



The refusal to provide a public service to the applicants, followers of the Alevi faith, entailed a breach of their right to freedom of religion

In today's **Grand Chamber** judgment¹ in the case of [Izzettin Doğan and Others v. Turkey](#) (application no. 62649/10) the European Court of Human Rights held:

by 12 votes to 5, that there had been a **violation of Article 9 (right to freedom of religion)** of the European Convention on Human Rights, and

by 16 votes to 1, that there had been a **violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9** of the European Convention.

The case concerned the domestic authorities' refusal to provide the applicants, who are followers of the Alevi faith (the country's second-largest faith in terms of the number of followers), with the public religious service which, in the applicants' assertion, is provided exclusively to citizens adhering to the Sunni understanding of Islam.

The applicants had requested that the Alevi community be provided with religious services in the form of a public service; that Alevi religious leaders be recognised as such and recruited as civil servants; that the *cemevis* (the places where Alevis practise their religious ceremony, the *cem*) be granted the status of places of worship; and that State subsidies be made available to their community. Their requests were refused on the grounds that the Alevi faith is regarded by the authorities as a religious movement within Islam, more akin to the "Sufi orders".

The Court held in particular that the authorities' refusal amounted to a lack of recognition of the religious nature of the Alevi faith and its religious practice (*cem*), depriving the Alevi community's places of worship (*cemevis*) and its religious leaders (*dedes*) of legal protection and entailing numerous consequences with regard to the organisation, continuation and funding of the community's religious activities. In the Court's view, the Alevi faith had significant characteristics that distinguished it from the understanding of the Muslim religion adopted by the Religious Affairs Department. The Court therefore found that there had been interference with the applicants' right to freedom of religion and that the arguments relied on by the State to justify that interference were neither relevant nor sufficient in a democratic society.

The Court further observed a glaring imbalance between the status conferred on the understanding of the Muslim religion adopted by the Religious Affairs Department and benefiting from the religious public service, and that conferred on the applicants, as the Alevi community was almost wholly excluded from the public service in question and was covered by the legal regime governing the "Sufi orders" (*tarikats*), which were the subject of significant prohibitions. The Court therefore held that the applicants, as Alevis, were subjected to a difference in treatment for which there was no objective and reasonable justification.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicants are 203 Turkish nationals who are followers of the Alevi faith. On 22 June 2005 they submitted a petition to the Prime Minister complaining that the Religious Affairs Department (RAD) confined its activities to a single school of Islamic thought while disregarding all other faiths, including the Alevi faith. They argued that their rights had been infringed, that their places of worship (*cemevis*) were not recognised and that numerous obstacles prevented *cemevis* from being built, that no provision was made in the budget for running the *cemevis* and that the exercise of Alevi's rights and freedoms was subject to the good will of public officials. The applicants requested, in particular, that the services connected with the practice of the Alevi faith constitute a public service, that *cemevis* be granted the status of places of worship, that Alevi religious leaders be recruited as civil servants and that special provision be made in the budget for the Alevi community.

In a letter of 19 August 2005 the Prime Minister's public relations department refused the applicants' requests, stating that the RAD's services were general and supra-denominational in nature and were available to everyone on an equal footing; that it was impossible to confer the status of places of worship on the *cemevis*; that civil servants were recruited on the basis of nationality and that no privileges could be granted to a group of persons on the basis of their faith or beliefs; and that it was impossible to make provision in the budget for services not provided for in the Constitution or by law.

Following that reply, 1,919 followers of the Alevi faith, including the applicants, lodged an application for judicial review with the Ankara Administrative Court, complaining of the arbitrary attitude of the authorities towards Alevi citizens and the fact that they were not provided with any service. On 4 July 2007 the Administrative Court dismissed the application, ruling that the administrative authorities' refusal had been in conformity with the legislation in force. The applicants lodged an appeal on points of law with the Supreme Administrative Court, which dismissed the appeal on 2 February 2010.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion) of the Convention, the applicants complained about the refusal of their requests seeking to obtain for the followers of the Alevi faith, to which they belong, the same religious public service hitherto provided exclusively to citizens adhering to the Sunni branch of Islam. They maintained that this refusal implied an assessment of their faith on the part of the authorities, in breach of the State's duty of neutrality and impartiality with regard to religious beliefs.

Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 9, the applicants claimed to be victims of discrimination on grounds of their religion.

The application was lodged with the European Court of Human Rights on 31 August 2010. On 25 November 2014 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 3 June 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Dean **Spielmann** (Luxembourg),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Josep **Casadevall** (Andorra),
Mark **Villiger** (Liechtenstein),
Ledi **Bianku** (Albania),
Julia **Laffranque** (Estonia),

Helen Keller (Switzerland),
André Potocki (France),
Paul Lemmens (Belgium),
Johannes Silvis (the Netherlands),
Faris Vehabović (Bosnia and Herzegovina),
Robert Spano (Iceland),
Iulia Antoanella Motoc (Romania),
Jon Fridrik Kjølbro (Denmark),
Yonko Grozev (Bulgaria),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 9 (right to freedom of religion)

In the Court's view, the authorities' refusal of the applicants' requests amounted to a lack of recognition of the religious nature of the Alevi faith and its practices (*cem*). This had the effect of denying legal protection to Alevi places of worship (*cemevis*) and religious leaders (*dedes*), and entailed numerous consequences for the organisation, continuation and funding of their religious activities. The Court therefore considered that there had been interference with the applicants' right to freedom of religion, which the Government sought to justify by means of various arguments.

The State's duty of neutrality and impartiality with regard to religions

The Government contended 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 referred to an opinion written by a number of experts who 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. The applicants argued that their faith had significant characteristics which were particular to it and which distinguished it from the Sunni understanding of the Muslim religion. They also observed that it was for Alevis alone to define their faith, that the *cem* ceremony constituted their main religious practice and that the *cemevis* were their places of worship.

The Court reiterated that, in accordance with the principle of autonomy for religious communities established in its case-law, only the highest spiritual authorities of a religious community, and not the State (or even the national courts), could determine to which faith that community belonged. Accordingly, the Court considered that the State's attitude towards the Alevi faith infringed the right of the Alevi community to an autonomous existence. The Court also observed that the Alevi community had significant distinguishing characteristics². Accordingly, the framing and definition of the Alevi faith should be entirely and exclusively a matter for Alevis. While they did not dispute the existence in Turkey of a sizeable Alevi community that practised the *cem* ceremony in the *cemevis*, the Government, basing their view on a classification of religious groups, asserted that the community in question was simply a "Sufi order". The Court observed that this assessment, which made no allowances for the specific characteristics of the Alevi community, resulted in the latter coming within the category of religious groups covered by Law no. 677, which entailed a number of significant prohibitions.

The Court therefore considered that the attitude of the State authorities towards the Alevi community, its religious practices and its places of worship was incompatible with the State's duty of neutrality and impartiality and with the right of religious communities to an autonomous existence.

² See the "Final Report", drawn up on the basis of a series of workshops involving participants sympathetic to Alevi issues.

Free practice by Alevi of their faith

The Court noted that the Alevi community came within the legal framework of the “Sufi orders” (*tarikats*). This entailed a number of prohibitions punishable by a term of imprisonment and a fine (notably with regard to the use of the title *dede* – denoting an Alevi spiritual leader – and the designation of premises for Sufi practices). Even though failure to abide by these prohibitions was tolerated in practice, the free practice of a faith characterised in domestic law as a “Sufi order” seemed to depend primarily on the good will of the administrative officials concerned, who apparently enjoyed a degree of discretion in applying the prohibitions in question. The Court therefore had serious doubts as to the ability of a religious group that was thus characterised to freely practise its faith and provide guidance to its followers without contravening the legislation. The Court could not regard the tolerance shown by the Government towards the Alevi community as a substitute for recognition, which alone was capable of conferring rights on those concerned.

The Court further noted that Alevi faced numerous problems with regard to the organisation of their religious life, the rights of Alevi parents with children attending primary and secondary schools, and the fact that Alevi religious leaders had no legal status and that there were no institutions able to train the personnel associated with the practice of the Alevi faith. That faith was excluded from all the benefits enjoyed by the recipients of the religious public service. Furthermore, the absence of a clear legal framework governing unrecognised religious minorities such as the Alevi faith caused numerous additional legal, organisational and financial problems. The ability to build places of worship was uncertain and was subject to the good will of the central or local authorities; the communities in question could not officially receive donations from members or State subsidies; and, since they lacked legal personality, these communities did not have access to the courts in their own right but only through foundations, associations or groups of followers.

Hence, the Court was not convinced that the freedom to practise its faith which the authorities left to the Alevi community enabled that community to fully exercise its rights under Article 9 of the Convention.

Margin of appreciation

Although the States enjoyed a certain margin of appreciation with regard to the forms of cooperation with the different communities, the Court considered that in the present case the State had overstepped its margin of appreciation. The Court reiterated that, according to its case-law concerning Article 9 of the Convention, the State’s duty of neutrality and impartiality was incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs were expressed. 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, such as the Alevi faith, of legal protection.

Absence of consensus within the Alevi community

The Court considered that the fact that there was a debate within the Alevi community regarding the basic precepts of the Alevi faith and the demands of the Alevi community did not alter the fact that it was a religious community with rights protected by Article 9 of the Convention. That argument did not therefore constitute grounds for the refusal by the authorities, who in the course of the workshops held in 2009-2010 had had the opportunity to identify the demands common to Alevi citizens, in particular concerning 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.

Consequently, the Court held that the situation described above amounted to denying the Alevi community the recognition that would allow its members, including the applicants, to effectively enjoy their right to freedom of religion. It considered, firstly, that the refusal complained of had had

the effect of denying the autonomous existence of the Alevi community and had 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. Secondly, the State had overstepped its margin of appreciation without relevant and sufficient reasons. The Court therefore held that the authorities' interference with the right of the applicants, as Alevis, to freedom of religion had not been necessary in a democratic society. Accordingly, **the Court found a violation of Article 9 of the Convention.**

Article 14 (prohibition of discrimination) taken in conjunction with Article 9

The Court considered that, with regard to their need for legal recognition and for a religious public service pertaining to their Alevi faith, the applicants could claim to be in a comparable situation to other citizens who had received such recognition and benefited from the religious public service. The Court noted that the State provided religious services pertaining to the Muslim religion as a public service, in particular by granting that religion a status within the State administration. Although in theory everyone could benefit from these services on an equal footing, in practice they were aimed first and foremost at the adherents of the understanding of Islam adopted by the RAD and not at those who subscribed to a different understanding. Irrespective of the place occupied by the Alevi faith in Muslim theology, it constituted a religious conviction with deep roots in Turkish society and history, and the needs of its followers in terms of recognition and the provision of a religious public service were thus comparable to the needs of those for whom religious services were regarded as a public service. However, the applicants, as Alevis, received less favourable treatment than the beneficiaries of the religious public service provided by the RAD despite being in a comparable situation.

As to the justification for this difference in treatment, the Court observed that in Turkey legal recognition entailed substantial advantages for religious denominations and undoubtedly facilitated the exercise of the right to freedom of religion. In the present case the religious services provided in respect of the Muslim religion, which were regarded as a public service, received substantial funds from the State budget, making it possible to recruit and manage religious functionaries and to carry out a variety of religious activities. Accordingly, that religion was almost entirely subsidised by the State. By contrast, the applicants, as Alevis, were almost wholly deprived of a comparable status and of the numerous advantages attendant on that status, on the ground that their faith was classified as a "Sufi order" by the national authorities. The Alevi faith did not enjoy any legal protection as a religious denomination: the *cemevis* were not recognised as places of worship, its religious leaders had no legal status and its followers did not enjoy any of the benefits of the religious public service. By failing to take account of the specific needs of the Alevi community, the State had thus considerably restricted the reach of the religious pluralism that characterised a democratic society.

The Court therefore noted a glaring imbalance between the applicants' situation as Alevis and that of persons who benefited from the religious public service. Firstly, the Alevi community, which was regarded as a "Sufi order" (*tarikati*), was made subject to a legal regime that entailed numerous restrictions, and the members of the community were denied the benefits of the religious public service. Secondly, whereas the Muslim religion as understood by the RAD was almost wholly subsidised by the State, virtually none of the religious public services benefited the Alevi community, and its specific characteristics were almost entirely overlooked. Moreover, Turkish law made no provision for any compensatory measures to remedy that marked discrepancy. The Court also failed 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. The Court therefore considered that the Alevi community was deprived of the legal protection that would allow it to effectively enjoy its right to freedom of religion. Moreover, the legal regime governing religious denominations in Turkey appeared to lack neutral criteria and to be virtually inaccessible to the Alevi faith, as it offered no safeguards apt to ensure that it did not become a source of discrimination towards the adherents of

other religions or beliefs. In the Court's view, whatever form was chosen, the State had a duty to put in place objective and non-discriminatory criteria so that religious communities which so wished were given a fair opportunity to apply for a status which conferred specific advantages on religious denominations.

Hence, the Court considered that the choice made by the State appeared manifestly disproportionate to the aim pursued. It found that the difference in treatment to which the applicants, as Alevis, had been subjected had no objective and reasonable justification, and held that there had been **a violation of Article 14 of the Convention taken in conjunction with Article 9.**

Article 41 (just satisfaction)

The Court held, unanimously, that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants. It ruled, by 16 votes to 1, that Turkey was to pay 3,000 euros (EUR) to the applicants jointly in respect of costs and expenses.

Separate opinions

Judges M. Villiger, H. Keller and J.F. Kjølbros expressed a joint partly dissenting and partly concurring opinion. Judges J. Silvis and F. Vehabović each expressed a dissenting opinion and Judge R. Spano made a declaration. These are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.