Can you protect minorities without recognizing them as minorities? The pitfalls of the Turkish legal and policy framework on radicalization

di Hasret Dikici Bilgin and Nazlı Özekici Emirönal

Abstract: Turkey has been struggling with political violence since the Ottoman Empire period. Its historical ethnic-religious conflicts and sensitivities; and restrictive approach to minorities adopted in the Lausanne Peace Treaty continue to shape its current legal and policy framework. The constitutional framework has maintained these concerns despite the fact that different constitutions were enacted across time. The relevant legislative framework beyond the constitutional context concerning radicalization has a similar security-based approach in which there is not a specific conceptualization of radicalization: discourses outside the constitution and official ideology are treated as threats to national integrity and evaluated under the context of counter-terrorism. The legislation is punitive, limited in scope regarding the hate crimes, and applied in a biased way to protect the majority ethnic and religious groups. The available legislative context with respect to radicalization doesn't encompass the online contexts, and any effort to detect radical content on online platforms tends to target minorities and dissident groups rather than hate speeches and discriminatory attitudes towards them. The institutional and policy framework reflects the approach in the legal framework in that policies ignore ethnic and religious diversity, downplay the crimes against minorities with a security approach on radicalization and deradicalization, and protect the dominant groups rather than minorities and dissidents. The Islamization policies of the Justice and Development Party (Adalet ve Kalkınma Partisi, AKP) and its further closing down the political space with a super-presidential system also exacerbate the situation and feelings of insecurity among non-Muslim and heterodox Muslim groups such as the Alevis.

Keywords: Deradicalisation, Radicalisation, Turkey, Policies, Historical legacy.

1. Introduction

This article[1] begins with a brief historical background on radicalization in Turkey with a specific focus on the main characteristics of the society and its constitutive groups and the geography of radicalization. It continues with

[1] The article is a revised version of the Turkey country report; H. Dikici Bilgin and N. Ozekici Emironal, 2021. *Deradicalization and integration legal and policy framework*, D4 Country Report, Horizon 2020 'De-Radicalisation in Europe and Beyond: Detect, Resolve, Re-integrate, D.Rad' (Nr 959198) Project. (dradproject.com/?publications=de-radicalisation-and-integration-legal-policy-framework-in-turkey).

the constitutional organization of the state and the values and rights pertaining to religious, political, ethno-national and separatist issues. In this section, it emphasizes that the weaknesses and loopholes in the Constitution with respect to radicalization are the main cause of the absence of a constitutional case law.

The study delves into the other relevant legislative framework in the following parts. Our research[2] points out that the Turkish Penal Code and the Turkish Counter Terrorism Law articles are invoked in the crimes against minorities and disadvantaged groups without any specific content pertaining to the element of hate. The Selendi case is analyzed as a case-law in which the Roma residents were attacked. In the next section, the article discusses the relevant policy and institutional framework in the field of radicalization, underlining the fact that the state authorities utilize the existence of radicalization to repress the expression of identities inconsistent with the Turkish-Sunni Muslim bloc and the policy framework prioritizes counter-terrorism rather than radicalization. It is argued that this leads to an absence of effective policy development for deradicalization.

2. Historical controversies and constitution-making in Turkey

Turkey's complex social structure is important to understand the legal and policy framework pertaining to radicalization. Multiple forms of radicalization with violent outcomes have prevailed in Turkey since the inception of the Republican period in 1923.[3] The country emerged out of World War I as the successor of the Ottoman Empire with its socio-economic and political legacies. The young Republic's vision of the new nation entailed a secular public sphere in which the religious authority would be subjugated to state control, and the ethnic minorities would be relegated to the cultural sphere under the umbrella identity of Turkishness. The Lausanne Peace Treaty of 1923, as the founding agreement of the republic, recognized only the non-Muslim communities as the minorities, but did not create a minority regulation regime that would respond to the cultural or religious claims. Through the course of the years, several divisive issues consolidated into politicized cleavages around ethnic and religious identities and the permissible visibility of religion in the public sphere. These conflicts attained violent character at certain historical junctures, sometimes through the intervention of the state institutions, particularly the military establishment, such as the September 12, 1980 coup.[4] A glance at the Turkish political history reveals two aspects. All four types of radicalization with violent characters, namely the jihadist, right-wing, left-wing and separatist, have existed in Turkey since the beginning of the Republican era.

[2] We thank İdil Isil Gul, Yaman Akdeniz, Ayhan Kaya, Kerem Altiparmak, Ulas Karan and Suleyman Kacmaz for their contributions to our research.

[3] This part of the article also takes place in Turkey country report D3.2 for DRad Project in a slightly revised form.

[4] The 1980 coup resulted in the exile, imprisonment and torture of tens of thousands of people, mostly from left-leaning and Kurdish groups. For further information, please see G. Orhon, *The weight of the past: memory and Turkey's 12 september coup*, Cambridge, 2015. The coup was made within the chain-of-command led by General Kenan Evren. It was supported by the ultra-nationalist groups actively and the Islamists tacitly.

Moreover, Turkey witnessed violent events related to all four types nearly in every decade, especially jihadist and right-wing radicalization.

The forms of radicalization based on religious or right-wing notions indeed precede the Republican period. The Westernization reforms initiated in the 18th century marked the beginning of the traditionalist-reformist division which consolidated further with the *Tanzimat*[5] period of the 19th century. Reactions against the secularism principle, which laid out the foundations of the new Republic led to several uprisings motivated by overtly religious concerns.[6] The *Tanzimat* reforms aimed to reform the dysfunctional state institutions along with proposing a new inclusive citizenship regime following the ethnic uprisings in the Ottoman Empire.[7] The search for creating a nation as homogenous as possible against the background of the ethnic uprisings of the 19th century and World War I during the early Republican period did not leave any space for ethnic and religious claims. It also created a minority discourse, in which any ethnic demand would be denoted as suspicious and divisive. The absence of any official recognition of the cultural specificities of different ethnic or religious groups other than the general clauses of the Lausanne Peace Treaty, which stipulate that the non-Muslim nationals would be under equal protection with all citizens[8] led to an obscure social setting on which right-wing groups justified their attacks against the minorities, claiming that they attacked the separatists and internationally funded groups as they could not be legally considered as minorities.

Constitution-making in modern Turkey carries the legacies of the concern for creating a relatively homogenous nation and the power struggles from the Ottoman Empire. The first constitutional movement came in 1808 with *Sened-I İttifak* (Deed of Alliance), which regulated the division of powers between the monarchy and the local rulers. It was followed by the *Tanzimat Fermanı* (Decree of Reforms) in 1839 and *Islahat Fermanı* (Decree of Improvements) in 1856. The *Tanzimat* reforms initiated secularization of the legal framework and provided rights to all citizens regardless of their ethnicity or religion, while the *Islahat* decrees specified the rights and liberties that were extended to non-Muslims.[9] The first constitution of the Empire followed these movements and was enacted in 1876 titled *Kanun-I Esasi* (The Basic Law). Although it provided constitutional equality of representation for the entire population, it failed to create a powerful parliament able to limit the powers of the government

[5] The Tanzimat period refers to the legal and policy reforms in the 19th century to rehabilitate the failing state institutions in the Ottoman Empire.
[6] N. Berkes, *The development of secularism in Turkey*, Kingston, 1964.
[7] D. Stamatopoulos, *From millets to minorities in the 19th-century Ottoman Empire: An ambiguous modernization*, Pisa, 2006; M. Dressler, *Historical trajectories and ambivalences of Turkish minority discourse*, in 17 *New Diversities*, 1, 9–26 (2015); R. H. Davison, *Reform in the Ottoman Empire, 1856-1876*, Princeton, 2015; H. Inalcik, *Application of the Tanzimat and its social effects*, Berlin, 2019.
[8] "Lausanne Peace Treaty" (1923), www.mfa.gov.tr/lausanne-peace-treaty-part-i_-political-clauses.en.mfa.
[9] I. N. Grigoriadis, *Minorities*, in M. Heper and S. Sayari (Eds), *The Routledge handbook of modern Turkey*, London, 2013, 298–308.

effectively.[10] It should be kept in mind that the constitutional movements in this period aimed to re-empower the Empire in turmoil and prevent foreign intervention by extending recognition and the rights to the non-Muslim population.[11] This aspect of the Ottoman constitutional framework sheds light on the dynamics of the citizenship and minority regime in the Republican period. As ethnic nationalism found appeal in the Ottoman territories overwhelmingly populated by non-Muslim groups leading to the emergence of separatist uprisings and the political regime became more autocratic under Abdulhamid II, the reform process was reversed, and ethnic tensions rose.

The first Republican constitution was made in 1921, establishing a parliamentary government and making Islam the state religion. It was made by the revolutionary elite who led the independence struggle against occupation in the post-World War I period and aimed to lay down the foundations of the new regime in general terms. In 1923, Lausanne Peace Treaty was signed, bringing the conflict between the Allied powers and the Ottoman Empire. It also recognized the new regime in Turkey as the legitimate and sovereign successor of the Ottoman Empire and the representative of the population living in Anatolia and Eastern Thrace. The citizenship regime defined in the Lausanne Peace Treaty laid out the foundations of the minority policy and legal framework throughout the Republican period to this day. The treaty was progressive in the sense of providing equal rights and liberties to all citizens regardless of their ethnicity, language, race and religion;[12] however, only non-Muslims were acknowledged as minorities. In other words, religious diversity within Islam (as in the case of the Alevis[13]) and ethnic diversity were ignored. As mentioned earlier, the policy and legal framework bore the legacy of the ethnic tensions preceding World War I. An annex of the treaty, titled Declaration of Amnesty, gave immunity to all crimes connected to political events in the period of 1914 to 1922. In the same year, the 1921 constitution was amended by declaring Turkey a republic following the international recognition of the sovereignty of the Turkish Republic as the successor of the Ottoman Empire. A new constitution took effect in 1924, which declared secularism as an irrevocable provision along with other fundamental principles, and installed a majoritarian parliamentarism. Ironically, a more progressive constitution was made in 1961 following the military coup of May 27, 1960.[14] 1961 Constitution introduced a clear separation of powers between the branches of government and a checks and balances system, designed a consensus vision of parliamentarism, reformed the electoral law

[10] Y. Atar, *The main features of 1982 Turkish constitution and recent constitutional changes in Turkey*, in 9 *Selcuk Uni.Huk. Fak. Der.*, 1–2, 215–235 (2001).
[11] Grigoriadis, *Minorities*, 282.
[12] Lausanne Peace Treaty.
[13] The Alevism is a heterodox group who has been persecuted by the Islamists since the Ottoman period. For details, please see the Turkey report 3.2.
[14] The 1960 coup was staged by a heterogenous group of low and middle rank officers led by General Cemal Madanoglu and against the Democratic Party (DP) government of Adnan Menderes. The coup had popular support from the emerging urban middle classes A. Daldal, *The new middle class as a progressive urban coalition: The 1960 coup d'etat in Turkey*, in 5 *Turk. Stud.*, 3, 75–102 (2004).

with a proportional representation system, established a bicameral parliament, brought the principle of the social state as another irrevocable provision and expanded the constitutional guarantee of the political rights and civil liberties.

The 1982 Constitution made after the September 12, 1980 coup reversed this process dramatically. Although the parliamentary system was retained, the checks on the executive branch were weakened, parliament became unicameral, and representation was curtailed with a 10% electoral threshold. This Constitution is still in effect however went through several amendments. Some of the democratic reforms in the form of constitutional amendments were made in the EU harmonization process following the 1999 Helsinki Summit as Turkey was granted the candidacy status. 2001 and 2004 reforms brought improvements regarding individual liberty, privacy, freedom of expression, freedom of the press, freedom of association and assembly, the right to a fair trial, the right to work and form labor unions. The reforms abolished the state security courts, empowered the Constitutional Court's (CC) review capacity, curtailed the institutional powers of the military establishment.[15] In 2007, the constitution was further amended enabling the election of the president by direct popular vote, which can be considered as the beginning of the transition to presidentialism. Although Gul was the president and Erdogan the prime minister, Erdogan started to sideline Gul and increasingly held the control of the state apparatus and the media. In other words, this de facto transition, came first in the form of presidentialization, a term coined by some scholars to refer to the increasing domination of the prime ministers in some parliamentary systems.[16] When Erdogan was elected as the new president by direct popular vote in 2014, a reverse trend emerged; and Erdogan tried to sideline the new Prime Minister, Davutoglu. Davutoglu's resistance led to his removal from office by Erdogan in search of a more compliant one.[17] Finally, in 2017, presidentialism was introduced. The new system grants extensive powers to the president by uniting the executive powers under the presidency and giving little role to the cabinet (Article 104), transfers the majority of the powers of the cabinet to the presidency (Article 106), weakens the supervision powers of the parliament over the executive (Article 87), empowers the president over the appointment of the CC judges (Article 146) and enables mutual dissolvement of the government and the parliament (Article 116).[18]

We have so far outlined the historical course of constitution-making in Turkey as the evolution of the constitution into its contemporary form provides a better understanding of its overarching principles and provisions. The first principle of the contemporary constitution is republicanism as the new regime aimed to break with its past and prevent any kind of return to

[15] E. Ozbudun, *Democratization reforms in Turkey, 1993–2004*, in 8 *Turk. Stud.*, 2, 179–196 (2007).
[16] T. Poguntke and P.D. Webb, *The presidentialization of politics: A comparative study of modern democracies*, Oxford, 2005.
[17] C. Letsch, *Turkish PM Davutoglu resigns as President Erdogan tightens grip*, The Guardian, May 5, 2016.
[18] "Constitution of the Republic of Turkey," 2709 § (1982), global.tbmm.gov.tr/docs/constitution_en.pdf.

monarchy (Article 1). The second article defines the characteristics of the republic as respecting to human rights, committed to Ataturk nationalism, democratic, secular, and social, and governed by the rule of law.[19] The third article emphasizes the integrity and indivisibility of the unitary state and its nation and recognizes Turkish as its official language. These three articles reflect the historical legacy and the impact of the approach adopted in the Lausanne Peace Treaty. Secularism principle separates state affairs from religious affairs, and Article 136 it establishes a Presidency of Religious Affairs (*Diyanet İşleri Başkanlıgı*, *Diyanet*) to work according to the principles of secularism. In this way, the religious authority is subjugated to the political authority. Article 24 provides freedom of religion and conscience; however, the constitution does not recognize religious diversity beyond the scope of the Lausanne Peace Treaty. In practice, this brought Sunni Islam as the dominant interpretation of Islam and does not grant the Alevis political and public recognition.[20] The Alevi worshipping places named as *cemevi* does not have legal status of a religious center, hence do not have the access to the public resources unlike the mosques dominated by the Sunni clerics.[21] Overall, although the principle of secularism is a progressive principle vital for a democratic system, its application in Turkey fails to resolve the secular-Islamist divide and recognize the diversities within the Muslim community. Crimes against the Alevi minority in this legal framework are handled without constitutional support beyond the Article 10 establishing equality before the law.

The emphasis on the loyalty to Ataturk nationalism in Article 2 identifies Turkishness as a supra identity with a civic interpretation of nationalism. On the other hand, ethnic identities remain unrecognized. The demands of the Kurdish minority in this context face the emphasis on the indivisibility of the unitary state and nation in Article 3. In other words, ethnic demands for recognition cannot be contained in the constitutional framework and interpreted only within the context of separatist activity. This emphasis overarches all other principles as Article 13 and 14 enables the constitution to curtail the fundamental rights and freedoms in case of threats to the national unity and territorial integrity.[22] Articles 25, 26, 33, 34, 68 regulate the fundamental rights and liberties pertaining to the freedom of expression, association, assembly and political party activity along with the Article 10 which provides equality before the law. Articles 20 and 22 provide protection of the individual privacy. However, as mentioned earlier, the Constitution allows curtailment of the fundamental rights and liberties in the cases deemed to pose threat to the fundamental principles defined in Articles 2 and 3, particularly secularism, nationalism and national

[19] The constiutional model is based on the Kemalist framework which sought to create the new state and its socio-economic order with a secular, nationalist, pro-Western Outlook. For a discussion of its practical implications on the Turkish politics, see S. Ciddi, *Kemalism in Turkish politics: The Republican People's Party, secularism and nationalism*, London, 2008.

[20] Dressler, *Historical trajectories and ambivalences of Turkish minority discourse.*

[21] M. Borovali and C. Boyraz, *Turkiye'de cemevleri sorunu: haklar ve ozgurlukler baglaminda elestirel bir yaklasim*, in 40 *Mulkiye Der.*, 3, 55–86 (2016).

[22] A. İcduygu and B. A. Soner, *Turkish minority rights regime: between difference and equality*, in 42 *Middle East. Stud.*, 3, 456 (2006).

integrity. In practice, this means that ethnic or religious demands can be interpreted as acts endangering the irrevocable principles of the Constitution. In a similar fashion, the constitution's emphasis on the national unity and territorial integrity does not allow formation of the local governments that can play role in democratic representation and local politics remain limited to the municipality services.[23]

The CC's decision on the closure of the HDP forms a case law in this regard.[24] In the case of the closure of the pro-Kurdish HDP (*Halkların Demokratik Partisi*, Peoples' Democratic Party) in 2003, the activities and the discourse of the party were ruled as violation of the Turkish constitution. The court ruled that the party's chairs and organization members had acts which violate the indivisible integrity of the unitary state and its nation, invoking the preamble and Articles 3, 5, 14, 28, 30, 58, 81, 103, 130 and 143, all of which emphasize the indivisibility of the integrity of the unitary state and its nation.[25] The court also invoked Articles 68 and 69 declaring that the closure of HDP was constitutional as the articles enable the closure of the political parties on the basis of the violation of the fundamental principles. HDP was further accused of affiliation with the PKK (Partîya Karkerên Kurdistanê). In conclusion, the party was closed in accordance with Articles 68 and 69 of the Constitution and Article 101/b of the Law on political parties, its top leadership was banned from political activity for five years, and the party's properties were transferred to the national treasury.

3. The legal framework concerning radicalization and hate crimes

The article relies on research on the legal documents as well as interviews with legal experts.[26] The respondents emphasized that the policy and legal framework in Turkey does not conceptualize radicalization and approaches discourses outside the constitutional framework and official ideology within

[23] L. Koker, *Local politics and democracy in Turkey: an appraisal*, in 540 *The ANNALS Amer. Aca. Pol. Soc. Sci.*, 1, 51–62 (1995); A. Guney and A. A. Celenk, *Europeanization and the dilemma of decentralization: centre–local relations in Turkey*, in 12 *J. Balkan and Near Eastern Stud.*, 3, 241–257 (2010).

[24] There is also the case pertaining to the closure of the Refah Party in 1998 again on the ground of violating the constitutional order, however with the accusation that the party members aimed to establish a teocratic state which would endanger the religious freedoms and the democratic system.

[25] Anayasa Mahkemesi, *HDP'nin Kapatilmasi Konusunda Anayasa Mahkemesi Karari*, Pub. L. No. 19.07.2003/25173, 2003/1 (2003), siyasipartikararlar.anayasa.gov.tr/SP/2003/1/1.

[26] We have conducted desk research on the broader legislative framework regulating the issues pertaining to radicalization and deradicalization beyond the constitutional context. We also made interviews on June 9, 2021, in a virtual format with two legal experts, one a human rights lawyer, the other a law scholar and a lawyer working in the fields of constitutional law and anti-discrimination. We also interviewed a political science scholar working in the field of radicalization and extremism on June 10, 2021, again in a virtual meeting. As we informed our three participants, we did not record the meetings and rather took notes in handwriting. The respondents were given written consent forms explaining the scope of the project and how the interview data will be used. We did not need to make further interviews as both legal experts provided similar information.

the context of counter terrorism and as acts and discourses against the indivisibility of the unitary state and its nation. In other words, the legislation is guided by national security and public order concerns rather than a principle of balancing the security regulations with the fundamental freedoms. The legislation on radicalization has a punitive approach and is applied in a biased way. The main legal provisions which regulate the cases related to radicalization are Articles 216 and 122 of the Turkish Penal Code. According to Article 216:[27]

(1) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years.
(2) A person who openly denigrates part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.
(3) A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.

Article 122 which was amended in 2014 to include a clause about hatred, provides that discrimination among people due to difference of language, race, color, sex, political view, philosophical belief, religion, religious sect etc. shall be considered a crime and punished. However, the Article specifies only four certain crimes within the scope of hate crime: preventing the sale or rent of a property, preventing access to a service, preventing employment, and preventing ordinary economic activity due to discrimination and hatred against a certain group.

The legal experts emphasized that the letter of the two provisions is not problematic in general. They claimed that the way Articles 216 and 122 are used by the political authority poses the core problem. Instead of protecting the minorities and disadvantaged groups, as can be seen in the court decisions, the public prosecutors and judges invoke these articles to protect Turkishness and Sunni Muslim values. For instance, during the student protests at Bogaziçi University against the presidential appointment, government officials denigrated the LGBTQ individuals as "perverts" and terrorists, however, Article 216 was instead invoked against the protestors.[28]

Article 122's scope of crimes is very narrow, for example excluding psychological and physical violence against women and the LGBTQ individuals. Discrimination and hate crimes encompass a wider scope than defined in the law and the crimes specified are very difficult to be proved that they are committed because of hatred and discriminatory attitudes. Moreover, even if it is ruled that there is an element of hatred and discrimination, it does not aggravate the punishment. Experts recommend aggravating the punishment in such cases, expand the scope of the crimes, taking hate crimes out of the scope of freedom of expression. Moreover, they

[27] Articles 122 & 216, Turkish Penal Code (No.5237), 26.09.2004. www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf

[28] Avukat Veysel Ok: 'TCK 216 Turkiye'de "mantik disi" uygulaniyor,' *Deutsche Welle*, February 9, 2021, www.dw.com/tr/avukat-veysel-ok-tck-216-t%C3%BCrkiyede-mant%C4%B1k-d%C4%B1%C5%9F%C4%B1-uygulan%C4%B1yor/a-56516487.

emphasize that unless the independence of judiciary is improved and a new justice system introduced in a way that people with different ideological and political tendencies can become judges. In its current condition, the presidency controls the judicial organs with partisan appointments and pressing charges against the judges who give unfavorable decisions. Otherwise, they warn that these unilateral and political interpretations dominant in the judicial system will continue to prevail. In the current situation, insults and discriminatory acts against minorities such as the Alevis, Kurds and Armenians, as the legal experts warn, are ruled as part of freedom of expression while any speech or act critical of the dominant social groups are punished. The respondents also recommend mediation in criminal matters with alternative dispute resolution. They underline the fact that use of the Penal Code to protect the majority religious and ethnic population leads to feelings of injustice, grievance and alienation which polarizes the society into those who are protected by the law and who are punished by the law. They argue that mediation in criminal matters can bring the perpetrator and the victim together and create a mechanism in which the encounter may convince the perpetrator about the consequences of their wrongful action.

Article 301 which regulates insulting Turkey, the Turkish nation, Turkish government institutions, or Turkish national heroes was interpreted particularly problematic, and, identifies ethnic demands as anti-constitutional and terrorist activities.[29] In 2011, the European Court of Human Rights ruled that this provision was too widely and vaguely interpreted by the judiciary on the basis of the case *Altug Tamer Akçam vs Turkey* and that the provisions violate the Article 10 of the ECHR.[30] The legal experts also concur that the Article 301 is used against the minorities rather than protecting the social peace.

The legal framework fails to respond to the on-line contexts as well. Articles 116 and 132 of the Turkish Penal Code regulates violation of the immunity of residence. Article 132 of the Turkish Penal Code, titled "Violation of Confidentiality of Communication" defines the violation of the confidentiality of communication between persons as an offence. Data protection law No. 6698 enacted in 2016 secures the data privacy of the individuals as a fundamental right and liberty. The companies or collective personalities which provides goods and services to the EU countries and their citizens are subject to General Data Protection Regulation (GDPR) and the data transfer from Turkey to the EU countries are GDPR compliant. However, these laws fail to protect the fundamental rights and liberties in practice.[31] Furthermore, the Internet Law No. 5651 dated 2007 authorizes the punishment and limitation of the online content and forces international news and social media platforms to appoint local representative, localize

[29] Article 301, Turkish Penal Code (No.5237), 26.09.2004. www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf

[30] European Court of Human Rights, "Altug Taner Akcam vs Turkey," Pub. L. No. 27520/07 (2011), hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-107206%22]}.

[31] K. Rodriguez and H. Temel, *Turkey doubles down on violations of digital privacy and free expression*, in *Electronic Frontier Foundation*, November 4, 2020, www.eff.org/deeplinks/2020/11/turkey-doubles-down-violations-digital-privacy-and-free-expression.

their data, and speed up the removal of content if demanded by the government. Finally, emergency decrees no. 667-676[32] took effect after the abortive July 15, 2016 coup[33] enables the government to access communications data without a court order. Overall, the legal framework empowers the state institutions rather than individual privacy and liberty. From another dimension, there is no legal or political framework against social media accounts that spread hatred and discriminatory discourse against minorities, and law enforcement either does not track the radical online content or tracks but does not take any precautions if it does not belong to separatist or left-wing groups. A repercussion of this policy was illustrated by the attack on the Izmir district branch of the HDP on June 27, 2021.[34] After the perpetrator was apprehended, it was revealed that one day before the incident, he tweeted hateful comments and threats to the minorities and posted photos showing him as a possible foreign fighter in Syria.[35]

At this point, it should be noted that the Turkish courts' role of interpretation is rather limited. The legal framework builds on codified laws, which, as in our cases, leaves little space for the courts to develop precedents for the protection of minorities and other disadvantaged social groups when the existing laws are limited in content or vaguely termed. There is only once relevant case that can be considered a paradigmatic case-law on radicalization. It is the Selendi case. The court decisions other than those of the Constitutional Court are closed to the public.[36] Therefore, we did not have any access to the official documents. However, we collected news coverage, statements from the lawyers of the victims, and reports of civil society organizations.

On December 31, 2009, a quarrel at a coffee house in Manisa's Selendi district between members of the Roma and non-Roma residents exacerbated into a lynching. The attacks on the property and the personality of the Roma people continued for days. On January 5, 2010, the mob flooded the streets chanting, "The Gypsies out", "Selendi is ours". The Roma witnesses claimed that the discriminatory behavior started after the local elections in 2009 with actions to prevent the Roma from entering some coffee houses or denying

[32] These decrees took effect after the abortive coup of 2016, granting the president the authority to dismiss public servants and removed the controls over the trial processes.
[33] On July 15, 2016, a factional coup was attempted led by officers with ties to the Gulenists to the best of our knowledge. The coup was aborted in a short time as the high ranking officers did not back up the putschists and the government succeeded in mobilizing popular support K. Caliskan, *Explaining the end of military tutelary regime and the luly 15 coup attempt in Turkey*, in 10 *J. Cult. Econ.*, 1, 97–111 (2017).
[34] E. Kepenek, *Attack on HDP İzmir Office: Party Worker Deniz Poyraz Killed*, in *Bianet*, June 17, 2021, www.bianet.org/english/human-rights/245836-attack-on-hdp-izmir-office-party-worker-deniz-poyraz-killed.
[35] İleri Haber, *İktidar Hedef Gosterdi, Tetikciler Sahneye Cikti: HDP Binasina Saldirida Bir Kisi Hayatini Kaybetti*, June 17, 2021, ilerihaber.org/icerik/iktidar-hedef-gosterdi-tetikciler-sahneye-cikti-hdp-binasina-saldirida-bir-kisi-hayatini-kaybetti-127291.html.
[36] The court decisions as well as the reports of the horizontal accountability institutions such as the Court of Accounts have been gradually closed to the public access increasingly since 2011 as the regime continued to close up and attain an increasingly authoritarian character.

service.[37] The element of hatred in public behavior was clear. The police failed to establish the public order and provide security for the Roma. The mob was later dispersed by the gendarmerie, and the Roma residents were relocated to another district. It took three years for the Ministry of Family and Social Policies to settle the displaced Roma to permanent public housing. The report published by the *Roman Hakları Dernegi* (Roma Rights Association) reveals the extent of psychological and financial damage. The displaced Roma mostly lost their jobs, could not adapt to their new neighborhoods, eventually moved to other places. The report also points out the feelings of insecurity and fear that the state institutions would not protect them and feel alienated as they thought that the perpetrators would not be persecuted to the extent that they deserved.[38] The trial took 20 hearings and 5 years. In 2015, Uşak 2. Civil Court of First Instance ruled that the perpetrators should be punished in accordance with Articles 216, 151, and 152 of the Turkish Penal Code. Article 216 provides that the offense of inciting the population to breed enmity or hatred, or denigration based on social class, race, religion, sect, or regional difference in a manner that might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years. It also rules that a person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace. The Selendi case is the only case in which Article 216 was used in favor of a minority group. Articles 151 and 152 on the other hand, regulate the offences against private property. As a result, the court ruled that 38 perpetrators should be imprisoned for a term between 8 months to 45 years. This is an important outcome as it is an attempt of the judge and the public prosecutors to compensate for the deficiencies of the legal framework. First, the punishments were given at the maximum terms. Secondly, as the element of hatred does not aggravate the prison term, additionally Articles 151 and 152 were invoked. The case forms an important precedent for similar events and shows that the Turkish legal system needs a specific legal framework for hate crimes. Turkish legal system does not leave much space for case-law and jurisprudence in general; however, the Selendi court decision could potentially discourage similar crimes showing that the outcome might be severe for the perpetrators. Unfortunately, later developments do not indicate that this potential of the Selendi case had a dramatic impact on the policy and legal frameworks as later crimes against minorities and refugees did not produce similar court decisions.

4. Does the policy framework remedy the legal limitations?

[37] İnsan Haklari Dernegi & Cagdas Hukucular Dernegi, *Manisa selendi ilcesinde Roman vatandaslarin yasamis oldugu linc girisimi ve sonucunda ilceden, yetkili makamlarca baska bir ilceye tasinmasi olayina donuk inceleme ve arastirma raporu*, İnsan Haklari Dernegi & Cagdas Hukukcular Dernegi (January 15, 2010), www.ihd.org.tr/blon-el-rapor167/.
[38] T. Ozbek, *Manisa selendi ilcesindeki linc girisimi sonrasinda baska ilcelere surulen romanlarin ekonomik ve psikolojik durum tespiti arastirma raporu*, Roman Haklari Dernegi (2015).

Unfortunately, the policy framework shares the limitations of the legal context to a large extent.. The official discourse follows the Constitution about the equality of all citizens before the law and that any act which denigrates a social group is subject to a criminal prosecution. However, we observe two tendencies: the policies ignore the religious and ethnic diversity, downplay the crimes against the minorities; and radicalization and deradicalization policies are mostly shaped by a security approach. Counter terrorism rather than radicalization informs the policies, and the priority resides with protection of the dominant groups rather than the minorities and dissidents. We also observe that the groups targeted by the regime changed across the time, however, the tendency of the state institutions to punish the subjectively defined enemies continues.

The official discourse regarding religious freedoms conventionally emphasized the secularism principles guarantees religious freedoms until 2000s. Despite the equality of citizenship and rights provided to the Muslims and non-Muslims, there is a general suspicious attitude towards the non-Muslims citizens, particularly the Jews and Armenians. The establishment of the Turkish Republic brought a process of religious harmonization by population exchange agreements between Turkey and Greece so that the non-Muslim population would move and the Muslim Turks abroad could be relocated.[39] The discriminatory policies of the public institutions and hate crimes targeting the non-Muslim population, which went unpunished, further resulted in the migration of the non-Muslim population abroad.[40] The Armenians have been particularly vilified for cooperating with the occupiers and their alleged atrocities during World War I and identified as an ethnic threat which was corroborated by the vilifying media discourse.[41] The feelings of alienation and insecurity appear to be exacerbated by the Islamization policies in the last two decades, as illustrated by the renewed emigration of non-Muslims.[42] Non-Muslims did not occupy top-level positions in law enforcement or bureaucracy. The policy framework also discriminates against heterodox Muslim groups such as the Alevis. The religious institutions have been designed according to the Sunni Islamic values and Alevism has not been officially recognized. The Alevi students have to attend the compulsory religious education courses with a Sunni Islamic curriculum despite the ECtHR decisions.[43] However, the policy framework has responded to the secular-Islamist cleavage, as shown by the ruling which led to the closure of the parties with an Islamist pedigree by

[39] Y. Gursoy, *The effects of the population exchange on the Greek and Turkish political regimes in the 1930s*, in 42 *East Eur. Quarterly*, 2, 95 (2008).
[40] A. Icduygu, S. Toktas, and B. A. Soner, *The politics of population in a nation-building process: emigration of non-muslims from Turkey*, in 31 *Eth. and Rac. Stud.*, 2, 358–389 (2008).
[41] U. Koldas, *The Turkish press and the representation of the Armenian minority during the 1965 events*, in 65 *Bilig*, 203 (2013).
[42] G. A. Côrte-Real Pinto and I. David, *Choosing second citizenship in troubled times: the Jewish minority in Turkey*, in 46 *Brit. J. Middle Eas. Stud.*, 5, 781–796 (2019).
[43] G. Ozalp, *ECHR rejects Turkish appeal to ruling on compulsory religion classes*, in *Hurriyet Daily News*, February 15, 2015, www.hurriyetdailynews.com/echr-rejects-turkish-appeal-to-ruling-on-compulsory-religion-classes-78508.

the Constitutional Court.[44] The quasi-coup of February 28, 1997[45] brought a process in which the female students with headscarves were deprived of their right to education.[46] On the other hand, the military-bureaucratic establishment dominated the post-1980 period until mid-2000s, adopting the Turkish-Islamic synthesis to counter the challenges from the pro-Kurdish and leftist politics.[47] The ascendance of the *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) to power in 2002 brought an Islamization process.[48] This process provided a wider space for the Sunni Muslim population and religious orders, while the desecularization led to feelings of injustice and alienation among the non-Muslims and the Alevi population.

The closing of the political space since the second term of AKP in power and with the transition to a presidential system in the form of super-presidentialism increased human rights violations and violations pertaining to the freedom of speech, expression, and the press. The current political landscape provides very little space to the local municipalities, the third sector, and the NGOs. Recently, the Court of Cassation prosecution opened a closure case against the pro-Kurdish HDP.[49] [50]

The main opposition party, CHP's (Republican Peoples Party) members, are accused by the government for having alleged affiliation with left-wing radicalization.[51] Interpreting the treatment of the secular and pro-Kurdish opposition by the incumbent party, the policies on radicalization appear to be punitive rather than integrative, and the security discourse dominates the policy framework on radicalization and deradicalization. As far as the Kurdish issue is concerned, AKP had initially started a reconciliation process known as the Peace Process in the 2012-2015 period. However, the process failed in the polarized political environment (Yegen, 2015; Pusane, 2014). In the context of separatist radicalization, the most

[44] K. Boyle, *Human rights, religion and democracy: the Refah party case*, in 1 *Essex Hum. Rights Rev.*, 1, 1–16 (2004).

[45] The February 28 process refers to the non-violent military intervention which removed the government in which the Islamist Refah Party was a partner; and, increased the institutional powers of the military over the parliament and the government.

[46] U. Cizre and M. Cinar, *Turkey 2002: Kemalism, Islamism, and politics in the light of the february 28 process*, in 102 *South Atl. Quar.*, 2–3, 309–332 (2003).

[47] U. Kurt, *The doctrine of 'Turkish-islamic synthesis' as official ideology of the september 12 and the "intellectuals' hearth–Aydinlar Ocagi" as the ideological apparatus of the state*, in 3 *Eur. J. Econ. Pol. Stud.*, 2, 113–128 (2010); A. Kaya, *Citizenship and protest behavior in Turkey*, in G. M. Tezcur (ed.), *The Oxford Handbook of Turkish Politics*, Oxford, 2020.

[48] I. A. Oprea, *State-led Islamization: the Turkish-islamic synthesis*, in 14 *Studia Universitatis Petru Maior. Historia*, 1, 131–139 (2014); B. Yesilada and B. Rubin, *Islamization of Turkey under the AKP rule*, London, 2013; A. Kaya, *Islamisation of Turkey under the AKP Rule: empowering family, faith and charity*, in 20 *South Eur. Soc. Pol.*, 1, 47–69 (2015).

[49] The report gives place to the closure of several Kurdish parties as the closure of the Kurdish parties have been cyclical since 1990s. A new party was formed after the closure of its predecessor to closed by a new verdict and succeeded by a new party.

[50] "AYM, HDP iddianamesini 21 Haziran'da inceleyecek," *BBC News Turkce*, June 7, 2021, www.bbc.com/turkce/haberler-dunya-57388318.

[51] "Kaftancioglu'dan 'DHKP-C'li militan' suclamasina yanit," *Deutsche Welle*, January 8, 2021, www.dw.com/tr/kaftanc%C4%B1o%C4%9Fludan-dhkp-cli-militan-su%C3%A7lamas%C4%B1na-yan%C4%B1t/a-56174012.

important deradicalization program was the "Return to Village and Rehabilitation Project" which was initiated in 1999.[52] The program accelerated under the AKP government's National Unity and Brotherhood program, commonly known as the Peace Process, which was terminated in 2015. Although the process was claimed to be officially initiated in 2013, initial efforts for putting a permanent end to armed conflict and beginning of the talks between the PKK and the state officials can be traced back to 2009, when more than 30 PKK members were permitted to enter Turkey legally from the Habur border gate with the promise of non-prosecution. In this context, the project was renewed on June 23, 2010, with an additional budget,[53] with an effort to sustain the peaceful return of the habitants of the villages evacuated and destroyed during the height of the armed conflict in the mid-1990s, providing occupational training and employment to the returnees, re-construction of the infrastructure, repairing the basic education and health care facilities, and providing logistical support for the reconstruction of the damaged houses. The policy was consistent with EU legal framework with regards to the protection of fundamental rights.

5. Deradicalization programs or its lack thereof

There is no deradicalization program targeting left-wing and right-wing radicalization in the Turkish policy framework. Prison programs appear as the most common deradicalization initiatives against jihadist radicalization. The Presidency of Religious Affairs[54] in coordination with the Ministry of Justice (particularly General Directorate of Prisons and Detention Houses) and the police force, conducts some programs in the field of jihadist radicalization. These programs aim to disseminate "peaceful and tolerant messages of Islam" among the inmates in Turkish prisons, cultural centers in Central Asia, and the Balkans; to raise awareness among the refugees under temporary protection in Turkey on the dangers of religious radicalization, to provide training programs in the child protection units against radical narratives, to raise imams who can disseminate tolerant messages. There is also a program of twin sister cities with the African countries to develop a counter-narrative. Turkish national police hold conferences at schools for awareness-raising and contact families designated as at-risk by the police force. There are also programs funded by the EU, and the General Directorate of Prisons and Detention Houses functions as a project partner in R2pris (2015).

As it comes to the use of technology for detecting radicalization, the Information and Communication Technologies Authority tracks radicalization, but mostly for the purposes of intimidating and prosecuting

[52] This part of the article is a revised version of the section from the country report, H. Dikici Bilgin and N. Ozekici Emironal, 2021. "Stakeholders of (de)radicalization in Turkey", D3.1 country report, Horizon 2020 'De-Radicalisation in Europe and Beyond: Detect, Resolve, Re-integrate, D.Rad' (Nr 959198) Project. (dradproject.com/?publications=stakeholders-of-de-radicalisation-in-turkey).

[53] www.icisleri.gov.tr/koye-donus-ve-rehabilitasyon-projesi-kdrp

[54] The Presidency of Religious Affairs was established in the early years of the republic. However, in the AKP period, its staff and budget expanded enormously and it became a critical and visible actor in the decision-making mechanism.

the opposition.[55] In addition to this institution, Counter-Terrorism and Operations Department under the Ministry of Internal Affairs and General Directorate of Prisons and Detention Houses under the Ministry of Justice deal with radicalization and deradicalization especially through the international projects funded and supported by the EU and the Erasmus Plus programs. The centralized administration and the closing of the political space does not allow independent actions by the local municipalities or the third sector and the NGOs. The Police Academy publishes reports about radicalization and deradicalization without any concrete deradicalization projects.[56]

6. Conclusion

This article focused on the existing legislative and institutional framework with respect to radicalization in Turkey. The research shows that the constitutional organization of the state and articles pertaining to the rights and values carry the legacy of ethnic sensitivities and citizenship regime adopted in the Lausanne Treaty, being also the constitutive treaty of the republic. Lausanne Treaty defines only non-Muslims as minorities, and there is not a specific minority regulation regime apart from the guarantee of equal treatment before the law. This restricted approach leaves no space for ethnic and religious demands, which is also visible in the founding principles of the Constitution. Article 2 highlights secularism as a characteristic of the republic but only recognizes the Ministry of Religious Affairs, embracing a Sunni interpretation of Islam, excluding the demands of heterodox Muslim groups such as Alevis. Such interpretation of Islam is controversial with Article 24, which guarantees freedom of religion and conscience. Again, in Article 2, Ataturk nationalism which is also mentioned as civic nationalism recognizes Turkishness as a supra identity and ethnic demands such as those of Kurds beyond that aren't recognized. Furthermore, Article 3 which highlights the integrity and indivisibility of the unitary state is interpreted in a way to encompass any ethnic or religious claims as a divisive threat to nation. Furthermore, Articles 13 and 14 claim that the fundamental rights would be curtailed in case of violating the first principles of the Constitution increases the difficulty of protecting the fundamental values and rights.

The relevant legislative framework with respect to radicalization also reflects the security-based approach. In fact, the existing framework doesn't conceptualize radicalization and approaches discourses outside the constitutional framework and official ideology under the context of counter-terrorism and treats them as threats to the integrity of the nation-state. The legislation also has a punitive approach and applied in a biased way. The main legal provisions regulating the cases related to radicalization such as

[55] Rodriguez and Temel, *Turkey Doubles Down on Violations of Digital Privacy and Free Expression | Electronic Frontier Foundation.*

[56] One report I could access is A. Gunn and A. Demirden, *Radikallesmenin onlenmesi ve terorizm olgusu*, Ankara, 2019. I could not get access to the others despite I formally contacted the Academy. The knowledge about the lack of concrete deradicalization projects is based on this report; and, the brief interviews I made with the people I could reach in the institution.

Articles 216 and 122 of the Turkish Penal Code are limited in scope, making a restrictive definition of hate even in their revised forms and neglect the crimes targeting certain groups such as women and LGBTQ individuals. Instead, they are frequently raised to protect majority ethnic and religious groups. Article 301 regulating insulting Turkey, the Turkish nation, Turkish government institutions, or Turkish national heroes is also problematic as it frames ethnic demands as anti-constitutional and terrorist activities and is used against minorities rather than protecting social peace.

Internet Laws are also controversial with respect to the protection of fundamental rights. The Internet Law No. 5651 dated 2007 authorizes the punishment and limitation of the online content and forces the international news and social media platforms to appoint a local representative, localize their data, and speed up the removal of content if demanded by the government. Finally, emergency decrees no. 667-676 took effect after the abortive July 15, 2016 coup enables the government to access communications data without a court order. On the other hand, the legislative framework fails to respond to the online contexts which spread hatred and discriminatory discourse against the minorities and if there is ever an attempt to track radicalized contents, it is only employed for separatists or left-wing groups.

The only paradigmatic case-law with respect to radicalization is the Selendi case in which the lynching against Roma community in the aftermath of the quarrel at a café in 2009 resulted in the penalization of perpetrators with maximum sentences and in which laws pertaining to cases of radicalization are used for the defense of a minority group. The court's decision could be emblematic as it showed that outcome might be severe for perpetrators. However, the research shows that the Selendi case didn't have a dramatic impact, as later crimes against minorities and refugees didn't produce the same results.

Overall, the research leads back to the original question of this article: can you protect minorities without legally recognizing their status? The answer is an obvious no. Neither Kurds, Roma, nor Alevis are officially recognized as minorities despite their explicitly disadvantaged position. The absence of legal status prevents the development of effective legal and policy frameworks in the struggle against radicalization. Moreover, this absence undermines the legitimacy of any peaceful democratic demands from the minority groups by downplaying the crimes against minorities with a security approach to radicalization and deradicalization, protecting the dominant groups rather than minorities and dissidents, and criminalizing democratic demands. The Islamization policies of AKP and its further closing down the political space with a super-presidential system exacerbates the situation and augments the feelings of insecurity among non-Muslim and heterodox Muslim groups such as Alevis.

Hasret Dikici Bilgin
Istanbul Bilgi University
hasret.dikici@bilgi.edu.tr

Nazlı Özekici Emirönal
Istanbul Bilgi University
nazliozekici@gmail.com