faith equates in particular to a refusal to recognise the religious nature of that faith. This also has numerous consequences liable to adversely affect, among other matters, the organisation and continuation of the religious activities of the Alevi faith and their funding. Recognition of the religious nature of the practices linked to that faith and of the status of its religious leaders (*dedes*) and places of worship (*cemevis*) is regarded by the Alevi community as essential to its survival and its development as a religious faith. Accordingly, the Court considers that the refusal of the applicants' claims, which amounts to denying the religious nature of the Alevi faith, constituted an interference with the applicants' right to freedom of religion as guaranteed by Article 9 § 1 of the Convention (see, *mutatis mutandis*, *Metropolitan Church of Bessarabia and Others*, cited above, § 105).

96. As to the extent to which the refusal of the applicants' claims could be said to be in breach of the State's positive obligations under the Convention, the Court reiterates that in addition to the primarily negative undertaking by the State to abstain from any interference with the rights guaranteed by the Convention, there "may be positive obligations inherent" in such rights (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 50, ECHR 2012 (extracts)). While the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar (see *Fernández Martínez*, cited above, § 114).

97. In the present case the Court considers that it is not necessary to examine further whether Article 9 also imposed positive obligations on the Turkish authorities (see, to the same effect, *Mouvement raëlien suisse*, cited above, § 51, and *Fernández Martínez*, cited above, § 115). The refusal in question amounted in any event to an interference, which can be justified only if the criteria laid down in paragraph 2 of Article 9 are satisfied.

2. Whether the interference was justified

98. In order to determine whether this interference entailed a violation of the Convention, the Court must ascertain whether it satisfied the

requirements of Article 9 § 2, that is to say, whether it was "prescribed by law", pursued a legitimate aim under that provision and was "necessary in a democratic society".

(a) "Prescribed by law"

99. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 9 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015).

100. In its judgment of 4 July 2007 (see paragraph 14 above), which was upheld by the Supreme Administrative Court (see paragraph 16 above), the Administrative Court cited in particular Laws nos. 633 and 677 and certain provisions of the Constitution as grounds for rejecting the applicants' claims. Under section 1 of Law no. 633, the RAD is responsible, among other tasks, for "deal[ing] with matters of Islamic beliefs, worship and moral tenets". In addition, Law no. 677 ordered the closure of the Dervish monasteries and makes it an offence to provide premises for the performance of the ceremonies of these religious orders. The same legislation also prohibits the use of certain titles connected with the religious groups in question, for instance, the title of *dede*, and the carrying-on of the associated activities (see paragraph 52 above).

101. The Court notes that the applicants conceded that the legislation in question served as a legal basis for the refusal of their claims by the domestic authorities. As the Court sees no valid reason to question the interpretation of the relevant provisions by the domestic courts, it accepts that the interference complained of was "prescribed by law" (see also paragraph 126 below).

(b) Legitimate aim

102. The parties did not express a view as to whether the interference in question had pursued a legitimate aim. However, it is clear from the case file that the domestic courts referred to the protection of public order (see paragraph 14 above). Having regard to the position taken by the administrative courts, the Court is prepared to proceed on the assumption that the interference in question pursued a legitimate aim, namely the protection of public order.

(c) "Necessary in a democratic society"

(i) General principles

103. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; and *S.A.S.*, cited above, § 124).

104. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which the manifestation of one's religion or beliefs may take, namely worship, teaching, practice and observance (see *Metropolitan Church of Bessarabia and Others*, cited above, § 114, and *S.A.S.*, cited above, § 125).

Article 9 does not, however, protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in the public sphere in a manner which is dictated by one's religion or beliefs (see, for example, *Arrowsmith v. the United Kingdom*, no. 7050/75, Commission's report of 12 October 1978, DR 19; *Kalaç v. Turkey*, 1 July 1997, § 27, *Reports of Judgments and Decisions* 1997-IV; *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 105 and 121, ECHR 2005-XI; and *S.A.S.*, cited above, § 125).

105. Under the terms of Article 9 § 2 of the Convention, any interference with the right to freedom of religion must be "necessary in a democratic society". An instance of interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, among many other authorities, *Bayatyan*, cited above, § 123; and *Fernández Martínez*, cited above, § 124).

106. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the freedom to manifest one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). This follows both from

paragraph 2 of Article 9 and from the State's positive obligations under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined therein (see *Leyla Şahin*, cited above, § 106, and *S.A.S.*, cited above, § 126).

107. The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see *S.A.S.*, cited above, § 127). As indicated above (paragraph 68), where the views in question attain a certain level of cogency, seriousness, cohesion and importance (see, *mutatis mutandis*, *Bayatyan*, cited above, § 110), the State's duty of neutrality and impartiality excludes any discretion on its part to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Manoussakis and Others v. Greece*, 26 September 1996, § 47, *Reports* 1996-IV; *Hasan and Chaush*, cited above, § 78; and *Fernández Martínez*, cited above, § 129). Religious and philosophical beliefs concern individuals' attitudes towards religion (see *Sinan Işık*, cited above, § 49), an area in which even subjective perceptions may be important in view of the fact that religions form a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature (see *Mansur Yalçın and Others,* cited above, § 70).

108. In democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership. In that connection, State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion. The role of the authorities in such a case is not to adopt measures favouring one interpretation of religion over another (see *Sinan Işık*, cited above, § 45) or to remove the cause of the tensions by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX; *Hasan and Chaush*, cited above, § 78; and *Metropolitan Church of Bessarabia and Others*, cited above, § 117).

109. Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44; *Valsamis v. Greece*, 18 December 1996, § 27, *Reports* 1996-VI; *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84(f)), ECHR 2007-III; and *S.A.S.*, cited above, § 128). Pluralism is also built on genuine recognition of, and respect

for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs and artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I; and *The Moscow Branch of the Salvation Army*, cited above, § 61). Respect for religious diversity undoubtedly represents one of the most important challenges to be faced today; for that reason, the authorities must perceive religious diversity not as a threat but as a source of enrichment (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII).

110. As indicated above (paragraph 93), the right of a religious community to an autonomous existence is at the very heart of the guarantees in Article 9 of the Convention and, were the organisational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become weakened (see *Hasan and Chaush*, cited above, § 62; *Sindicatul "Păstorul cel Bun"*, cited above, § 136; and *Fernández Martínez*, cited above, § 127). In that connection, determining the religious affiliation of a religious community is a task for its highest spiritual authorities alone and not for the State (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 90, 15 September 2009). Only the most serious and compelling reasons can possibly justify State intervention (ibid., § 86).

111. In their activities, religious communities abide by rules which are often seen by followers as being of divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers and the status of their places of worship are undoubtedly of importance to every member of the community. Participation in the life of the community is thus a particular manifestation of their religion which is in itself protected by Article 9 of the Convention (see, *mutatis mutandis*, *Hasan and Chaush*, cited above, § 62; *Perry v. Latvia*, no. 30273/03, § 55, 8 November 2007; and *Miroļubovs and Others*, cited above, § 80(g)).

112. It is also important to emphasise the subsidiary role of the Convention mechanism. As the Court has held on many occasions, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. This is true, in particular, where questions concerning the relationship between State and religions are at stake (see, among other authorities, *S.A.S.*, cited above, § 129). This will be the case in particular where practice in European States is characterised by a wide variety of constitutional models governing relations between the State and religious groups (see *Sindicatul "Păstorul*

cel Bun", cited above, § 138, and *Fernández Martínez*, cited above, § 130). In sum, the Contracting States must be left a margin of appreciation in choosing the forms of cooperation with the various religious communities (see *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, § 108, ECHR 2014 (extracts)).

113. This margin of appreciation, however, goes hand in hand with a European supervision embracing both the law and the decisions applying it. The Court's task is to determine whether the measures taken at national level are justified in principle and proportionate (see, among other authorities, *Manoussakis and Others*, cited above, § 44; *Leyla Şahin*, cited above, § 110; and *S.A.S.*, cited above, § 131). Furthermore, in exercising its supervision, the Court must consider the interference complained of in the light of the case as a whole (see *Metropolitan Church of Bessarabia and Others* cited above, § 119).

114. Lastly, the Court reiterates that the Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among other authorities, *Folgerø and Others*, cited above, § 100; see also *Kimlya and Others*, cited above, § 86). The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith (see, in particular and *mutatis mutandis*, *Kimlya and Others*, cited above, § 86). It should be pointed out in this connection that, according to the United Nations Human Rights Committee (see paragraph 58 above), these definitions may not be interpreted to the detriment of non-traditional forms of religion (see, *mutatis mutandis*, *Magyar Keresztény Mennonita Egyház and Others*, cited above, § 88).

(ii) Application of the above-mentioned principles in the present case

115. The Court observes that it has found that the refusal at issue, which amounts to denying the religious nature of the Alevi faith, is to be regarded as interference with the applicants' right to freedom of religion (see paragraph 95 above). As justification for that interference the Government submitted, first of all, that they duly complied with their duty of neutrality with regard to religions. They further stressed that, despite the restrictions imposed by the law, Alevis were able to exercise their freedom of religion without any hindrance. They also drew the Court's attention to the importance of the national authorities' discretionary power, and submitted that the domestic courts had examined in detail the provisions governing the sub-branches (that is to say, the Sufi interpretations) of Islam, such as the

Alevi faith. Lastly, the Government stated that there were numerous differences, in both theory and practice, with regard to the definition, resources, rituals, ceremonies and rules of Alevism in Turkey.

116. The Court will examine in turn the reasons thus relied on by the Government and the domestic authorities as grounds for refusing the applicants' requests for recognition, in order to ascertain whether they were "relevant and sufficient" and whether the refusal in question was "proportionate to the legitimate aims pursued". In doing so, it has to satisfy itself that the national authorities, on the basis of an acceptable assessment of the relevant facts, applied rules that are consistent with the principles enshrined in Article 9.

(α) The State's duty of neutrality and impartiality towards the Alevi faith

117. The Court notes at the outset that, as emphasised by the Government, Article 2 of the Turkish Constitution guarantees the principle of secularism, which prohibits the State from manifesting a preference for a particular religion or belief; this makes the State an impartial arbiter and necessarily entails freedom of religion and conscience, which in turn is protected by Article 24 of the Constitution (see *Leyla Şahin*, cited above, § 113).

118. The Government submitted that, in keeping with its duty of neutrality and impartiality towards religions, the State did not define the Alevi faith but took as its basis the definition provided by the applicants themselves. In the proceedings before the Court they further referred to an opinion written by a number of experts who primarily proposed a classification of religious groups, and argued in particular that *cemevis* were merely places where followers of the Alevi faith carried on their "customs and ceremonies" rather than places of religious worship (see paragraph 44 above). On the basis of that opinion, and referring to the judgment in *Fernández Martínez*, cited above, the Government added that the precepts of Islam should be taken into consideration in determining the place occupied by the Alevi faith within the Muslim religion.

119. In their written pleadings to the Administrative Court, submitted via the Prime Minister's Legal Department, the administrative authorities explained in greater detail the reasons for the refusal of the applicants' claims. According to that document, it was not possible to provide a public service to "banned Sufi orders (*tarikat*)". The same document further stated that the establishment of places of worship for the followers of Islamic interpretations or movements, including the Alevi faith, was "not in conformity with religion" and that requests such as those made by the applicants would create "chaos within that religion" (see paragraph 13 above).

120. However, the Court notes that, although they regard their faith as "a Sufi and rational interpretation and practice of Islam", the applicants

nevertheless stress that it has significant characteristics that are particular to it, and are also careful to distance themselves from the understanding of the Muslim religion adopted by the RAD (see paragraph 35 above). On this point, the present case differs from that of *Fernández Martínez,* cited above, which concerned Article 8 of the Convention and related mainly to the non-renewal of the employment contract of a teacher of Catholic religion and ethics who had made public his situation as a "married priest" despite having accepted a "heightened duty of loyalty towards the Catholic Church" (ibid., § 135). In the present case, no such duty of loyalty could be imposed on the applicants. While avoiding entering into a theological debate, they stressed in particular that it was for Alevis alone to define their belief and that the "customs and ceremonies" in question, namely the *cem* ceremony, constituted their main form of religious practice and that the *cemevis* were the place where this was performed.

121. In that connection the Court observes that, in accordance with the principle of autonomy for religious communities which is established in its case-law – and which is the corollary to the State's duty of neutrality and impartiality – only the highest spiritual authorities of a religious community, and not the State (or even the national courts), may determine to which faith that community belongs (see, *mutatis mutandis*, *Miroļubovs and Others,* cited above, § 86). Accordingly, it considers that the State's attitude towards the Alevi faith infringes the right of the Alevi community to an autonomous existence, which is at the very heart of the guarantees in Article 9 of the Convention (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 79).

122. In particular, the Court notes that there is no dispute as to the existence of an Alevi community, which has its origins in the historical and religious context of Turkey and whose roots – as the Government specified – go back thousands of years (see paragraph 43 above). It is also clear from the Final report – which was the culmination of lengthy discussions in the workshops attended by a variety of participants sympathetic to the Alevi issue, including Alevi religious leaders – that, in numerous spheres such as theological doctrine, principal religious practices, places of worship and education, this faith has significant characteristics distinguishing it from other faiths. The Final report found that this community, "which appeared during the Ottoman era, must be viewed as a community distinct from Sunnism" and that "the Alevism of Anatolia can rightly be regarded as a structure having its own particular features". For that reason, the report stated, the framing and definition of the Alevi faith were entirely and exclusively a matter for Alevis (see paragraph 53 above).

123. In any event, it is clear from the undisputed facts and is generally accepted that a large Alevi community exists in Turkey which performs the *cem* ceremony, a fundamental element of the Alevi faith, in the *cemevis* (see paragraphs 35 and 37 above). The Government nevertheless asserted, basing

their position on a classification of religious groups, that this faith was simply a "Sufi order". According to that assessment, which makes no allowances for the specific characteristics of the Alevi community, the latter falls into the category of religious groups covered by Law no. 677. As explained below (paragraph 126), this entails a number of significant prohibitions (see also paragraph 52 above) and takes no account of the findings of the aforementioned Final report.

124. Consequently, the Court considers that the attitude of the State authorities towards the Alevi community, its religious practices and its places of worship is incompatible with the State's duty of neutrality and impartiality and with the right of religious communities to an autonomous existence.

(β) Free practice by Alevis of their faith

125. Although the applicants did not allege that the refusal to recognise the religious nature of their faith had made it impossible for Alevis to practise that faith, they stressed the damaging consequences of the refusal. In particular, they took the view that the lack of recognition of the Alevi faith as a religious denomination distinct from Sunni Islam amounted to a negation of its specific religious features.

126. In the Court's view, it is important to bear in mind that the refusal complained of has had the effect of denying the autonomous existence of the Alevi community and of maintaining it within the legal framework of the "banned Sufi orders (*tarikat*)" for the purposes of Law no. 677. That Law lays down a number of significant prohibitions with regard to these religious groups: the use of the title "*dede*", denoting an Alevi spiritual leader, is banned, as is the designation of premises for Sufi practices, and both are punishable by a term of imprisonment and a fine. Even though, according to the Government, failure to abide by these prohibitions is tolerated, the fact remains that in its submissions to the Administrative Court the Prime Minister's Legal Department specified clearly that "[t]o recognise *cemevis* as places of worship would be contrary to Law no. 677" (see paragraph 13 above). Furthermore, in its judgment of 4 July 2007 the Administrative Court referred explicitly to the prohibitions laid down by that Law (see paragraph 14 above).

127. The apparent result is that the free practice of their faith by members of a religious group characterised in domestic law as a "Sufi order" depends primarily on the good will of the administrative officials concerned, who appear to have a degree of discretion in applying the prohibitions in question. The Court has serious doubts as to the ability of a religious group that is thus characterised to freely practise its faith and provide guidance to its followers without contravening the aforementioned legislation. As to the tolerance allegedly shown by the Government towards the Alevi community, the Court cannot regard this as a substitute for

recognition, which alone is capable of conferring rights on those concerned (see, to the same effect, *Metropolitan Church of Bessarabia and Others*, cited above, § 129).

128. Moreover, in addition to the refusal to recognise the *cemevis* as places of worship (as regards the repercussions of this refusal, see *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, § 45), it is clear from the relevant case-law of this Court and from the Final report, cited above (see paragraph 53), that Alevis face numerous other problems which affect not just the organisation of the religious life of their community but also the rights of Alevi parents whose children attend primary and secondary schools. First of all, the Final report stresses that Alevi religious leaders have no legal status and that there are no institutions able to train the personnel associated with the practice of the Alevi faith. Furthermore, when it comes to the provision of the public religious service, the Alevi faith is excluded from all the benefits enjoyed by the recipients of that service (see paragraph 53 above).

129. Likewise, in its judgment in *Mansur Yalçın and Others*, cited above, which concerned the compulsory classes in religious culture and ethics taught in primary and secondary schools, the Court previously stated that Alevi parents could legitimately consider that the arrangements for teaching the subject in question were liable to create a conflict of allegiance for their children between their school and their own values, giving rise to a possible issue under Article 2 of Protocol No. 1 to the Convention (ibid., § 71). The Court held in particular that the education system of the respondent State was not appropriately equipped to ensure respect for the beliefs of those parents (ibid., § 77).

130. Moreover, the absence of a clear legal framework governing unrecognised religious minorities such as the Alevi faith causes numerous additional legal, organisational and financial problems (see paragraph 31 above). Firstly, the ability to build places of worship is uncertain and is subject to the good will of the central or local authorities. Secondly, the communities in question cannot officially receive donations from members or State subsidies. Thirdly, as they lack legal personality, these communities do not have access to the courts in their own right but only through foundations, associations or groups of followers. Furthermore, religious communities trying to operate as a foundation or an association face numerous legal obstacles (see paragraph 32 above).

131. In sum, the Court is not convinced that the freedom to practise its faith which the authorities leave to the Alevi community enables that community to fully exercise its rights under Article 9.

(γ) Margin of appreciation

132. As regards the margin of appreciation relied on by the Government, the Court acknowledges that, in line with its well-established case-law,

where questions concerning the relationship between the State and religious movements are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 112 above). Respondent States therefore have some margin of appreciation in choosing the forms of cooperation with the various religious communities. It is clear in the present case that the respondent State has overstepped its margin of appreciation in choosing the forms of cooperation with the various faiths.

133. In any event, in its case-law concerning Article 9 the Court has consistently held that the State's duty of neutrality and impartiality excludes any power on its part to determine whether religious beliefs or the means used to express such beliefs are legitimate (see paragraph 107 above). As stated previously (see paragraph 114 above), the right enshrined in that provision would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of religion, such as the Alevi faith, of legal protection.

(δ) Absence of consensus within the Alevi community

134. The fact that there is a debate within the Alevi community regarding the basic precepts of the Alevi faith and the demands of the Alevi community in Turkey does nothing to alter the fact that it is a religious community with rights protected by Article 9 of the Convention. The Court fails to see how the existence of such an internal debate can constitute grounds for the refusal complained of. The Alevi workshops held in 2009-2010 gave the respondent State the opportunity to identify and bring together the demands common to Alevi citizens (see paragraphs 39-42 above). Furthermore, the Final report published following the workshops shows that, while there is a debate within the Alevi community concerning the choice of forms of cooperation with the State, a clear consensus has emerged on issues pertaining to the autonomy of the Alevi community and the fundamental elements of the faith, such as the place occupied by the *cem* and the *cemevis* and the role of its religious leaders (see paragraph 53 above).

(ε) Conclusion

135. The Court therefore concludes that the situation described above amounts to denying the Alevi community the recognition that would allow its members – and in particular the applicants – to effectively enjoy their right to freedom of religion. In particular, the refusal complained of has had the effect of denying the autonomous existence of the Alevi community and has made it impossible for its members to use their places of worship (*cemevis*) and the title denoting their religious leaders (*dede*) in full conformity with the legislation. Consequently, in the absence of relevant

and sufficient reasons, the respondent State has overstepped its margin of appreciation. The interference complained of cannot therefore be considered necessary in a democratic society.

Accordingly, there has been a violation of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 9

136. The applicants claimed to be victims of discrimination on grounds of their religion. They relied in that connection on Article 14 of the Convention taken in conjunction with Article 9.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

137. The Government contested the applicants' argument.

A. The parties' submissions

1. The applicants

138. The applicants claimed to be victims of discrimination on grounds of their religion as they received less favourable treatment than citizens of the Sunni branch of Islam in a comparable situation, without any objective and reasonable justification for that difference in treatment.

139. They alleged that the Alevi community, to which they belonged, was discriminated against compared with the Sunni Muslim community. While the followers of the Sunni understanding of Islam received numerous public services provided by the RAD, the latter offered no such services to the followers of the applicants' faith.

140. In the applicants' submission, the refusal of their claims stemmed from the authorities' attitude towards their faith, which the Government sought to define according to the Sunni understanding of Islam. They stressed that the national authorities denied the particular features of their faith, in breach of the State's duty of neutrality with regard to religious beliefs. They reiterated in that regard that the Government had a duty not to define their beliefs or their needs. The administrative authorities almost wholly disregarded the specific needs of Alevi citizens and provided a "denominational public service in the religious sphere" centred on the Sunni understanding of Islam. The neutrality of the religious public service and the resulting principle of equal access to public services were therefore central to the case.

141. The applicants further submitted that the budget allocated to the RAD for the period 1996 to 2015 came to a total of TRY 37,275,900,000 (approximately USD 16 billion). In 2015, a budget of TRY 5,743,000,000 had been set aside for public services in respect of the Sunni Muslim faith, but no provision had been made for public services for the Alevi community or other faiths or beliefs. In the applicants' view, although States were not obliged to take positive measures in that regard, the Turkish State had decided of its own accord to provide a public religious service to a particular faith, while refusing the same favourable treatment to other beliefs and religions.

142. The applicants submitted that the RAD employed over 100,000 civil servants to run the religious public service, administered hundreds of thousands of mosques and *masdjids* and received several billion Turkish liras from the general budget in order to carry out the functions assigned to it. In performing its functions the RAD, although its responsibilities encompassed the Muslim religion as a whole, confined its attention to the demands of the Sunni schools of Islam, and in particular the Hanafi school, while ignoring all the other movements and branches of Islam. The general budget was funded largely by the revenue from the taxes paid by all citizens. No distinction based on religion was made in the collection of taxes. However, the RAD, which received billions of Turkish liras from the general budget, provided a public service exclusively to the followers of a particular belief, namely the Sunni Muslim faith.

143. The applicants further submitted that the Government pursued a discriminatory policy in numerous spheres. For instance, the Turkish Broadcasting Authority had assigned one of its television channels to the RAD. Likewise, in addition to the budget set aside for the RAD, the latter had also received substantial sums from the Religious Affairs Foundation in particular, which came under the supervision of the RAD. Meanwhile the Alevis, although they too were users of public services and paid taxes, were obliged to cover all their faith-related expenses themselves. They met the costs of their own places of worship, the *cemevis* – which, moreover, did not enjoy a status comparable to that of other places of worship – and paid the religious leaders in these *cemevis*. Furthermore, although numerous *imam-hatip* upper secondary schools had been set up, dedicated entirely to the training of Sunni Muslim religious leaders, the Ministry of Education did not spend a single cent on the training of Alevi religious leaders nor had it opened a single school for that purpose.

144. The applicants requested in particular that the State ensure equal treatment of all beliefs and religions in the provision of public services, without favouring a particular branch of a religion in the administration of the religious public service to the detriment of the others. In their submission, the considerations set out above amply demonstrated the existence of a difference in treatment. Lastly, the applicants submitted that

citizens belonging to the Alevi faith were in a comparable situation to citizens who subscribed to the Sunni understanding of Islam. The difference in treatment to which they were subjected lacked any objective and reasonable justification.

2. The Government

145. The Government began by asserting that the applicants' allegations were not sufficiently relevant in the context of Article 9 and that there was no direct link between those allegations and Article 9. Even supposing that such a link existed, the applicants had failed to demonstrate its existence in practical terms, in so far as they were able to observe their religious practices freely in their *cemevis*. In that connection the Government reiterated their view that there had been no interference with the exercise by the applicants of their rights under Article 9 of the Convention and that Article 14 was therefore not applicable.

146. In the Government's submission, the comparison made by the applicants in their application between the "Alevi faith" and the "Sunni branch of Islam" was in any event erroneous and it was inappropriate to assess the RAD's remit on the basis of that comparison, as the theological branches and Sufi sub-branches did not fall into the same category.

147. Referring to the opinion prepared by seven academics (see paragraph 44 above) and basing their arguments on the academics' definition of the term "Sunni", the Government submitted that it was technically impossible to view the Alevi faith as a theological school of thought (*mezhep*) and that it was therefore inappropriate to compare Alevism and Sunnism. In the Government's view, the applicants had not been subjected to discrimination on grounds of their religion; they had not been treated less favourably than Muslim citizens in a comparable situation, namely the members of the *Qadiri* and *Mevlevi* religious orders or the followers of other religious orders which adopted Sufi and mystical religious practices. Still referring to the opinion cited above, the Government stressed that according to the overall classification accepted by religious academics, religious groups comprised three primary structures, namely religions, sects and mystical groups. They added that, in Muslim societies, Sufi thought and practices fell into the third category.

148. The Government further asserted that the Republic of Turkey was a secular State which observed human rights and whose Constitution guaranteed the right to freedom of religion and conscience. In accordance with Article 136 of the Constitution, the RAD was part of the general administration and carried out the functions assigned to it under the special law by which it was governed, in accordance with the principle of secularism, while remaining detached from all political views or ideas and with the aim of promoting national solidarity and union. The RAD performed its tasks on the basis in particular of the shared and objective

understanding of Islam. When it came to informing the public about Islamic beliefs, prayer and moral tenets, the RAD carried out its remit not by reference to the religious preferences or traditions of a particular faith or a particular religious group or order, but by reference, *inter alia*, to the sources of the Muslim religion accepted by all Muslims. According to the RAD, these traditions and sources were universal and timeless.

149. The Government disputed the applicants' assertion that the RAD represented the Sunni-Hanafi interpretation of Islam and based its religious service on that understanding. The RAD did not discriminate between citizens on the basis of their religious affiliation, and provided services to mosques located in areas inhabited by citizens of the Alevi, Shafii and Shiite/Jafari faiths.

150. The Government added that the Religious Affairs Department (Creation and Functions) Act had been amended on 1 July 2010. The consultative authority of the RAD was the Supreme Council of Religious Affairs. Under section 5(c) of the Act, the Supreme Council was responsible, among other tasks, for analysing the various religious interpretations, socio-religious groups and cultural and religious groups both in Turkey and abroad and for carrying out studies on these matters, undertaking consultations and organising meetings and conferences. Under section 7(10)(a) of the Act, the RAD was responsible for organising activities relating to the various religious interpretations, socio-religious groups and traditional cultural and religious groups adhering to the Muslim faith. In the Government's submission, the amendments in question demonstrated clearly that the RAD did not merely represent followers of the Sunni-Hanafi faith or carry out activities relating to that faith.

151. The Government further stressed that the constitutional and legislative provisions did not provide for any measures concerning the institutions of the Sufi or mystical tradition such as the Dervish monasteries (*dergah*), or the religious practices and mystical conventions and rules of that tradition, such as the *semah* and *cems*.

152. The RAD recruited its staff in accordance with the Civil Servants Act (Law no. 657) and on the basis of nationality. Consequently, no preferential treatment was given to candidates on the basis of their membership of a religious group.

153. Furthermore, no provision was made in the budget for the building, upkeep and renovation of mosques. The RAD's task consisted in authorising mosques built by citizens or legal entities to operate as places of worship, inspecting those places, administering them and assigning religious functionaries to them

154. Lastly, the Government submitted that States should be allowed a margin of appreciation in determining whether and to what extent differences between otherwise similar situations justified a difference in treatment.

B. The Court's assessment

1. General principles

155. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions, and to this extent it is autonomous, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 71, Series A no. 94; *X and Others v. Austria* [GC], no. 19010/07, § 94, ECHR 2013; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 72, ECHR 2013 (extracts); and *Hämäläinen v. Finland* [GC], no. 37359/09, § 107, ECHR 2014).

156. According to the Court's settled case-law, in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *X and Others*, cited above, § 98; *Vallianatos and Others*, cited above, § 76; and *Hämäläinen*, cited above, § 108).

157. The Court reiterates that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 388, ECHR 2012 (extracts); and *S.A.S.*, cited above, § 161).

158. The Court further reiterates that the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require a State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide. This principle is well entrenched in the Court's case-law (see the Case *"relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, p. 34, § 9, Series A no. 6; *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X; *E.B. v. France* [GC], no. 43546/02, § 48, 22 January 2008; and *X and Others*, cited above, § 135). If the State has gone beyond its obligations and created additional rights

falling within the wider ambit of the rights guaranteed by any Convention Article it cannot, in the application of those rights, take discriminatory measures within the meaning of Article 14 (see, *mutatis mutandis*, *X and Others*, cited above, § 135; *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 58, 9 December 2010; and *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, § 48).

159. As to the burden of proof in this regard, the Court has previously held that once an applicant has established a difference in treatment, it is for the Government to show that it was justified (see *D.H. and Others*, cited above, § 177, and *Kurić and Others*, cited above, § 389).

160. Furthermore, only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010). "Religion" is specifically mentioned in the text of Article 14 as a prohibited ground of discrimination (see *Eweida and Others*, cited above, § 86, and *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, § 42).

2. Approach taken by the Court in cases concerning relations between the State and religious communities

161. For the purposes of the present case the Court also refers to its case-law concerning relations between the State and religious communities.

162. It observes at the outset that, as stated previously (see paragraph 112 above), where issues concerning relations between the State and religions are at stake, the role of the domestic policy-maker should be given special weight, as no single model exists in Europe governing relations between the State and religious communities. States have a certain margin of appreciation in choosing the forms of cooperation with the various religious communities. The same is true with regard to the regulation of public services in a particular sphere.

163. The Court also observes that the relationship between the State and the majority religion may take a variety of forms depending on the context. Although the majority of the Contracting States separate State and religion, several Contracting States have a system which is based on a State religion and which already existed when the Convention was drafted and when the States concerned became Parties to it (see *Ásatrúarfélagid v. Iceland*, no. 22897/08, 18 September 2012). Likewise, the Court recognised that a constitutional model founded on the principle of secularism was also consistent with the values underpinning the Convention (see *Leyla Şahin*, cited above, §§ 113-14; and *Dogru v. France*, no. 27058/05, § 72, 4 December 2008). However, in order to satisfy the requirements of Article 9, each system must include specific safeguards for the individual's freedom of religion (see, *mutatis mutandis*, *Darby v. Sweden*, 23 October 1990, § 45, Series A no. 187).

164. It is true that freedom of religion does not require the Contracting States to create a particular legal framework in order to grant religious communities a special status entailing specific privileges. Nevertheless, a State which has created such a status must not only comply with its duty of neutrality and impartiality but must also ensure that religious groups have a fair opportunity to apply for this status and that the criteria established are applied in a non-discriminatory manner (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92; *Savez crkava "Riječ života" and Others*, cited above, § 85; *Ásatrúarfélagid*, cited above, § 34; and *The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, no. 7552/09, § 34, 4 March 2014).

3. Application of these principles to the present case

165. The Court observes at the outset that it is not disputed in the present case that the facts complained of fall within the ambit of Article 9 of the Convention (see paragraph 68 above). Furthermore, "religion" is specifically mentioned in the text of Article 14 as a prohibited ground of discrimination (see *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, § 42). Hence, this is clearly an issue which comes within the scope of Article 14 taken in conjunction with Article 9. Article 14 is therefore applicable to the facts of the case (see *Cha'are Shalom Ve Tsedek*, cited above, § 87).

(a) Whether there was a difference in treatment between persons in similar situations

166. The first question which the Court must address is whether there was a difference in treatment in the present case between persons in similar situations. The Court notes that the parties disagreed on this point. The applicants essentially compared their situation with that of citizens who benefited from the religious public service. They stressed that in Turkish law, this public service benefited only the followers of the majority understanding of Islam, while Alevi citizens were deprived of that service and of the corresponding status. In the Government's view, the comparison made by the applicants between the Alevi faith and the Sunni branch of Islam was erroneous, and their situation should instead be compared with that of citizens belonging to the Sufi orders (*tarikat*), which fell into the category of mystical groups (see paragraphs 43-44 above).

167. The Court takes the view at the outset that, as regards their need for legal recognition and for a religious public service pertaining to their Alevi faith, the applicants can claim to be in a comparable situation to other citizens who have received such recognition and benefit from that public service (see, *mutatis mutandis*, *Darby*, cited above, § 32). The Turkish State provides religious services pertaining to the Muslim religion as a public service, in particular by granting that religion a status within the State

administration. The Administrative Court observed that the services provided by the RAD were available to everyone and that all citizens were entitled to benefit from them on an equal footing. The Court also notes that in Turkey the legal framework governing public services must be based on the principle of the neutrality of those services, which is a component of the broader concept of the secular State (see paragraph 27 above).

168. By its very nature, the religious public service in question is determined by the religious beliefs of those who use it, and in particular by the manner in which they perceive and practise their religion. Although in theory everyone may benefit from the service, in practice it is aimed first and foremost at the followers of the understanding of Islam adopted by the RAD and not at those who subscribe to a different understanding.

169. The Court notes that, irrespective of the place occupied by the Alevi faith in Muslim theology, there is no doubt that it is a religious conviction which has deep roots in Turkish society and history (see *Hasan and Eylem Zengin,* cited above, § 66) and that it represents a sizeable community – to which the applicants belong – which performs its religious rites in the *cemevis*. As the Court has already noted (see paragraph 122 above), the Alevis form a religious community which has distinctive characteristics in numerous spheres including theological doctrine, principal religious practices, places of worship and education. The needs of its followers as regards recognition and the provision of a religious public service in respect of their community appear comparable to the needs of those for whom religious services are regarded as a public service. The applicants, as Alevis, are therefore in a comparable situation to the beneficiaries of the religious public service provided by the RAD.

170. The Court notes that the right to freedom of religion protected by Article 9 encompasses the freedom, in community with others and in public or in private, to manifest one's religion in worship, teaching, practice and observance. Accordingly, the applicants have received less favourable treatment than the beneficiaries of the religious public service despite being in a comparable situation. The Court must therefore examine whether or not there was an objective and reasonable justification for the difference in treatment.

(b) Whether there was an objective and reasonable justification for the difference in treatment

171. The Court observes that in Turkey legal recognition entails substantial advantages for religious denominations and undoubtedly facilitates the exercise of the right to freedom of religion. One of the most important aspects of that status is unquestionably the opportunity of benefiting from the religious services provided in the form of a public service. In that connection, the religious services provided in respect of the Muslim religion in Turkey as understood by the RAD are regarded as a

public service, and substantial funds from the State budget are allocated to the RAD, which is part of the State administration. These funds enable the RAD to recruit and manage a large number of religious functionaries and to carry out a variety of religious activities relating to the Muslim religion. Accordingly, that religion is almost wholly subsidised by the State.

172. However, although their situation is comparable to that of other citizens as regards their need for legal recognition and provision of the corresponding religious public service, the applicants are almost wholly deprived of a comparable status, and of the numerous advantages attendant on that status, on the ground that their faith is classified as a "Sufi order" by the national authorities.

173. As the Court stressed in examining the case from the standpoint of Article 9 (paragraphs 120-124 above), this assessment by the national authorities raises serious issues with regard to the State's duty of neutrality and impartiality towards the Alevi faith. The authorities' attitude therefore calls for particular scrutiny on the part of the Court in the light of the State's obligations flowing from Article 14 of the Convention taken in conjunction with Article 9 (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 97; and *Savez crkava "Riječ života" and Others*, cited above, § 87), in order to determine whether this difference in treatment pursued a legitimate aim and was proportionate to that aim.

174. In that connection it should be noted that in its judgment of 4 July 2007 the Administrative Court acknowledged that the Alevi faith did not benefit from the public service. As justification for that difference in treatment it observed, in particular, that if the State were to respond to all the expectations and demands of religious groups by providing a public service, this might engender a debate on the manner in which the religious public service was delivered by the RAD. There would also be a risk of breaching the principle of secularism by upsetting the balance between religious and legislative rule-making, and of restricting the exercise of the right to freedom of religion (see paragraph 14 above). In their observations the Government endorsed that argument. In sum, like the domestic courts they stressed the concern to preserve the secular nature of the Turkish State, which in turn was founded on the premise that the RAD provided a religious public service on a supra-denominational basis and in accordance with the principle of neutrality.

175. The Court recognises the importance of the principle of secularism in the Turkish constitutional order (see paragraph 117 above). It also observes that, while it must abstain, as far as possible, from pronouncing on matters of purely historical fact, it may accept certain well-known historical truths and base its reasoning on them (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 96, ECHR 2006-IV, and *Miroļubovs and Others*, cited above, § 91). In the sphere of religion, when it examines the compatibility of a national measure with the provisions of the Convention, the Court must

take account of the historical context and the particular features of the religion in question (see *Miroļubovs and Others*, cited above, § 81). Likewise, a State may have other legitimate reasons for restricting eligibility for a specific system to certain religious denominations. It may also, in some circumstances, make justified distinctions between different categories of religious communities or offer other forms of cooperation. In that regard, the comparative-law materials (see paragraphs 60-64 above) show that the relationship between the State and religions may take a variety of forms depending on the context.

176. Nevertheless, the principle of proportionality does not merely require the measure chosen to be suitable in principle for the achievement of the aim sought. It must also be shown that it is necessary, in order to achieve that aim, to exclude certain persons – in this instance certain religious communities – from the scope of application of the measure (see, *mutatis mutandis*, *X and Others*, cited above, § 140; and *Vallianatos and Others*, cited above, § 85).

177. Although the Alevi faith constitutes a religious conviction which has deep roots in Turkish society and history and has distinctive characteristics, it does not enjoy any legal protection as a religious denomination: the *cemevis* are not recognised as places of worship, its religious leaders have no legal status and its followers do not enjoy any of the benefits of the religious public service (as regards issues linked to the education system of the respondent State, see paragraph 129 above).

178. In the Court's view, by failing to take any account of the specific needs of the Alevi community, the respondent State has considerably restricted the reach of pluralism, in so far as its attitude is irreconcilable with its duty to maintain the true religious pluralism that characterises a democratic society, while remaining neutral and impartial on the basis of objective criteria. In that connection the Court observes that pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions and identities and religious convictions. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see paragraph 109 above).

179. The Court observes that the main argument relied on by the Government as justification for this difference in treatment is based on a theological debate concerning the place of the Alevi faith within the Muslim religion. The Court has already responded to this argument by finding that such an approach is inconsistent with the State's duty of neutrality and impartiality towards religions (see paragraphs 120 to 124 above) and clearly oversteps the State's margin of appreciation in choosing the forms of cooperation with the various faiths (see paragraph 132 above).

180. In particular, the Court cannot but note the glaring imbalance between the applicants' situation and that of persons who benefit from the religious public service. Not only is the Alevi community regarded as a

"Sufi order (*tarikat*)" and made subject to a legal regime that entails numerous and significant restrictions (see paragraphs 126 to 127 above), but the members of the community are also denied the benefits of the religious public service. Whereas the Muslim religion in Turkey as understood by the RAD is almost wholly subsidised by the State, virtually none of the religious public services – with the exception of some studies on the different religious interpretations and the temporary assignment of religious functionaries for fixed periods – benefit the Alevi community as such, and its specific characteristics are almost entirely overlooked in that regard. Moreover, Turkish law makes no provision for any compensatory measures capable of remedying this marked discrepancy.

181. In that connection the Court reiterates that the principle of proportionality requires the measure chosen to be suitable in principle for achievement of the aim sought. However, in the present case it fails to see why the preservation of the secular nature of the State – the legitimate aim invoked by the national courts – should necessitate denying the religious nature of the Alevi faith and excluding it almost entirely from the benefits of the religious public service.

182. In the light of its findings under Article 9 of the Convention (see, in particular, paragraph 130 above), the Court also doubts whether the Turkish system clearly defines the legal status of religious denominations, and especially that of the Alevi faith. The examination of the present case demonstrates in particular that the Alevi community is deprived of the legal protection that would allow it to effectively enjoy its right to freedom of religion (see paragraph 135 above). Moreover, the legal regime governing religious denominations in Turkey appears to lack neutral criteria and to be virtually inaccessible to the Alevi faith, as it offers no safeguards apt to ensure that it does not become a source of *de jure* and *de facto* discrimination towards the adherents of other religions or beliefs (see paragraphs 29-34 above). In a democratic society based on the principles of pluralism and respect for cultural diversity, any difference on grounds of religion or beliefs requires compelling reasons by way of justification. In that regard it must be borne in mind that an unfavourable attitude and an unjustified difference in treatment with regard to a particular faith may have significant repercussions on the exercise of the religious freedom of its followers (see, to the same effect, paragraph 42 of the "Joint Guidelines on the Legal Personality of Religious or Belief Communities", paragraph 55 above).

183. The Court stresses that its task in the present case is not to ascertain whether the requests made by the applicants should or should not have been granted, particularly since they related to a large number of spheres. Furthermore, it is not the Court's place to impose on a respondent State a particular form of cooperation with the various religious communities. As already stated (see paragraph 162 above), there is no doubt that the States

enjoy a margin of appreciation in choosing the forms of cooperation with the various religious communities. However, whatever form is chosen, the State has a duty to put in place objective and non-discriminatory criteria so that religious communities which so wish are given a fair opportunity to apply for a status which confers specific advantages on religious denominations (see, *mutatis mutandis*, *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*, cited above, § 49; see also paragraph 40 of the "Joint Guidelines on the Legal Personality of Religious or Belief Communities", paragraph 55 above).

184. In view of all the considerations set forth above – the existence of an Alevi community with deep roots in Turkish society and history, the importance for that community of being legally recognised, the Government's inability to justify the glaring imbalance between the status conferred on the majority understanding of Islam, in the form of a religious public service, and the almost blanket exclusion of the Alevi community from that service, and also the absence of compensatory measures – the choice made by the respondent State appears to the Court to be manifestly disproportionate to the aim pursued.

185. In conclusion, the difference in treatment to which the applicants, as Alevis, have been subjected has no objective and reasonable justification. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 9.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

186. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

187. The applicants maintained their claim originally submitted before the Chamber and sought EUR 50,000 each in respect of non-pecuniary damage.

188. The Government contested those claims.

189. The Court considers, in view of the particular circumstances of the case, that the findings of a violation of Article 9 of the Convention and of Article 14 taken in conjunction with Article 9 can be regarded as sufficient just satisfaction in this regard. It therefore makes no award under this head.

B. Costs and expenses

190. The applicants submitted an unquantified claim for travel costs and other expenditure incurred by their six lawyers in attending the Grand Chamber hearing. They produced invoices in respect of Mr Doğan's subsistence costs and air fares and those of five lawyers.

191. The Government contested that claim.

192. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, ECHR 2013 (extracts)). In the present case the Court notes that the invoices relating to the subsistence expenses of the applicants and their counsel do not enable a precise calculation to be made of the costs incurred. In view of the documents in its possession and its case-law, it considers it reasonable to award a sum of EUR 3,000 to the applicants jointly to cover miscellaneous expenses.

C. Default interest

193. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by twelve votes to five, that there has been a violation of Article 9 of the Convention;

3. *Holds*, by sixteen votes to one, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9;

4. *Holds*, unanimously, that the findings of violation constitute in themselves sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants;

5. *Holds*, by sixteen votes to one,

(a) that the respondent State is to pay the applicants jointly, within three months, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert	Guido Raimondi
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint partly dissenting and partly concurring opinion of Judges Villiger, Keller and Kjølbro ;

(b) dissenting opinion of Judge Silvis ;

(c) dissenting opinion of Judge Vehabović ;

(d) statement of Judge Spano.

G.R.A.
J.C.

JOINT PARTLY DISSENTING AND PARTLY CONCURRING OPINION OF JUDGES VILLIGER, KELLER AND KJØLBRO

1. Unlike the majority of the Court, we voted against finding a violation of Article 9 of the Convention. At the same time, like the majority, we voted in favour of finding a violation of Article 14 read in conjunction with Article 9 of the Convention, albeit on narrower grounds compared with the reasoning of the majority of the Court. Therefore, we will briefly explain our position as regards both issues.

Article 9 of the Convention

2. It follows from the requirement of exhaustion of domestic remedies (Article 35 of the Convention) that a complaint lodged with the Court must have been submitted, at least in substance, to the competent domestic authorities, thereby giving them a possibility to redress the alleged violation first (see *Vučković and Others v. Serbia* (preliminary objection), [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014). From this it follows that – in general – the complaints made before the domestic authorities and those made before the Court must be the same.

3. The applicants' claims as submitted to the domestic administrative and judicial authorities were clear. They wanted (1) to be provided with a public religious service by the RAD that was meaningful and useful to them as Alevis, (2) the recognition of their *cemevis* as "places of worship" with the accompanying advantages, (3) the employment of their religious leaders as civil servants by the RAD and (4) the allocation of funds from the general budget to finance their religious activities (see paragraphs 10 and 14 of the judgment).

4. These claims should have constituted the basis for the Court's assessment of the application. Consequently, the applicants' complaint is not about the lack of a procedure for recognition of the Alevi faith as a religious group or denomination. Such a procedure was not the object or purpose of the domestic proceedings and would not, even in the event of recognition, have given the applicants any of the specific benefits sought. Nor is the application about any other problems or consequences addressed by the Court but not included in the specific requests submitted by the applicants to the domestic authorities (see, for example, paragraphs 128 to 130 of the judgment).

5. By changing the focus of the Court's assessment from the applicant's specific requests (see paragraph 89 of the judgment) to the lack of a procedure for the recognition of religious denominations (see paragraphs 115 and 116 of the judgment), the Court is, in our view,

departing from the very essence of the complaint as submitted to the Court. This does not, in our view, fit well with the principle of exhaustion of domestic remedies as a condition for lodging a complaint with the Court.

6. The majority repeatedly states that the religious nature of the Alevi faith has not been recognised by the Turkish authorities (see paragraphs 92, 95 and 115). We respectfully disagree. It emerges clearly from the domestic decisions that the religious nature of the Alevi faith has been recognised. In its judgment the Administrative Court, referring to the Court's case-law (*Hasan and Eylem Zengin v. Turkey*, no. 1448/04, 9 October 2007), stated that "Alevism is a serious and coherent set of beliefs [and] is an interpretation of Islam" and that "it is generally accepted that the Alevi faith enjoys the protection afforded by Article 9" (see paragraph 14 of the judgment).

7. In reaching the conclusion that the application concerns an instance of interference (rather than a positive obligation), the Court relies heavily on a line of case-law concerning the lack of, or delayed, recognition by the domestic authorities of religious groups, in cases where this had significant negative consequences for the religious group in question (see paragraph 94 of the judgment). However, in our view, the present application is clearly distinguishable from the cases relied on by the majority, which do not sufficiently support the conclusion that there has been interference with the applicants' rights under Article 9 of the Convention.

8. Thus, the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (no. 45701/99, § 105, ECHR 2001-XII) concerned a situation where the applicant church, without official recognition as a religion under domestic law, could not operate as a church, in particular because its priests were not entitled to conduct divine service and its members could not meet to practise their religion and because, since it lacked legal personality, it was not entitled to judicial protection of its assets. Likewise, in *Moscow Branch of the Salvation Army v. Russia* (no. 72881/01, § 74, ECHR 2006-XI), the applicant religious organisation, after being obliged to amend its articles of association, was faced with a situation where registration of the amendments was refused by the State authorities, with the result that it lost its legal-entity status. Furthermore, under domestic law, the lack of legal-entity status of a religious association restricted its ability to exercise the full range of religious activities. Similarly, the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, §§ 79-80, 31 July 2008) concerned the prolonged failure to grant legal personality to the applicant religious society under domestic law.

9. In our view, the above-mentioned cases (as well as the other cases cited by the majority in paragraph 94 of the judgment) are clearly distinguishable from the present application.

10. That being said, the core question to be answered is whether the application should have been assessed as an issue of interference that has to

be justified or as an issue of positive obligations. As already mentioned, the domestic proceedings were not about the lack of a procedure for obtaining recognition as a religious group, but about specific requests. Furthermore, a procedure for obtaining recognition would not in itself have satisfied any of the applicants' specific requests. In this context we cannot but observe that the applicants have been able – and continue to be able – to exercise their religious activities. Thus, it emerges clearly from the facts of the case as presented to the Court that the Alevi faith has been in existence for many years and has a large number of adherents, who are able to meet freely and perform their religious activities and rites in their *cemevis*, of which there are thousands (see, for example, paragraphs 35 to 37 of the judgment).

11. Furthermore, as the Administrative Court also emphasised in its judgment (see paragraph 14 of the judgment), the applicants do not mention or rely on specific examples suggesting that they have in any way been hindered in the exercise of their religious activities and rites in their *cemevis*. It is undisputed that the Alevi community, to which the applicants belong, can function unhindered as a religious community and practise its religion. It can create legal entities in the form of foundations and associations, and as such it can – and does in practice – own the buildings necessary for its religious activities. As a religious community, the Alevis can – and do in practice – have religious leaders. They can – and do in practice – teach the principles of their religious creed as well as meeting and practising their religion. Furthermore, the religious nature of the Alevi faith – and the accompanying protections under Article 9 of the Convention – have, as already mentioned, clearly been recognised by the domestic authorities.

12. The majority relies on Law no. 677 (see paragraphs 123 and 126 of the judgment). We admit that this law, in view of its content, is problematic and raises serious issues with regard to the provisions of the Convention. However, the law and its prohibitions have not been applied to the applicants, nor do they allege otherwise; furthermore, as pointed out by the Government, the law is no longer applied (see paragraph 84 of the judgment).

13. Having regard to the facts of the case and the practical situation of the applicants, we find it problematic to say that there has been interference with their rights under Article 9 of the Convention. Consequently, the application should, in our view, have been assessed in terms of the State's positive obligations inherent in Article 9 of the Convention. In submitting their specific claims to the domestic authorities, the applicants were requesting a number of privileges and advantages from the State. In general, a religious group cannot claim a particular treatment from the domestic authorities. If a religious group claims the right to be treated in the same manner as other religious groups, the complaint is to be assessed under

Article 14 read in conjunction with Article 9 of the Convention (see §§ 17 et seq. below).

14. In our view, Article 9 of the Convention cannot be interpreted as imposing a positive obligation on a State to provide a religious group with religious services, to recognise their places of worship, to employ and pay the salaries of the group's religious leaders and to allocate funds from the general budget to finance, wholly or in part, the group's activities. Such an interpretation of Article 9 of the Convention would go too far. Therefore, and having regard to what the application is not about, we voted against finding a violation of Article 9 of the Convention.

Article 14 read in conjunction with Article 9 of the Convention

15. We voted in favour of finding a violation of Article 14 read in conjunction with Article 9; however, we did so on the basis of a narrower and more limited approach than that adopted by the majority.

16. We fully agree that the facts of the case fall within the ambit of Article 9, thereby rendering Article 14 applicable. It is well established in the Court's case-law that when States decide to grant rights or privileges that are not required by the Convention, they have to do so in compliance with the prohibition against discrimination (see, for example, the case-law cited in paragraph 158 of the judgment). Furthermore, granting certain rights and privileges to religious groups may in some situations be so closely linked to, and have such significant repercussions for, the right to manifest religious beliefs and function as a religious community that the facts of the case fall within the ambit of Article 9, thus rendering Article 14 applicable (see *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, no. 32093/10, § 41, 2 December 2014).

17. The failure of the Turkish authorities to recognise the Alevi faith as a religion, and consequently the failure to recognise the Alevi *cemevis* as "places of worship" within the meaning of the domestic legislation, will, depending on the specific circumstances of the case, amount to discrimination in violation of the Convention.

18. The Court reached that conclusion in the *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı* judgment, cited above, in which it assessed a situation where "places of worship" within the meaning of the domestic legislation could be exempted from paying for electricity used within the premises. According to the domestic legislation, mosques, churches and synagogues benefitted from this exemption. However, owing to the failure of the domestic authorities to recognise the Alevi faith as a religion and thus to recognise the Alevi *cemevis* as "places of worship" within the meaning of the domestic legislation, the *cemevis*, unlike mosques, churches and synagogues, were excluded from the advantages provided for in domestic

law. In the Court's view, this amounted to discrimination in violation of Article 14 read in conjunction with Article 9 of the Convention.

19. We see no reason to depart from or call into question the Court's assessment in *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*. Neither in that case nor in the present case did the Government provide an objective and reasonable justification for the difference in treatment between the Alevi faith and other religions or religious groups as regards the rights and privileges provided for in the domestic legislation.

20. Therefore, we had no hesitation in voting in favour of finding a violation of Article 14 read in conjunction with Article 9 in the present case. In our view, the Court should have limited its assessment to the difference in treatment between the Alevi faith and other religions or religious groups with regard to the rights and privileges provided for in the domestic legislation. However, in the present case the Court adopted a much broader approach, on the basis of which it found a violation of Article 14 read in conjunction with Article 9. In so doing it followed the overly broad approach which it had already applied in the context of Article 9 in this case.

21. In the present judgment the Court compares the situation of the applicants, as followers of the Alevi faith, with that of the "beneficiaries of the religious public service provided by the RAD" (see paragraphs 166 to 170 of the judgment). In doing so, it pays insufficient attention to the fact that the religious public service provided by the RAD is of little or no avail to any persons who do not share the religious views and practices reflected in that public service, which is based on a Sunni interpretation of Islam. In other words, any religious groups that do not belong to the Sunni faith as favoured by the RAD, be they Shia Muslims, Jews, Catholics, Orthodox Christians, Protestants, Hindus or any other religious groups, will not benefit from the services provided by the RAD. If the applicants as a religious group can claim to be in a situation that is comparable to that of the beneficiaries of the religious public service provided by the RAD, so can any other religious group.

22. By comparing the applicants, as followers of the Alevi faith, with Sunni Muslims, who "[benefit] from the religious public services of the RAD", the Court is in practice requiring that the RAD's service – or some kind of similar privileges – be provided not only to the applicants, as followers of the Alevi faith, but also to persons of other religious beliefs, since they, like the applicants, do not benefit from the religious public service provided by the RAD and are, according to the Court's assessment, in a comparable situation to that of the beneficiaries of that service (see paragraphs 183 and 184 of the judgment). In doing this, the Court is, in our view, going too far.

23. In practice, the Sunni interpretation of Islam – which is supported by the RAD – acts as a *de facto* "State religion" in Turkey, even though it is

not recognised by the Government (see paragraphs 17 to 28 of the judgment). It emerges clearly from the facts presented to the Court that the Sunni interpretation of Islam as supported by the RAD is wholly subsidised by the State, to the tune of considerable sums, and enjoys a privileged position in Turkey (see paragraph 25 of the judgment). A very large number of persons, including religious leaders and teachers, are employed as civil servants by, and receive their salary from, the RAD (see paragraph 24 of the judgment). The RAD administers and supports very many mosques and *masdjids* (see paragraph 24). Furthermore, religious teaching and training are made available by the RAD (see paragraph 24). Therefore, as we see it, the core legal problem raised by this case, but not sufficiently addressed by the Court in the judgment, is whether it can be regarded as compatible with the Convention for one religion, in this case the Sunni interpretation of Islam, to occupy a privileged position within Turkey for historical and cultural reasons.

24. By not recognising the privileged position of the Sunni interpretation of Islam as supported by the RAD and its *de facto* status as a "State religion" in Turkey, the Government fail to put forward arguments which, in our view, suffice to provide an objective and reasonable justification for a difference in treatment between Muslims benefiting from the service provided by the RAD and other Muslims (or other religious groups for that matter) (see paragraphs 78 to 88 and 145 to 154). Thus, for example, when the Government argue that the services of the RAD are for all Muslims, including Alevis, and that they are "supra-denominational" (see for example paragraphs 11, 13 and 148 of the judgment), they do not adequately recognise and address the fact that the services are of little or no use to persons who do not adhere to the Sunni interpretation of Islam as supported by the RAD.

25. In our view, the crux of the matter is indisputably the fact that the Sunni interpretation of Islam, as practised by the majority of the population in Turkey, is granted preferential treatment, while other religions are not granted similar treatment, with some exceptions such as the possibility of being exempted from payment of electricity bills.

26. Therefore, the question is whether Turkey is entitled to grant a special and privileged position to one religion, in this case the Sunni interpretation of Islam as supported by the RAD. This question touches upon the relationship between State and religion. So far the Court has accepted in its case-law that a religion may have a privileged position within a State for historical and cultural reasons (see, for example, *Darby v. Sweden*, 23 October 1990, § 45, Series A no. 187; *Ásatrúarfélagið v. Iceland*, no. 22897/08 (dec.), 18 September 2012; and *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 132, 3 May 2007). At the same time the Court has emphasised that when States grant rights and privileges to religious groups,

they should do so without discriminating (see the cases cited in paragraph 164 of the judgment). Last but not least, this is an area where there is no European consensus (see the comparative-law information provided in paragraphs 60 to 64 of the judgment) and where the States enjoy a wide margin of appreciation (see, for example, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII, and *S.A.S. v. France* [GC], no. 43835/11, § 129, ECHR 2014 (extracts)).

27. Therefore, and having regard to what the applicants sought to obtain at domestic level, that is, the specific claims they raised before the domestic courts (requests for a religious service regarded as meaningful and useful to them, for recognition of the *cemevis* as place of worship with the accompanying advantages, for the employment of religious leaders as civil servants and for the allocation of funds from the general budget), which should also be the basis for the Court's assessment of the case (see § 5 above), we find it problematic to compare the applicants' situation with that of the beneficiaries of the religious public service provided by the RAD, as those services are of interest only to persons adhering to the Sunni interpretation of Islam as supported by the RAD.

28. To conclude, the applicants' situation should have been compared, in our view, with that of other religious groups in relation to which they may certainly claim to be in an analogous or comparable situation as regards the rights and privileges granted under the domestic legislation to religions or religious groups, as in the *Cumhuriyetçi* case concerning exemption from the payment of electricity bills for "places of worship". On that basis, we voted in favour of finding a violation of Article 14 read in conjunction with Article 9 of the Convention.

DISSENTING OPINION OF JUDGE SILVIS

The applicants, members of the Alevi faith, complain that their religion does not enjoy the same public support in Turkey as the Sunni branch of Islam. The violation of the Convention is to be found solely in the comparison between the two.

What would be left for our Court to consider if the difference in treatment between the two were removed from the case? In my view, very little.

Why should it be problematic in itself that:

(1) services connected with Alevi religious practice are not considered services to the public;

(2) Alevi places of worship (*cemevis*) are not granted any special status by the State;

(3) Alevi leaders are not on the Government payroll as civil servants;

(4) no special provision is made in the State budget for the practice of the Alevi faith?

The situation is no different in those countries of the Council of Europe where Church and State are separate in law and in practice.

There is no obligation under the Convention for the State to seek an active supporting role in matters of religion. For that reason I respectfully disagree with the majority that there has been a violation of Article 9 taken alone.

Nevertheless, when comparing the position of the Alevi faith with that of the Sunni Muslim faith in Turkey, it is clear that there has been a difference in treatment for which no objective and reasonable justification exists. This is therefore a typical religious discrimination case, nothing more.

DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been a violation of Article 9 and of Article 14 taken in conjunction with Article 9 of the Convention.

The applicants' requests to the Prime Minister and to the Court were as follows:

(a) for services connected with the practice of the Alevi faith to constitute a public service,

(b) for Alevi places of worship (*cemevis*) to be granted the status of places of worship,

(c) for Alevi religious leaders to be recruited as civil servants,

(d) for special provision to be made in the budget for the practice of the Alevi faith.

None of these requests had implications for the applicants' freedom to practise Islam in their own way.

Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see, among many other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 58, ECHR 2008). Thus, a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may nevertheless infringe the Article when read in conjunction with Article 14, for the reason that it is of a discriminatory nature (see, for example, the "*Belgian linguistic case*" (merits), 23 July 1968, pp. 33-34, § 9, Series A no. 6). Article 14 comes into play whenever "the subject-matter of the disadvantage ... constitutes one of the modalities of the exercise of a right guaranteed" (see *National Union of Belgian Police v. Belgium*, 27 October 1975, § 45, Series A no. 19), or the measure complained of is "linked to the exercise of a right guaranteed" (see *Schmidt and Dahlström v. Sweden*, 6 February 1976, § 39, Series A no. 21).

The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010). "Religion" is specifically mentioned in the text of Article 14 as a prohibited ground of discrimination.

In order to constitute discrimination on grounds of religion, however, the alleged discrimination must fall "within the ambit" of a right protected by Article 9, in this case, the right to manifest one's religion. In the present

case, the possibility or otherwise for Alevis to have their religious services granted the status of a public service and to obtain all the other financial benefits connected to that particular status does not prevent them from manifesting their religion. But I would not regard this as conclusive. If the legislation imposed any additional obligations on Alevis alone, I would regard that as coming within the ambit of Article 9. But in the present case no burden is imposed on the Alevis on account of their religion. The applicants simply complain that the State does not provide them with services that have the status of public services and with the benefits arising from that status. That seems to me an altogether different matter.

Furthermore, I think that even if this can be regarded as a case of indirect discrimination, it may relate only to Article 1 of Protocol No. 1.

I disagree with the majority's conclusion that the assessment made by the Turkish authorities concerning the religious nature of the Alevi practice of Islam amounts to a denial that Alevi religious practice constitutes a form of religious worship and to depriving Alevi meeting places and religious leaders of legal protection. The Court goes even further, concluding that recognition of the religious nature of the practices linked to that faith and of the status of its religious leaders and places of worship is regarded by the Alevi community as essential to its survival and its development as a religious faith. Finally, the Court considers that the refusal of the applicants' claims, which amounts to denying the religious nature of the Alevi faith, constitutes an interference with the applicants' right to freedom of religion as guaranteed by Article 9 § 1 of the Convention.

In today's world there are many deviant forms of religious practice and belief which should never obtain legitimacy and, by means of such recognition, the possibility to spread these deviant ideas and ideologies. Of course this case is in no way connected with these ideas, but the issue is relevant in terms of the wide margin of appreciation afforded to the States in this area and the possibility of creating a precedent for the future. The legislature must have broad discretion in deciding what should be regarded as a sufficient public benefit to justify including other religious groups and religious movements in the system of public services.

In short, I do not see this case as falling within the ambit of Article 9. The persons who worship in the *cemevis* are not prevented from manifesting their religion or their belief by the fact that *cemevis* do not have the status of places of worship or the fact that Alevi religious leaders are not recruited as civil servants and consequently are not paid from the State budget. The legislation is not directed at Alevis alone on the grounds of their beliefs. It is easier to view the case as falling within the ambit of Article 1 of Protocol No. 1.

It is clear from a variety of sources that there are thousands of places of worship (*cemevis*) in Turkey, serving numerous Alevi communities, and that the *cemevis* all operate without any State interference or any pressure or

limitations with regard to Alevi belief, worship, teaching, practice and observance. Are there limitations on Alevis' right to manifest their form of religious practice? Are any restrictions or prohibitions applicable to the applicants and their way of practising Islam? I find no such arguments in the applicants' submissions. What I find is that the applicants' requests are all connected, not to any right protected by Article 9 of the Convention, but rather to Article 1 of Protocol No. 1 to the Convention, as is clear from the request for the State to intervene by providing financial services to the Alevi community. In other words, the Alevis' requests are not aimed at obtaining legal recognition of their faith so that they can start practising their religion, but at obtaining funding for their religious leaders and places of worship and having their religious leaders recognised as civil servants. There is not a single word concerning any alleged limitation on their right to manifest their belief or on any other right protected by Article 9 of the Convention; rather, the applicants' complaints concern property rights.

Seeking to define religion and to distinguish a religion from a sect is a very dangerous undertaking. Is Alevism a religion in its own right or is it merely a sect within Islam? The Western concept of religion is completely different from the Eastern understanding. According to its settled case-law, the Court leaves to Contracting States a certain margin of appreciation in deciding whether and to what extent any interference is necessary. It is true that a wide margin is usually allowed to the State when it comes to general measures of economic or social strategy. This is because, given their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; see also, for example, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports of Judgments and Decisions* 1997-VII, and *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, no. 7552/09, 4 March 2014).

STATEMENT OF JUDGE SPANO

I concur in the judgment, but as regards my reasons for finding a violation of Article 14 of the Convention, taken in conjunction with Article 9, I subscribe to the more narrowly tailored reasoning provided for in the joint partly dissenting, partly concurring opinion of my colleagues Judges Villiger, Keller and Kjølbro.

LIST OF APPLICANTS

1. Cemal ADSIZ is a Turkish national born in 1959.
2. Fatime AĞIRMAN is a Turkish national born in 1940.
3. İmam AĞIRMAN is a Turkish national born in 1941.
4. Feride AKBAŞ is a Turkish national born in 1964.
5. Cevat AKBAŞ is a Turkish national born in 1961.
6. İlyas AKDEMİR is a Turkish national born in 1937.
7. Selahattin AKDEMİR is a Turkish national born in 1977.
8. Hüseyin AKDEMİR is a Turkish national born in 1965.
9. Mutlu AKDEMİR is a Turkish national born in 1980.
10. Esma AKDEMİR is a Turkish national born in 1941.
11. Cafer AKTAN is a Turkish national born in 1959.
12. Bayram AKTAŞ is a Turkish national born in 1944.
13. Yeter ALTINTAŞ is a Turkish national born in 1981.
14. Hasan ALTINTAŞ is a Turkish national born in 1974.
15. Beyhan ALTINTAŞ is a Turkish national born in 1974.
16. Aşur ARMUTLU is a Turkish national born in 1969.
17. Hüsamettin ARSLAN is a Turkish national born in 1965.
18. Selma ARSLAN is a Turkish national born in 1972.
19. Şenay ARSLAN is a Turkish national born in 1983.
20. Saniye ARSLAN is a Turkish national born in 1977.
21. Tuncay ARSLAN is a Turkish national born in 1977.
22. Gülbeyaz ARSLAN is a Turkish national born in 1956.
23. Mustafa ARSLAN is a Turkish national born in 1957.
24. Gazi ARSLAN is a Turkish national born in 1974.
25. Murat ARSLAN is a Turkish national born in 1958.
26. Döndü ARSLAN is a Turkish national born in 1949.
27. Sadık ARSLAN is a Turkish national born in 1955.
28. Zeki ASLAN is a Turkish national born in 1950.
29. İdris ASLAN is a Turkish national born in 1961.
30. Şaziye ASLAN is a Turkish national born in 1965.
31. Mehmet ASLAN is a Turkish national born in 1956.
32. Turan ASLAN is a Turkish national born in 1966.
33. İsmihan ASLANDAŞ is a Turkish national born in 1963.
34. Hidayet ASLANDAŞ is a Turkish national born in 1960.
35. Hülya ASLANDAŞ is a Turkish national born in 1983.
36. Mehrali ATEŞOĞLU is a Turkish national born in 1964.
37. Mustafa Kemal AYDIN is a Turkish national born in 1948.
38. İsmet BACIOĞLU is a Turkish national born in 1955.
39. Abidin BACIOĞLU is a Turkish national born in 1976.
40. Hakan BACIOĞLU is a Turkish national born in 1979.
41. Döne BACIOĞLU is a Turkish national born in 1953.

42. Murat BACIOĞLU is a Turkish national born in 1975.
43. Betül BACIOĞLU is a Turkish national born in 1984.
44. Ali Gündüz BALÇIK is a Turkish national born in 1975.
45. Adem BARAN is a Turkish national born in 1981.
46. Derya BARAN is a Turkish national born in 1983.
47. Maviş BEKAR is a Turkish national born in 1944.
48. Ali BEKAR is a Turkish national born in 1936.
49. Nezih Doğan BERMEK is a Turkish national born in 1948.
50. Kazım BÜKLÜ is a Turkish national born in 1952.
51. İsmail BÜKLÜ is a Turkish national born in 1934.
52. Özkan BÜYÜKTAŞ is a Turkish national born in 1977.
53. Kasım ÇAĞLAR is a Turkish national born in 1956.
54. Ali İhsan ÇAĞLAR is a Turkish national born in 1966.
55. Çiçek ÇAĞLAR is a Turkish national born in 1937.
56. Güldane ÇAĞLAR is a Turkish national born in 1972.
57. Sati ÇAĞLAR is a Turkish national born in 1960.
58. Nurcan ÇAKMAK is a Turkish national born in 1959.
59. Süleyman CAN is a Turkish national born in 1979.
60. Cemal CANKURT is a Turkish national born in 1973.
61. Kiraz ÇAY is a Turkish national born in 1978.
62. Kazım ÇELİK is a Turkish national born in 1940.
63. Ali Rıza ÇELİK is a Turkish national born in 1947.
64. Hamide ÇELİK is a Turkish national born in 1948.
65. Durmuş ÇELİK is a Turkish national born in 1953.
66. Penpe ÇELİK is a Turkish national born in 1958.
67. Hasan ÇELİK is a Turkish national born in 1958.
68. Zeliha ÇİFTÇİ is a Turkish national born in 1942.
69. Mehmet ÇİFTÇİ is a Turkish national born in 1930.
70. Hasan ÇIKAR is a Turkish national born in 1935.
71. Cafer ÇINAR is a Turkish national born in 1958.
72. Sadık ÇIPLAK is a Turkish national born in 1974.
73. Zeynep ÇIPLAK is a Turkish national born in 1953.
74. Ahmet ÇIPLAK is a Turkish national born in 1955.
75. Salih ÇOBAN is a Turkish national born in 1952.
76. Hıdır DEMİR is a Turkish national born in 1956.
77. Nurten DİLEK is a Turkish national born in 1980.
78. Erol DİLEK is a Turkish national born in 1980.
79. Çeşminaz DİLEK is a Turkish national born in 1960.
80. Ali DİLEK is a Turkish national born in 1955.
81. İbrahim DOĞAN is a Turkish national born in 1965.
82. Selahattin DOĞAN is a Turkish national born in 1971.
83. Ziya DOĞAN is a Turkish national born in 1963.
84. Gülbeyaz DOĞAN is a Turkish national born in 1968.
85. Arife DOĞAN is a Turkish national born in 1974.

86. Ali DOĞAN is a Turkish national born in 1966.
87. Gülizar DOĞAN is a Turkish national born in 1942.
88. Ağgül DOĞAN is a Turkish national born in 1950.
89. Niyazi DOĞAN is a Turkish national born in 1954.
90. Zeynel DOĞAN is a Turkish national born in 1936.
91. Hediye DOĞAN is a Turkish national born in 1954.
92. İzzettin DOĞAN is a Turkish national born in 1940.
93. Veli ELGÜN is a Turkish national born in 1947.
94. Remziye ERÇELİK is a Turkish national born in 1978.
95. Arslan ERÇELİK is a Turkish national born in 1968.
96. Davut ESKİOCAK is a Turkish national born in 1974.
97. Aziz GÜNEŞ is a Turkish national born in 1954.
98. Ercan GÜVENÇ is a Turkish national born in 1964.
99. Cemal GÜVENÇ is a Turkish national born in 1947.
100. Abidin HARMAN is a Turkish national born in 1933.
101. Güleser HIR is a Turkish national born in 1967.
102. Rıza HIR is a Turkish national born in 1959.
103. Sevinç ILGIN is a Turkish national born in 1962.
104. İsmail ILGIN is a Turkish national born in 1961.
105. Kaya İZCİ is a Turkish national born in 1966.
106. Nargül KALE is a Turkish national born in 1966.
107. Aydın KALE is a Turkish national born in 1966.
108. Fadime KAMA is a Turkish national born in 1967.
109. Ali KAPLAN is a Turkish national born in 1948.
110. Hasan Hüseyin KAPLAN is a Turkish national born in 1950.
111. Veyis KARA is a Turkish national born in 1955.
112. Hasan KARAKÖSE is a Turkish national born in 1976.
113. Fadık KARAKÖSE is a Turkish national born in 1978.
114. Eylem KARATAŞ is a Turkish national born in 1977.
115. Ali KAVAK is a Turkish national born in 1934.
116. Nermin KAYA is a Turkish national born in 1953.
117. Sadık KAYA is a Turkish national born in 1953.
118. Ali KAYA is a Turkish national born in 1958.
119. Hüseyin KAYA is a Turkish national born in 1949.
120. Gülüzar KAYA is a Turkish national born in 1961.
121. Teslime KAYA is a Turkish national born in 1966.
122. Hüseyin KAYA is a Turkish national born in 1964.
123. Kemal KAYA is a Turkish national born in 1961.
124. Senem KAYA is a Turkish national born in 1944.
125. Turan KAYA is a Turkish national born in 1943.
126. Zeynel KAYA is a Turkish national born in 1944.
127. Mehmet KAYACIK is a Turkish national born in 1949.
128. Hasan KAYTAN is a Turkish national born in 1960.
129. Türkmen KAYTAN is a Turkish national born in 1962.

130.Gürsel KAYTAN is a Turkish national born in 1985.
131.Düzgün KELEŞ is a Turkish national born in 1964.
132. Nuriye KELEŞ is a Turkish national born in 1967.
133. Tayyar KETEN is a Turkish national born in 1975.
134. Cemal KETEN is a Turkish national born in 1970.
135. Alime KETEN is a Turkish national born in 1963.
136. Akgül KETEN (KALE) is a Turkish national born in 1980.
137. Hasan KILIÇ is a Turkish national born in 1959.
138. Haşim KIRIKKAYA is a Turkish national born in 1968.
139. Dilber KÖSE is a Turkish national born in 1966.
140. Kazım KÜÇÜKŞAHİN is a Turkish national born in 1933.
141.Süleyman KUMRAL is a Turkish national born in 1967.
142.Gülten KURT est une ressortissante turque.
143.İpek MISIRLI is a Turkish national born in 1972.
144. Ali MULAOĞLU is a Turkish national born in 1960.
145. Ayten MULAOĞLU is a Turkish national born in 1963.
146. Fatma NACAR is a Turkish national born in 1965.
147. Ali NACAR is a Turkish national born in 1960.
148. Cevahir NAYIR is a Turkish national born in 1951.
149.Hüseyin NAYIR is a Turkish national born in 1950.
150.Şükrü OCAK is a Turkish national born in 1940.
151.Tülay ODABAŞ is a Turkish national born in 1968.
152. Ahmet ÖNER is a Turkish national born in 1932.
153. Bekir ÖZCAN is a Turkish national born in 1955.
154. Yeter ÖZDEMİR is a Turkish national born in 1964.
155.Gülden ÖZDEMİR is a Turkish national born in 1964.
156. Salman ÖZDEMİR is a Turkish national born in 1964.
157. Fazlı ÖZDEMİR is a Turkish national born in 1964.
158. Mustafa ÖZDEMİR is a Turkish national born in 1958.
159. Sati ÖZEKER is a Turkish national born in 1956.
160. Celal ÖZEKER is a Turkish national born in 1951.
161. Ali Haydar ÖZPINAR is a Turkish national born in 1951.
162. Mustafa PARLAK is a Turkish national born in 1939.
163. Cemal POLAT is a Turkish national born in 1951.
164.Yüksel POLAT is a Turkish national born in 1963.
165. Fethi SAĞLAM is a Turkish national born in 1959.
166.İlyas ŞAHBAZ is a Turkish national born in 1976.
167. Salih ŞAHİN is a Turkish national born in 1960.
168.İbrahim ŞAHİN is a Turkish national born in 1944.
169. Tamo ŞAHİN is a Turkish national born in 1943.
170. Hasan Hüseyin ŞAHİN is a Turkish national born in 1966.
171. Hatice ŞAHİN is a Turkish national born in 1973.
172. Ali ŞAHİN is a Turkish national born in 1962.
173. Abdullah ŞAHİN is a Turkish national born in 1942.

174. Sati ŞAHİN is a Turkish national born in 1931.
175. Rıza ŞAHİN is a Turkish national born in 1947.
176. Hasan ŞAHİN is a Turkish national born in 1941.
177. Güner ŞAHİN is a Turkish national born in 1939.
178. Sabri ŞAKAR is a Turkish national born in 1949.
179. Hakkı SAYGI is a Turkish national born in 1931.
180. Celal SEVİNÇ is a Turkish national born in 1950.
181. Pınar SOFUOĞLU is a Turkish national born in 1985.
182. Namık SOFUOĞLU is a Turkish national born in 1958.
183. Hıdır SOYLU is a Turkish national born in 1925.
184. Jülide SUCUOĞLU is a Turkish national born in 1975.
185. Sait TANRIVERDİ is a Turkish national born in 1962.
186. Hasan TAŞDELEN is a Turkish national born in 1947.
187. Serap TOPÇU is a Turkish national born in 1973.
188. Hamdi TÜRKEL is a Turkish national born in 1974.
189. Ali Rıza TÜRKEL is a Turkish national born in 1956.
190. Ali Rıza UĞURLU is a Turkish national born in 1951.
191. Kenan YAĞIZ is a Turkish national born in 1970.
192. Mansur YALÇIN is a Turkish national born in 1967.
193. Paşa YALÇIN is a Turkish national born in 1955.
194. Sevim YILDIRIM is a Turkish national born in 1964.
195. Hakkı YILDIRIM is a Turkish national born in 1964.
196. Yusuf YILMAZER is a Turkish national born in 1955.
197. Ali YÜCE is a Turkish national born in 1974.
198. Ali YÜCESOY is a Turkish national born in 1957.
199. Dursun ZEBİL is a Turkish national born in 1959.
200. Sakine ZEBİL is a Turkish national born in 1965.
201. Ganime ZEBİL is a Turkish national born in 1932.
202. Fadime ZEBİL is a Turkish national born in 1965.
203. İsmihan ZEBİL is a Turkish national born in 1954.