RELIGIOUS INFORMATION ON IDENTITY CARDS:
A TURKISH DEBATE

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In 2006, the Turkish Grand National Assembly (TGNA) made a notable departure from historical precedent when it replaced the Population Register Law of 1972.1 The 1972 law, in Article 43, required that the national registry records on all households in Turkey contain the religion of all family members unless, under Article 46, an individual or family went to court to make a revision in these records.2 This was the legal basis of the inclusion of religious information on Turkish identity cards, issued in accordance with the information in family registers.3 Article 35 of The Population Services Law of 2006 now provides:4 “Requests about the religious information in household registers shall be approved, modified, left blank or deleted, in accordance with the written application of the concerned person.”5

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2. Id. at art. 43 & art. 46.
3. Id. at art. 58.
5. This issue has surfaced repeatedly in the European Union (EU) monitoring reports. The European Commission against Racism and Intolerance (ECRI), for example, prepared three reports about Turkey in 1999, 2000 and 2004. The Commission noted in the first of these that obliging people to designate their religion or faith in their family register and on their identity cards would, in certain circumstances, invite intolerance and discrimination. European Commission Against Racism and Intolerance, ECRI’s Country-by-Country Approach: Report on Turkey, 12 (Feb. 5, 1999) (available at http://www.coe.int/t/e/human_rights/ecri/5-archives/1-ecri%27s_work/1-country_by_country/CBC1-Turkey.pdf) (accessed Nov. 12, 2006). The Commission repeated this opinion in the second report and recommended that Turkish authorities should abolish the religious information requirement. European Commission Against Racism and Intolerance, Second Report on Turkey, 7 (Dec. 15, 2000) (available at http://www.coe.int/t/e/human_rights/ecri/5-archives/1-ecri%27s_work/5-cbc_second_reports/Turkey_CBC2_en.pdf) (accessed Nov., 12, 2006). The latest report also touched on this issue, with the Commission opining that the elimination of the religious record from identity documents would improve the freedom of religion in Turkey. European Commission against Racism and Intolerance, Third Report on Turkey 12 (June 25, 2004) (available at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/turkey/Turkey%20third%20report%202004%2005-5.pdf) (accessed Nov. 12, 2006). This was, in fact, one of the debated issues within the framework of the EU harmonization process, which has been gaining momentum after the approval of Turkey’s

579
We shall argue, in this paper that Article 35 of the Population Services Law of 2006 is unconstitutional just like Article 43 of the Population Register Law of 1972 was, and that information about individuals' religions should be deleted from both the national register and individuals' identity (ID) cards. The inclusion of religious information in the identity cards of citizens or resident aliens, who apply for Turkish citizenship, violates the religious liberty in Turkey, particularly under a "neutrality" conception of that right. We shall review the jurisprudence of the Turkish Constitutional Court concerning ID cards in the light of the negative and positive aspects of religious liberty, focus on the different meanings of neutrality such as "formal neutrality," "substantive neutrality," "aim neutrality," "justification neutrality" and "consequences neutrality." Before we evaluate this practice under neutrality theory, however, it would be appropriate to begin with a historical narrative about the origin of religious notations on Turkish identity cards, and explain the content and the meaning of the new law.

I. HISTORICAL OVERVIEW

The first significant legal provision for identity cards in Ottoman-Turkish history was the "Regulation of the Population Registration of 1881 (Sicil-i Nüfus Nizamnamesi)." Under that law, the Census Department (Nüfus-u Umumi İdaresi) began to issue population certificates to individuals that reproduced the information in the permanent population registers, which were far from complete and accurate at the time. These population certificates were used as both birth certificate and identity card. This certificate included a record of its bearer's religion along with other information such as his or her place of birth, residence, age, craft or occupation, health, marital status and, for men, military status.

With the revisions of the "Regulation of the Population Registration" in 1900 and 1902, the census system in the Empire was

6. 8 Saban 1298 (July 5, 1881), Irade, Suray-i Devlet 3148.
9. Id. at 331.
rearranged. Under the revised law, the first census survey was carried out in the Empire, and took three years to complete—from 1903 to 1906. On the basis of the newly-collected census data, population certificates were replaced with “identity booklets” (nüfus cüzdanı), which preserved a line to indicate the holder’s religion and contained more detailed information about him or her.

Although a new population register law was passed in 1914, identity booklets with religious information continued to serve as identity documents after the foundation of the Turkish Republic in 1923. The Law of 1914 was later replaced by another population register law enacted in 1972 and put into effect in 1974. Under the new law, identity cards which continued to include a line for the holder’s religious belief began to be distributed by the State on June 1, 1976. As we shall explain in detail below, although the inclusion of religious information on ID cards, as provided by Article 43 of the Law of 1972, was challenged as unconstitutional twice in the Constitutional Court; the Court dismissed the cases both times. Thus, the 1972 law remained in force until the Population Services of Law of 2006 became effective.

This history prompts an interesting question: After the proclamation of the Turkish Republic in 1923, virtually all references to Islam, the foundation of the Ottoman State, were gradually erased from the public realm, why was the religious information on the staunchly secular Republic’s ID cards preserved? This paradox is not easy to explain, but the answer, we believe, lies in the remnants of the Ottoman Empire’s Millet Sistemi (Nation System) that remained even after the declaration of the Republic.

The Ottoman Empire was a multi-religious state; that is, although Islam was the official religion of the Empire, other religions were

10. Id. at 335.
12. Sicilli Nüfus Kanunu, Ağustos (Aug.) 14, 1330 (1914), 5 Şevval 1332.
14. See supra n. 11, at 66 (Turkish).
16. Although the heading of the section on ID documents was changed from Millet (Nation) to Din (Religion), the type of information inscribed in this section remained the same.
recognized and protected on the Ottoman lands in accordance with the *Millet Sistemi*. This system allowed minority religious groups, such as Christians and Jews, to administer their own legal and social affairs in many matters such as marriage, divorce, heritage, religion, and education.\(^{17}\) Even if the *Millet Sistemi* lost its significance due to the Westernization movements in the Ottoman Empire that began in the first quarter of the nineteenth century,\(^ {18}\) its spirit survived to some extent in the Lausanne Treaty of 1923, which finally ended disputes about the sovereignty and territory of the Turkish state after World War I.\(^ {19}\) The Treaty mentioned “non-Muslim minorities” without listing and granted them special self-governance rights.\(^ {20}\) However, the State recognized only Armenian Orthodox Christians, Greek Orthodox Christians and Jews as “non-Moslem minorities” in practice.\(^ {21}\) Thus one may argue

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17. Stanford Shaw defined the concept as follows:

[T]he division of society into communities along religious lines formed the *millet* (nation) system, with each individual or group belonging to one *millet* or another according to religious affiliation. Subjects had status and position in society only through membership in such millets. . . . Each *millet* established and maintained its own institutions to care for the functions not carried out by the Ruling Class and state, such as education, religion, justice, and social security.


18. The nineteenth-century legal reforms triggered the abolition of the “*Millet System*.” These reforms started with the “Royal Edict of 1839” (*Tanzimat Ferman*), which officially recognized for the first time the equality of all Ottoman subjects before the law regardless of their religion. This principle was confirmed by the “Edict of 1856” (*Islahat Fermani*) in a more extensive way. That edict promised to treat all subjects equally in terms of appointments to government posts, administration of justice, taxation and military services. The Constitution of 1876 also guaranteed the principle of equality before law and recognized Ottoman citizenship for all subjects. See generally Roderic H. Davison, *Turkish Attitudes Concerning Christian-Muslim Equality in the Nineteenth Century*, 59 Am. Hist. Rev. 844 (1954).

19. The Lausanne Treaty was signed between the British Empire, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene State and the Grand National Assembly of Turkey on July 24, 1923. The Lausanne Treaty repealed the Peace Treaty of Sèvres of 1920, which had been concluded between the Ottoman Empire and the Allies of World War I, except Russia and the United States. The Sèvres Treaty, abolishing the Ottoman Empire, was not recognized by the government led by Mustafa Kemal Atatürk. For the contents of both treaties, see *The World War I Document Archive*, http://www.lib.byu.edu/index.php/Post-1918_Documents (last modified Jan. 30, 2008).


Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Id.

21. See Baskin Oran, *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçihat*,
that, in order to apply the Lausanne Treaty properly, the State needed to know and record the religious affiliations of these minority groups. This would naturally require the religious-belief slot to be kept on ID documents, even under the secular legal system of the Republic.

The question of why the religious information continued to be included on ID cards can also be approached from a politico-sociological perspective. Islam was the unifying framework for the multi-religious, multi-ethnic Ottoman society. Yet, after the founding of the Republic, the elites who had extracted Islam from the social fabric recognized the need for a common bond to keep the several ethnic and religious communities together within the framework of the Ottoman polity and attempted to fill this vacuum by promoting "Turkish Nationalism" as the new unifying basis of collective Turkish nation.\(^{22}\)

In reality, however, Islam was never completely put aside in the creation of the new Turkish national identity. As documented by İçduyuğ, Çolak and Soyarık:

[N]on-Muslim groups (Greeks, Armenians and Jews) were called Turk only in respect of citizenship but not of nationality; in terms of defining nationality they were seen as outsiders whether or not of Turkish origin, for they were not Muslim. This shows that in determining the nature of Turkish nationality, in an implicit manner, religion appeared as a significant element together with ethnicity.\(^{23}\)

In essence, then, Kemalist nationalism, despite its militant-secular characteristics and reliance on other elements binding Turks together, such as citizens' common (Turkish) language,\(^ {24}\) in many respects tacitly

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Uygulama (Minorities in Turkey: Conceptions, Lausanne, Domestic Regulations, Jurisprudence, Applications) 36-41 (TESEV 2004) (Turkish). This policy can also be detected in some statutes today, such as "Law on Private Educational Institutions" (Özel Öğretim Kurumları Kanunu) adopted recently by the TGNA. Law No. 5580, adopted by the TGNA on Feb. 8, 2007; published in the Official Gazette on Feb. 14, 2007 (No. 26434). Art. 2 of the Law explicitly describes minority schools as private kindergartens, primary schools and secondary schools (including high schools) founded by the Greek, Armenian and Jewish communities, whose rights are protected by the Lausanne Treaty.


24. Undoubtedly, after the foundation of the Republic, language was also a vital component for the creation of new Turkish citizenship. However, religion trumped language in certain cases. The case of Karaman Turks may illustrate this point. After the Greco-Turkish war, two governments signed a protocol in Lausanne in 1923 for the compulsory exchange of populations. Within the framework of his Agreement, the exchange was not based on language, but on religion. Muslims in Greece, except those who were living in Thrace, were to be sent to Turkey. Orthodox Christians in Turkey, on the other hand, except those who were living in Istanbul and in two islands across Canakkale, were to be sent to Greece. Karaman Turks, who were Orthodox
telegraphed the following viewpoint about religion and nationality to its citizens: "Muslim = Turk" "Non-Muslim = Non-Turk." The religious notations on ID documents were presumably retained as important symbolic elements of the newly-manufactured Turkish national identity. From this perspective, the preservation of religious information on ID cards during the republican era reflects one of the inherent paradoxes of Kemalist nationalism; it portrayed Turkey as a staunchly secular state even while it used religion as a means to unify and mobilize the collective consciousness of the Turkish people.

II. THE CONTENT AND THE MEANING OF THE NEW IDENTITY CARD REGULATION

Upon the historical background explained above, the problem of a religious record on identity cards has been debated sporadically in the general public. The issue, however, was put in legal agenda for the first time by the center-left:center-right/nationalist coalition government in 2000, during the preparation of the Central Census Administration

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Christians, identified themselves as “Turk,” spoke Turkish as their mother tongue, even worshiped in Turkish. However, their Turkish identification was not sufficient to exempt them from deportation; they were sent to Greece, even though they did not want to leave Turkey. See Bernard Lewis, Crisis of Islam: Holy War and Unholy Terror 18-19 (Modern Lib. 2003); Bernard Lewis, The Return of Islam, Commentary 39, 43 (Jan. 1976).


26. One may note the similarities between the Turkish and Greek cases in this respect. The religion column on identity cards was compulsory until May 2000 in Greece. Because the overwhelming majority of the population, almost 98%, is Orthodox-Christian, religion appears to be an indispensable element of the Greek nation. In this sense, Orthodoxy is tantamount to Hellenism, the distinctiveness of the Greek nationality, and historical and cultural identity. See Lina Molokotos-Liederman, Identity Crisis: Greece, Orthodox, and the European Union, 18 J. Contemporary Religion 291, 299 (2003); Vassiliki Karageorgiou, The EU’s Impact on the Orthodox Church of Greece, Paper prepared for the 2d LSE Ph.D. Symposium on Modern Greece: Current Social Science Research on Greece, June 10, 2005, (available at http://www.lse.ac.uk/collections/hellenicobservatory/pdf2nd_symposium/Vassiliki_Karageorgiou_paper.pdf) (accessed Mar. 7, 2008). So, the strong ties between the Orthodox Church and the State are mainly the cause and effect of the framing of the Greek identity.


28. During the Republican era, although ruling elites expressed their commitments to the principle of secularism, they—including the military rulers of the transitory periods after military interventions—did not hesitate to use religion as a unifying framework. See Necdet Subasi, Ara Dînem Din Politikalari (The Religious Policies of Military Regimes), 93 Toplum ve Bilim 284 (2002).

29. This proposal was explicitly articulated by the Government after its meeting on Aug. 3,
System Project (MERNIS). As part of Turkey’s attempts to harmonize its legal practices with European Union norms, the Government prepared a draft law, proposing renewal of all citizen ID cards in accordance with the EU criteria; but the junior partner in the coalition government, the Nationalist Action Party (NAP), opposed abolition of the religious designation on identity cards in this reorganization. Consequently, the tripartite coalition government could not reach an agreement on changing the designation.

The proposal to abolish the religious designation on national ID cards did not reappear until the preparation of the Population Services Law of 2006. The NAP, however, was again on the scene during the discussions of the recent regulation. The Deputy Secretary of the NAP, Mehmet Şandır, said about the new population register regulation: “We have to protect the values that hold society together, at least in appearance.” He added that:

I urge the [incumbent] Justice and Development Party (JDP) government to learn how to say “no” to the EU. The most significant risk in this process is the degeneration of our social unity, our social characteristics and the values that hold our society together.

Not only Nationalists, but also Islamists and more conservative elements within the JDP expressed their support for the preservation of the religious designation on the ID cards.

Apart from historical-political considerations, those opposing the new provision brought a more practical concern to the attention of the public in order to solidify the validity of their claims. For example, some claimed that it would be wrong to perform a funeral service in conformity with Islamic rules for someone who did not have “Islam” written on his or her identity card. The president of the Department of

36. See for an interview with Ismail Nacar (researcher on the history of Islam), Vatan
Religious Affairs disputed this claim, noting that it is the imam’s duty to perform a funeral ceremony for any dead person who is brought to a mosque, and that there is no need to examine the deceased’s past or beliefs in order to carry out this obligation.  

Opposing the claims of conservatives and Islamists, some religious denominations, especially the Alevis, criticized the preservation of religion designation on ID cards on the grounds that it compelled citizens to disclose their religious beliefs. They also asserted that law’s classification of all Muslim sects as “Islam” for purposes of the religious designation restricted their freedom of religion, since some Alevis consider Alevism to be a separate religious culture and philosophy from Islam. Thus, many Alevi organizations such as the Alevi-Bektasi Federation (ABF) and the European Confederation of Alevi Associations (ECAA) sought to have the religion designation eliminated from the ID cards. 


38. Alevi, which is generally considered under the Shi’a branch, is a sect of Islam. Those Alevis living in Anatolia have developed their own life-style. Although no official statistics are available about the number of Alevis in Turkey, it is unofficially estimated that 15 to 25% of Turkey’s population is Alevi. See Karin Vorhoff, Let’s Reclaim Our History and Culture: Imagining Alevi Community in Contemporary Turkey, 38 Die Welt des Islam 220, 228 (1998); Tahire Erman & Emrah Gökem, Alevi Politics in Contemporary Turkey, 36 Middle E. Stud. 99, 99 (Oct. 2000). The majority of Alevis are ethnically and linguistically Turkish, descended mainly from central and eastern Anatolia, though some 20% are Kurdish. David Zedan, The Alevi of Anatolia, http://www.alevi.dk/ENGELSK/THE_ALEVI_OF_ANATOLIA.pdf. (Dec. 1995). Alevis constitute the country’s second largest religious community after the Sunnis. Their religious practices differ from those of Sunni Muslims. For instance, they do not worship in mosques; they meet in their own prayer halls; men, women and children participate together at funeral services. Most notably, they use Turkish rather than Arabic in their religious ceremonies and literature.  


In the middle of these debates, the New Population Services Law in Turkey was adopted by the TGNA on April 25, 2006 and became effective on April 29, 2006, after its publication in the Official Gazette. The new law made several important innovations over the Population Register Law of 1972 in the organization and implementation of population services. Even though the law appeared to significantly change the procedures for religious designations on ID cards, in reality it was hardly an innovation in religious freedom. Put briefly, the new regulation allows people to leave blank or alter religious information in family registers by a petition to the Directorate of Population. Thus, rather than dramatically changing the legal landscape for ID cards, the law really only lifts the requirement for citizens to seek a judicial order permitting a change in the religious information in family registers.

Even before the new law, this change was possible with a court order. For example, a Turkish parent living abroad with his family applied to the Turkish Embassy in 2004 to get his children’s identity cards. He requested that his children’s religion column be left blank so that they could choose the religion they wanted to practice at the age of eighteen. When Embassy authorities ignored this request and routinely filled in the children’s religion slot as “Islam,” the parent filed a suit in Turkey against Embassy authorities, winning a judgment permitting the plaintiffs’ demand. In a second case in 2005, a high school teacher successfully sought the removal of “Islam” as the religious designation on the identity card.

As these examples clearly illustrate, despite de facto resistance of administrative authorities, there was no de jure prohibition on the inscription of people’s religious preferences on their ID cards. So, although the new law has made it easier for individuals to change their religious belief designation on identity documents, it does not free them from the obligation to reveal their religious beliefs. As we shall try to

42. See L. No. 5490, supra n. 4.
43. Law of 1972, supra n. 1, at art. 11.
46. One may observe the reluctance of administrative authorities particularly in the high school teacher’s case. After the final judgment, the National Education Directorate punished the high school teacher by cutting 1/8 of his salary claiming that he had made a statement to the press about the court decision without getting the permission of his superiors. According to the administrative authority, a civil servant could not make a statement to the press about his legal rights as well as his public duties and responsibilities. Ostensibly, this punishment was not due to the high school teacher’s religious preferences, but again, doubts were expressed about the real reason of the National Education Directorate’s act.
demonstrate below, inclusion of a religious information box on ID cards, which since 1972 has required government intervention to change or omit the information in the box, either with a court decision (Article 43 of Population Register Law of 1972) or without court decision (Article 35 of Population Services Law of 2006), is unconstitutional and against the law of nations because it violates the basic principles of religious liberty.

III. CONSTITUTIONALITY OF RELIGIOUS INFORMATION ON ID CARDS

Religious liberty, one of the defining characteristics of modern secular states, can be defined in two ways: as negative religious liberty, or as positive religious liberty. 47 "Negative religious liberty," which has been the focus of Turkish court decisions interpreting the Constitution, includes two rights: freedom from coercion and freedom from discrimination on the grounds of religious (or nonreligious) belief. 48 By contrast, "positive religious liberty" goes farther in encouraging citizens to fully exercise their religion; it is "the freedom to actively manifest one's religion or belief in various spheres (public, private, etc.) and in a variety of ways (worship, teaching, and so on)." 49 In the following discussion, we shall demonstrate that a religious record on an identity card is not compatible with negative religious liberty, and certainly would not be defensible under a conception of positive religious liberty.

A. The Constitutional Court's Decisions on Freedom from Coercion

The Constitutional Court of Turkey employed the concept of "coercion" in its first decision concerning the constitutionality of Article 43 of the Population Register Law of 1972, the counterpart of Article 35 of the current Population Services Law, in the case of 1979. 50 In this case, three Armenian-Turkish citizens sued to change their identity cards, two of them asserting that "Islam," instead of "Christian," had been written in the religion column on their identity cards. 51 The third

47. Rex Ahdar & Ian Leigh, Is Establishment Consistent with Religious Freedom?, 49 McGill L.J. 650 (2004). Several terms, such as internal and external aspects of religious liberty and inner and outer religious freedoms, have been used to explain these dimensions of religious liberty in different contexts. The conceptual pair of "forum internum-forum externum" is also used in the European context. See Bahia Tahzib-Lie, The European Definition of Freedom of Religion or Belief, 9 Helsinki Monitor 17 (No. 3 1998).


49. Id. at 650.

50. See Decision of the Constitutional Court E. 1979/9, supra n. 15 (Turkish).

51. Id.
plaintiff maintained that the population register, which listed his religion as “Islam” was inconsistent with his identity card, which had listed him as “Catholic.” Each of the plaintiffs petitioned the Civil Court to change the religious information on their identity cards to “Armenian.” The Civil Court applied to refer the case to the Constitutional Court, maintaining that Article 43 of the 1972 Population Register law was unconstitutional under civil procedure principles. Under these principles, judges could not deliver a verdict based solely upon the statements and petitions of the concerned parties alone; the very nature of trying a case assumes that the parties must prove their allegations and that judges must decide petitions by examining evidence and hearing witnesses. Applying these general principles of civil procedure, the Civil Court held that the statements of the plaintiffs were not sufficient to correct their registers; they would have to prove that they were really Armenians or Christians. This, in turn, would require a judge to not only inquire about, but find as a matter of fact, what a person’s religion was. Such an inquiry, continued the Civil Court, would contravene Article 19/3 of the Constitution of 1961, stipulating that: “No person shall be compelled to worship, or participate in religious ceremonies and rites, or to reveal his or her religious faith and belief. No person shall be reproached for his or her religious faith and belief.” Using this reasoning, the Civil Court reached the conclusion that the existing religious designation in official records was unconstitutional and unnecessary for a secular state.

Reviewing the decision of the Civil Court using a “coercion” analysis, the Constitutional Court reasoned that the column containing

52. Id.
53. It is interesting to note that plaintiffs requested to change the information in their religion boxes to “Armenian” instead of “Christian.” We may construe this as a remnant of the Millet System.
54. Id.
55. Id.
religion in the census registers was not contrary to Article 19 of the Constitution. Under Article 19, it was permissible for the government to ask someone’s religious belief and convictions; it was forbidden for the government to coerce people to reveal such information. Relying on the concept of “coercion” as the chief constitutional limitation on the government action, the Constitutional Court judges concluded that Article 43 of the Population Register Law of 1972 did not force anyone to reveal his or her religious belief and convictions; it only required citizens to disclose what religious body they were presently affiliated with, so it did not violate Article 19.57

With other constitutional scholars, we agree that the Constitutional Court’s interpretation of Paragraph 3 of Article 19 of the Constitution of 1961 is too narrow as applied to the problem of Article 43 population registers. Turkish legal scholars such as Bülbent Tanor and Necmi Yuzbasioglu, have maintained that even though the enforcement of Article 43 does not result in state condemnation of individuals because of their religion, it compels citizens to reveal and thus express their religious beliefs; for if one wants to obtain his or her ID, one must announce his or her religious affiliation.58 In their view and ours, Article 43 is incompatible with the freedom of thought, religion and conscience guaranteed by the Turkish Constitution even under a compulsion analysis. This protection is underscored by the fact that Article 15 of the Constitution prohibits the limitation of certain rights and liberties, including the right of people not to reveal their religious beliefs, even in times of emergency; it should be a fortiori immune to state intervention in normal times.59

To emphasize the coercive character of the Population Register Law of 1972, some scholars have also pointed out that the law’s Article 2, added in 1984, contemplated that census administrations were authorized to “invite” people to declare the religion of their children older than one year, even adult children who had not been registered yet.60 Parents, who did not designate their children’s religion might be

57. The Court repeated the same reasoning in the case of 1995, which we shall discuss in detail below.
59. Kemal Gozler, Türk Anayasası Hukuku (Turkish Constitutional Law) 125 (Ekin Kitabevi 2000).
60. This regulation was added to the Population Register Law of 1972 in 1984 by the L. No.
punished in accordance with the Criminal Code. So, a parent who registered his or her child would have to declare the child’s religious belief, thus accepting the state’s “offer” under threat of sanction. We would add another statutory case of coercion: a resident alien applying for Turkish citizenship was also required to have a household register and ID card. Naturalized persons, therefore, would have to reveal their religious beliefs to fulfill this obligation. Consequently, even if Article 43 of the Population Register Law of 1972 did not directly penalize those who did not want to express their religion, making the revelation of one’s religious disposition a precondition of acquiring an ID was still coercive and it was a violation of the first and foremost principle of religious liberty that individuals should not be penalized or pressured because of their religious beliefs.

Most scholars, and we are among them, agree that the concept of coercion in religious matters should be read much broader than this, however. Ahdar and Leigh have noted:

Coercion is a difficult concept to define, especially when one moves beyond “blatant” or “direct” instances of coercion (where the government expressly forbids or compels certain behavior) to instances of “subtle” or “indirect” coercion (where government action merely makes non-compliance more difficult).

Seen in this light, Turkish religious registration regulations and practices can be seen as instances of “indirect coercion” that are also implicitly banned by Article 19/3 of the Constitution, which guarantees that: “No one shall be compelled to . . . reveal religious beliefs and convictions. . . .” This conclusion, of course, is also applicable to Article 35 of the current Population Services Law because it preserves the requirement for religious notations on ID cards unless individuals

3080, adopted by TGNA on Nov. 15, 1984; published in Official Gazette on Nov. 21, 1984 (No. 18582).

61. Gozler, supra n. 59, at 125.


63. This principle forbids the state from wielding its power to impose on individuals, certain behavior which the individuals would otherwise not prefer. Freedom from coercion, in this sense, creates a protected domain for individuals against state interference. Accordingly, if a state decision or a state policy leads to the coercion of people on religious grounds, then it violates the freedom from coercion, which would be unacceptable in a secular-liberal regime. Art. 18, Para. 2 of the United Nations International Covenant on Civil and Political Rights formulated this principle in the following manner: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” United Nations Covenant, supra n. 56 (all provisions of the United Nations International Covenant on Civil and Political Rights entered into force on Mar. 23, 1976, except Art. 41 which came into effect on Mar. 28, 1979. Turkey signed the convention on Aug. 15, 2000 and ratified on Sept. 23, 2003).

64. Ahdar & Leigh, supra n. 48, at 667.

65. See Turkish Const. 1961, supra n. 56.
take active steps to remove that information, in violation of the framework of Article 24/3 of the Constitution of 1982.66

B. The Constitutional Court’s Holdings on Freedom from Discrimination

The case of 1979 is not the only opportunity the Constitutional Court has had to rule on the compatibility of the Population Register laws with the Turkish Constitution. The Constitutional Court of Turkey dealt with the question of the constitutionality of religious records on ID cards in a 1995 case that came to the court through an incidental proceeding.67 In this second decision, the Court not only reaffirmed its earlier decision that the Population Register laws did not violate the right to freedom from coercion, but also held that they did not violate the right to freedom from religious discrimination.

66. Art. 24 of the 1982 Constitution, currently in force, guarantees freedom of religion and conscience and consists of five paragraphs:
   (1) Everyone has the right to freedom of conscience, religious belief and conviction.
   (2) Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.
   (3) No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.
   (4) Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual’s own desire, and in the case of minors, to the request of their legal representatives.
   (5) No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets.

Turkish Const. 1982, supra n. 56.

67. Dec. Const. Ct. E. 1995/17, supra n. 15. According to the 1961 and 1982 Constitutions, the Constitutional Court examines laws, decrees having the force of law, and the standing orders of the Parliament. See 1982 Const., supra n. 56, at Art. 148. According to the Constitution in force, access to the Constitutional Court may be sought in two ways. One of them is focused on making abstract legal norms consistent and uniform. Allegations about unconstitutionality of a norm may be brought to the Constitutional Court only within a limited time after the publication of that norm in the Official Gazette by a restricted number of persons and groups, such as the president of the Republic, parliamentary groups of the ruling party, the main opposition party, and the minimum one-fifth of the total number of parliamentarians. Another way to appeal to the Constitutional Court to invalidate a norm because of its unconstitutionality is concrete norm control. If a court that is trying a case finds that the norm to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it must postpone the consideration of the case until the Constitutional Court decides on the issue. If the Constitutional Court decides that the norm is unconstitutional, the norm will cease to have effect from the date of publication of the Constitutional Court’s decision in the Official Gazette. For details see Ergun Ozbudun, Constitutional Law, in Introduction to Turkish Law 19 (Tugrul Ansay & Don Wallace Jr. eds., 5th ed., Kluwer L. Intl. 2005).
Interestingly, while the reasoning of the Constitutional Court focuses on another dimension of negative religious liberty, the freedom from discrimination, the arguments of the constitutional judges in that case invites us to expand our theoretical perspective on religious liberty to include such concepts as "formal neutrality" and "substantive neutrality." In the case of 1995, the plaintiff filed a suit in a civil court to erase the term "Islam" and to enter the term "Baha’i" in his population register. The Civil Court allowed the term "Islam" to be erased from plaintiff’s population register, but rejected the plaintiff’s request to order revision of the entry to "Baha’i" on the grounds that this change should be made through an administrative act. The plaintiff subsequently sought to have the Directorate of Population inscribe his new religious affiliation into his population register, but the Directorate denied his petition claiming that it was not possible to enter religious "sects" like Baha’i into family registers. The plaintiff filed suit to overturn the Directorate’s decision, but the Administrative Court approved the Directorate’s reasoning and rejected the complaint. The plaintiff then appealed to the Council of State, which in turn referred the case to the Constitutional Court with its conclusion that Article 43 of the Law of 1972 was contrary to Article 2 and Article 24/3 of the 1982 Constitution.

In its decision upholding the 1972 Population Register Law and finding against the plaintiff, the Constitutional Court first discussed the meaning and content of the disputed constitutional provision. The constitutional judges pointed out that the information in population registers is entered in order to specify and record an individual’s characteristics, such as name, surname, sex, marital status, place and date of birth, and education. Collecting data about the nation’s demographic structure, including citizens’ religious dispositions, is in the public interest because a state should know the characteristics in order to meet requirements for public order and fulfill the state’s duty to ensure that citizens have their economic, social and political needs met.

69. Id.
70. Id.
71. Art. 2 states:
The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.
72. See Turkish Const. 1982, supra n. 66.
In supporting the constitutionality of the law, the Constitutional Court developed basically two arguments, first repeating its "coercion argument" which we have already analyzed and criticized in detail. According to the Court, Article 24 of the Constitution does not compel people to reveal their religious beliefs and convictions, or in any way denounce them because of their religious beliefs and convictions, but it does not forbid the state from being asked to be informed about their religion. Thus, the Constitutional Court found no violation of the Constitution on a "coercion" rationale.\(^{74}\)

To deal with the claim that the Population Register Law discriminated against those of minority religions, the constitutional judges turned to the principle of formal neutrality. As defined by Kurland in his seminal article, formal neutrality means that "religion may not be used as a basis for classification for purposes of governmental action, whether that action be the conferring of rights or privileges or the imposition of duties or obligations."\(^{75}\) This principle contains two elements: "religious neutrality" and "general applicability."

For Frederick Gedicks,\(^{76}\)

\[\text{[a] law is formally neutral with respect to religion if it does not use religion as a basis of classification—that is, if the religious beliefs and practices of those to whom a law applies are irrelevant to the law's goals.}\]

He also suggests that "[a] generally applicable law is one that does not focus its burdens or benefits on a particular religious class to the exclusion of secular classes that are similarly situated."\(^{77}\) The purpose of these two principles, which complement each other, according to Gedicks, is to prevent "religious discrimination."\(^{78}\)

\(^{74}\) Id. Note that in another case, the Constitutional Court unanimously decided that Article 61 of the Law on Criminal Trial Procedure, which obliges courts to ask witnesses their religion with their name, appellation, age, occupation, and domicile was unconstitutional. The Court pointed out in this case that obliging a witness to disclose his or her religion would allow the possibility of the influence of religion in public affairs. Religion should be kept an internal matter in a secular state in order to eliminate all kinds of influence and possible intervention into religion. Also, the questioned provision would require a person to reveal his or her belief without his or her will. This legal obligation is unavoidable for anyone because obeying law is a requisite of the rule of law. This is why the Court came to the conclusion that the questioned provision is contrary to Art. 2 and 24 of the Constitution. Dec. Constitutional Ct. E. 1995/25, K. 1996/5, Feb. 2, 1996 (Turkish) http://www.anayasa.gov.tr/eskinsite/KARARLAR/İPTALİTİRAN/K1996/K1996-26.htm (accessed Mar. 18, 2006).

\(^{75}\) Philip B. Kurland, Of Church and State and the Supreme Court, 29 U. Chi. L. Rev. 1, 5 (1961-62).


\(^{77}\) Id. at 486.

\(^{78}\) Id. at 485-486.
The Constitutional Court of Turkey developed its "formal neutrality argument" by making reference to Article 2 of the 1982 Constitution, establishing the principle of secularism.\textsuperscript{79} The constitutional judges reasoned that the principle of secularism requires the State to take a neutral position concerning religions and to accept the equality of all religious beliefs.\textsuperscript{80} However, no provision in any law permits the state to treat citizens unequally based on religious information in their population registers and the requirement to reveal one's religion in population registers is compulsory for everybody. Turkey's laws do not provide that some religions are recognized by the State or by its agents while some are not, so there is no interference with individuals' belief or non-belief. Thus, the Population Register provision does not infringe the principle of secularism guaranteed in Article 2 of the 1982 Constitution using formal neutrality analysis.

Interpreting the norm of neutrality more broadly, we find the reasoning of the Constitutional Court defective. Although Article 43 of the Population Register Law of 1972 may technically fulfill the requirements of formal neutrality in being applicable to all religious groups and not permitting any discriminatory measures against them, formal neutrality is not sufficient to enforce freedom from discrimination in its genuine meaning. In our view, the Court should have gone beyond formal neutrality to foresee the probable real-life discriminative effects of these policies.

Our argument is that the Court should be applying the test of "substantive neutrality".\textsuperscript{81}

Under substantive neutrality, the question to be asked... is whether the challenged government action has the effect of creating either incentives or disincentives for persons to follow their sincere religious beliefs.\textsuperscript{82}

Under substantive neutrality, free exercise protection for religion... would include protections from the consequences of regulatory laws of general application that do not single out religion or a religious group for limitations, yet have the unintended or incidental effect of limiting or interfering with

\textsuperscript{79} See supra n. 71.

\textsuperscript{80} See Dec. Constitutional Ct. E. 1995/17, supra n. 15.

\textsuperscript{81} Douglas Laycock defined the concept of substantive neutrality as follows: "[T]he religion clauses require government to minimize the extent to which it either encourages or discourages religious belief or disbelief, practice or nonpractice, observance or nonobservance." Douglas Laycock, Formal, Substantive, and Disaggregated Neutrality Toward Religion, 39 DePaul L. Rev. 993, 1001 (1989-90).

\textsuperscript{82} Stephen V. Monsma, Substantive Neutrality as a Basis for Free Exercise-No Establishment Common Ground, 42 J. Church & St. 13, 27 (2000) (emphasis in original).
religious belief or practice.  

From the substantive neutrality perspective, Article 43 of the Population Register Law of 1972 is hardly constitutional in the context of the way that religious belief and attachment are regarded in Turkish society. Anyone who is familiar with the Turkish situation, as with the situation in many other nations where there is a majority religious population, would surmise that a citizen who has to request that his ID card be filled in with a different religion than that held by the majority of the population might provoke discriminatory reactions. That is true even if, as envisaged by Article 35 of the current Population Services Law, it is now optional for citizens to leave a blank in the religion box on the ID card. Most people who have access to the citizen’s ID card might presume that his decision to leave the religion column blank signifies that the bearer is not a follower of the majority religion in Turkey, i.e., Islam, the religion which is recorded automatically in the birth register, unless otherwise requested by the family of an infant. This, in turn, may create at least social pressure on non-Muslims (or Muslims who do not wish to be identified as such) who find themselves in an intolerant religious community. A genuinely secular state would

83. Id. at 29.

84. Indeed, religious intolerance may make ID cards with religious information literally dangerous. For example, religious information was included in Lebanese identity documents until the issuance of new cards on Mar. 17, 1997. During the civil war, many people were killed because of their religious affiliation, which was revealed on IDs. In compliance with the Taif Accord, the religious lines were removed from identity documents. According to a news article:

The plight of foreign hostages in Lebanon is continually in the news, but generally less known is the fact that many Lebanese themselves are seized as hostages. Since the civil war began in 1975, no one knows how many of this country’s citizens have been abducted and killed, by one side or the other, depending on their religion. This has come to be known as the “battle of the IDs,” because religion is spelled out on Lebanese identity cards, and much of this activity takes place at the so-called Green Line that divides Beirut into predominantly Christian and Muslim sectors.

Marilyn Raschka, The Forgotten Hostages: Lebanese Kidnappings: An Unknown Number Have Been Abducted, Usually Because of Their Religion, LA Times 6 (Apr. 2, 1990). We may also mention the Indonesian case. The Indonesian Parliament adopted a law on Dec. 8, 2006, requiring the inclusion of religious information on ID cards. Indonesian House Passes Controversial Bill into Law, People’s Daily Online (Dec. 9, 2006) http://english.people.com.cn/200612/09/eng20061209_330484.html (accessed Jan. 12, 2007). This regulation was widely criticized on the grounds that it would assist in fostering religious discrimination. An activist, Maya Safira Muchtar from the National Integration Movement said, people have been killed in sectarian conflicts because religion is mentioned on the cards. Indonesia Matters, KPT Religion, http://www.indonesiamatters.com/834/kpt-religion (accessed Jan. 12, 2007). The National Integration Movement called the Government to review the Law by pointing out that the law would threaten national unity and could incite more sectarian conflicts in the country. Ridwan Max Sijabat, Call to Take Religion from ID Cards, Jakarta Post (Mar. 2, 2007) (available at http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070302. H05#). Turkey has not experienced such religious conflict in the republican era, but a recent public opinion survey alerts us that the increasing level of religious intolerance should be taken seriously.
want to hold that even the possibility that a citizen could suffer such a discriminatory impact makes both Article 43 of the Population Register Law of 1972 and Article 35 of the current Population Services Law of 2006 unconstitutional.

C. Positive Religious Liberty and the Right to Manifest Religion or Belief

So far, we have analyzed the constitutionality of religious information on ID cards on the basis of the concept of negative religious liberty, i.e., freedom from coercion and discrimination. However, particularly because of the fact that the international documents have recognized a more positive aspect to religious liberty, it is appropriate to analyze the ID card problem briefly from the perspective of positive religious liberty, i.e., the right to manifest one’s religious identity or belief.

We might first ask whether the requirement to print religious information on identity documents constitutes the state’s protection for and approval of the right to manifest one’s religion. At first glance, one may think that a citizen who is declaring his or her religion on the ID card is exercising the right to manifest religion, but a closer analysis demonstrates that this cannot be seen as an example of manifestation or as some outward expression of the religious belief or opinion, or the performance of religious ritual. In a relevant Greek case, the European Court of Human Rights explained as much:

Identity cards cannot be regarded as a means of securing the right of members of a religion or faith to practise or manifest that religion or faith. When a State chooses to introduce a system of identity cards, these are merely official documents identifying and distinguishing the individual in his or her capacity as a citizen and in relation to the national legal order. Religious conviction is not a datum relevant to the individual citizen’s dealings with the State. Furthermore, an identity card is an official document whose content cannot be determined according to the individual’s wishes. The fact that Orthodoxy is the predominant religion in Greece and that official ceremonies contain an element of religious ceremony cannot justify specifying religion on identity cards. The purpose of an identity card is in any case neither to reinforce the bearer’s religious beliefs nor to reflect the religion of a given society at a

given time.\footnote{86} Undoubtedly, within the limits of law, individuals can express their religion in every possible way—for example, religious communities may issue ID cards containing religious information about their members, which can be used by them for intra-community purposes—but official identity documents cannot be considered as appropriate means to manifest one’s religion. Consequently, even the positive aspect of religious liberty, i.e., the right to manifest one’s religion, cannot justify the preservation of religious information on ID cards.

IV. ANALYZING THE LAW BASED ON POLITICAL CONCEPTIONS OF RELIGIOUS LIBERTY

In the preceding sections, we have critiqued the Constitutional Court’s decisions to rely on very limited concepts of negative religious liberty and formal neutrality to uphold the constitutionality of Article 43 of the Popular Registration Law of 1972, as well as its failure to find that the law violates positive liberty rights by coercing, rather than permitting, people to manifest their religion or belief. However, our analysis would not be complete if we did not move beyond these limited concepts of liberty and neutrality, which are not directly mandated by the law,\footnote{87} to consider how political theory might shed some light on the question of requiring the designation of religion on national identity cards. As suggested by these principles, the Population Register Law is philosophically very problematical.

A. “Aim Neutrality,” “Justification Neutrality” and “Consequences Neutrality”

According to legal philosopher Ronald Dworkin, “political decisions must be... independent of any particular conception of the good life.”\footnote{88} Similarly, according to philosopher John Rawls, “the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance


\footnote{87} Here, it should be noted that the line between legal and political theory blurs when it comes to the question of neutrality. Moreover, some of the authors (e.g., Ronald Dworkin) whom we shall be consulting in this section, can be considered neither purely political, nor purely legal theorists. Nevertheless, one may still detect a distinct approach with its own terminology in each of the respective fields. We believe that this “not-so-visible” demarcation between legal and political studies allows us to study the relevant theories separately.

to those who pursue it." Dworkin’s and Rawls’s formulations are only two among many that argue that the state should be neutral between competing conceptions of the good; this claim is generally defended by liberals and considered one of the basic tenets of liberal social order.

Liberals’ adherence to the concept of neutrality can be explained by the basic premises of liberalism: First, liberals put the "individual" at the core of their theory. They consider the individual, not the community or the society, as the "locus of value" and recognize that, among individuals and groups, there is a wide variety of belief about what is good and true in human life. These two principles, i.e., "individualism" and support for a "plurality of values," together with "instrumental conception of normative justification" (i.e., the justification of institutions depends on their capacity to serve the interests of those who are subject to them) undergird liberal neutrality. Accordingly, in any state that purports to govern by liberal principles:

- Politically, the state [is] charged with respecting a plurality of values. More specifically, the state [is] prohibited from acting in such a way as to favor one conception of the good at the expense of others, for such policies [can] not be justified to those who are thereby disadvantaged, and so plurality [gives] rise to a principle of political neutrality.

In this sense, liberals assume an anti-perfectionist stance by rejecting the idea that "political authorities should take an active role in creating and maintaining social conditions that best enable their subjects to lead valuable and worthwhile lives."

Although liberals generally find the concept of neutrality an appropriate means to promote their anti-perfectionist project, they differ on how the principle of neutrality should be formulated and implemented. Various liberal philosophers have argued for three types of neutrality: "neutrality of aims," "neutrality of justification" and "neutrality of consequences." Those who argue for "neutrality of aims" are primarily concerned with what the state wants to achieve, i.e., with

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91. Id. at 191.
94. Generally, a two-fold typology of neutrality is accepted by political theorists; "neutrality in the consequences of government policy" and "neutrality in the justification of government policy." See e.g. Will Kymlicka, Liberal Individualism and Liberal Neutrality, 99 Ethics 883 (1989).
the purpose of its actions. They would argue that the state should not act with the purpose or goal of favoring or disfavoring certain ways of life. "Neutrality of justification" focuses on the rationale or grounds for state action. Under this type of neutrality, the state may not justify or explain its decisions by making reference to certain conceptions of the good. "Neutrality of consequences," in turn, refers neither to the state's purpose or aim, nor to the reasons the state gives for its decisions and policies; it is rather the principle that state actions should in fact produce the same effects for individuals irrespective of the conceptions of the good held by those individuals.95

It is tempting to think that Laycock's concept of substantive neutrality previously described96 and the concept of "neutrality of consequences" are identical. In fact, although there are similarities between the two ideas, these concepts do not refer to one and the same thing. Consequentialist theories of neutrality simply ask the neutrality question in terms of the outcomes of state actions, whereas the concept of substantive neutrality evaluates the same problem from the viewpoint of those affected by the policies of the state by focusing on whether these policies create incentives or disincentives for people to fulfill the requirements of the religion they follow.97 A consequentially neutral state promotes all conceptions of the good life on an equal basis98 or "ensures that all conceptions of the good do equally well."99 If we read these definitions through the lens of religious liberty questions, we would ask: Is the inclusion of religious information on ID cards equally good or equally bad in terms of its consequences for all religions or religious groups, e.g., Muslims, Christians or Jews? As we have pointed out earlier, such policy may be detrimental to minority religious groups. Although the state's policy itself (i.e., the inclusion of religious information on ID cards) is not directly the source of harm, even an

96. See Laycock, supra n. 81.
97. It has been argued that consequential neutrality is unattainable for several reasons. First, it is impossible to conceive a policy that would satisfy all citizens. In other words, it is inevitable that state action will have a variable impact on particular conceptions of the good. Second, it would hardly be possible to equalize the effects of a state's actions on individuals, for the level of satisfaction of individuals by the state's action cannot be practically measured. Third, the state will have to interfere with individuals' lives and the market to achieve outcome neutrality, which is incompatible with the basic premises of liberalism. See Zhidas Daskalovski, Neutrality, Liberal Nation Building and Minority Cultural Rights, 5 Critical Rev. Intl. Soc. & Political Phil. 27, 28-31 (2002).
98. Dimock, supra n. 90, at 192.
indirect correlation between the harm of religious discrimination through social pressure and the action of the state suffices to qualify this policy as non-neutral under the concept of neutrality of consequences. In other words, even if the harm to religious minorities is a side-effect of the state's action, it would be incompatible with the principle of state neutrality toward religion.

The other two conceptions of neutrality we have described, namely "neutrality of aims" and "neutrality of justification," provide us fresh accounts to solidify our overall conclusion that the religious information should be removed from national ID cards. If, according to the principles of "neutrality of aims" and "neutrality of justification," the state cannot have as its purpose or as its reasons for a particular legal action a particular conception of the good, and if the liberal-neutral state performs its functions without taking into account the religious preferences of its citizens, then there is no need to record or even inquire about the individuals' beliefs in official documents. In other words, to have or not to have religious information on identity cards would create no effect on the liberal neutral state’s policy preferences and the application of them.

CONCLUSION

In this paper, we have argued for the unconstitutionality of including religious information on national ID cards, particularly focusing on Article 35 of Turkey’s new Population Services Law of 2006, which is the counterpart of Article 43 of the Population Registration Law of 1972. We have not only attempted to demonstrate that these regulations are unconstitutional under the Turkish Constitution, but also have suggested briefly that they are incompatible with the European Convention on Human Rights and court decisions

100. Within this context, we may also discuss the practice of asking for religious affiliations on the census. The goal of census in a liberal neutral state should be to get information about population, economic and social characteristics of inhabitants, etc. with the aim of giving better service to its citizens. Religious belief should not hold a place on a census questionnaire because the state is not able to better fulfill its functions with the knowledge of this information. See Dorothy Good, Questions on Religion in the United States Census, 25 Population Index 3 (1959) (discussing this problem in America).

101. Indeed, the use of religious information on ID cards in certain historical situations reminds us that such practices would go along with non-liberal states. Religious information on identity cards, for example, was used for identifying the Jews in Nazi Germany. The notorious "J-stamp" on ID cards was a ticket to discrimination for the Jewish community at the time. See J.F. Krop, The Jews under the Nazi Regime, 245 Annals Am. Acad. Political & Soc. Sci. 28 (1946); Richard Sobel, The Demeaning of Identity and Personhood in National Identification Systems, 15 Harv. J.L. & Tech. 319, 344-346 (2002); Richard Sobel, The Degradation of Political Identity under a National Identification System, 8 B.U. J. Sci. & Tech. L. 37 (2002).
relying on international norms for religious liberty.\textsuperscript{102} Although the 2006 Population Services Law was primarily introduced to meet the European Union criteria on the freedom of religion, it will not satisfy the EU criteria. Despite the changes that have permitted citizens to change or eliminate religious information through administrative procedures, Turkey still remains the only country in the European Parliament that preserves a place for religious information on ID cards.\textsuperscript{103} Thus, the

\textsuperscript{102} The ECHR has supremacy over laws in accordance with Article 90 of the Constitution of 1982. Accordingly, related provisions of the ECHR and their interpretation by the European Court of Human Rights are binding for Turkey. See Levent Gonenc & Selin Esen, \textit{The Problem of the Application of Less Protective International Agreements in Domestic Legal Systems: Article 90 of the Turkish Constitution}, 8 European J. L. Reform, 485 (2006).

\textsuperscript{103} Greece was the only EU country continuing the practice of holding religious information on identity cards. The EU, however, never approved this policy of the Greek Government. This issue appeared for the first time in Greece in the 1980s. The compulsory religious belief slot on IDs was first introduced by the German occupiers during World War II in order to identify the Jews. See Aristotelis Stamoulas, \textit{Cultural Democracies And Human Rights: Conditions For Religious Freedom in Modern Greece}, 3 J. Hum. Rights 477 (2004). Later, in 1986, the Socialist Government made the revelation of religious affiliation on ID cards voluntary. However, it became compulsory again in 1991, through legislation prepared by the center-right government. The following year, the European Parliament issued a strong recommendation to alter the Greek legislation due to the religious minority problems, such as those experienced by the Jehovah’s Witnesses, so the center-right government attempted to reinstate the regulation, which was in effect between 1986-91. Surprisingly, this time, even the Socialists did not vote in favor of the amendment, for it was perceived by the majority of the deputies as giving in to blackmail by the European Union regarding the Macedonian issue. Anastassios Anastassiadis, \textit{Religion and Politics in Greece: The Greek Church’s ‘Conservative Modernization’ in the 1990’s} 6 (Ctr. Intl. Stud. & Research, Research Paper 2004, http://www.ceri-sciences-po.org/publica/qdr.htm (accessed Nov. 12, 2006). The issue did not come up until 2000. Finally, despite the opposition of the conservative groups, the Greek Government deleted religious faith information as well as other personal data (e.g., citizenship, spouse’s name, profession and fingerprints) from identity documents in 2000 to harmonize its domestic legislation with the European standards. By doing so, the Greek authorities also hoped to undo the ongoing conflict between its domestic legislation and the ECHR decisions. See Molokotos-Liederman, \textit{supra} n. 26, at 303. It is interesting to note that, unlike Turkey, the new legislation in Greece faced quite intense opposition, spearheaded by the Orthodox Church. Evidently, the special link between the Orthodox Church and the State and society explains this phenomenon. The Orthodox Church has always considered itself the protector of not only faith and morality, but also of Greek national identity. Moreover, it has always had close relations with the State. As a result, the Church, receiving considerable support from the State, obtained a privileged position vis-à-vis other beliefs in the country. For instance, it received generous public subsidies in the form of clergy payments and tax exemptions, and the Church has the right to influence national education and cultural orientation in schools. Stamoulas, \textit{supra} at 485. Thus, the Orthodox Church viewed the new law as a first step in the gradual erosion of its institutional monopoly and considered it an attack against Greek identity. The Clergy provoked the opposition forces against the new legislation by using the argument that “Orthodoxy is inseparable from the Greek identity.” The religious authorities, organizing mass rallies in big cities for fifteen months, collected more than three million signatures to put this issue in a referendum, which would result in the optional inclusion of religious information on ID cards. George Mavrogordatos, \textit{Orthodoxy and Nationalism in the Greek Case}, 26 W. European Politics 117, 122-123 (Jan. 2003); Elizabeth Prodromou, \textit{Negotiating Pluralism and Specifying Modernity in Greece: Reading Church-State Relations in the Christodoulou Period}, 51 Soc. Compass 471, 474 (2004). As a matter of fact, the hard work of the Orthodox Church yielded no results.
elimination of religious faith information from identity cards seems to be necessary to harmonize Turkish laws with EU legislation. Such a move is also vital for achieving contemporary standards of secularism on the basis of the principle of state neutrality and the effective protection of the freedom of thought, religion and conscience. In other words, the Turkish policy on identity cards concerns not only Turkey’s prospects of entering the EU as a full and complying partner, but also the quality of Turkish democracy. Removal of religious designations from Turkey’s identity cards is essential to foster true religious pluralism and religious toleration, two of the main pillars of “embedded democracies”\footnote{See Wolfgang Merkel, \textit{Embedded and Defective Democracies}, 11 Democratization 33 (Dec. 2004).} in the contemporary world.