

Mandates of the Special Rapporteur on minority issues and the Special Rapporteur on the right to education

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(Please use this reference in your reply)

20 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues and Special Rapporteur on the right to education, pursuant to Human Rights Council resolutions 43/8 and 44/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued forced closure of the Heybeliada Theological School and its broader impact on the fundamental rights of Christian Greek-Orthodox minority in Türkiye.**

According to the information received:

The Heybeliada Theological School (HTS) was established in 1843 with the aim to provide theological education to the Christian Orthodox community within the Ottoman Empire. During its 128 years of functioning, it is reported that HTS was an important institution for the training of senior hierarchs within the Christian Orthodox Church, and particularly the Ecumenical Patriarchate of Constantinople.

In 1971, the Government of Türkiye closed the HTS by prohibiting the education and enrollment of students. The reason for the closure allegedly was a decision of the Constitutional Court of Türkiye, which ruled private foundation colleges that were not affiliated with a state-run university to be unconstitutional.

Despite numerous appeals by the Ecumenical Patriarchate of Constantinople and by numerous religious and civil society leaders since 1971 to our days, there has been no governmental response or action over the last 51 years on the question of reopening the HTS.

Notably, it is reported that the Ecumenical Patriarchate has not been granted appropriate legal status by the State, and as such, is unable to challenge the 1971 decision within the judicial system of Türkiye. Despite its inability to bring forth legal challenges, the Ecumenical Patriarchate has submitted, on numerous occasions, appeals to the authorities of the Republic of Türkiye to allow the Christian Orthodox community to reopen its theological educational facilities. The subject has also been brought up by the Ecumenical Patriarch on several occasions during social and formal meetings with top level government officials.

Since the HTS was closed, there has been no theological school in Türkiye where new generation of Christian Orthodox priests could have their religious education. Consequently, those in Türkiye who do wish to become Orthodox priests must go abroad for their education. This does not necessarily match the

education they would have received at the HTS, which is reported to possess a millennial educational tradition. Moreover, the HTS remains closed despite the fact that, since 1983, Türkiye has permitted the opening of several private foundation universities, and that several religious schools currently provide Sunni-Muslim education in the country.

The imposed restrictions seriously affect the Ecumenical Patriarchate's efforts to fulfill its global mission towards over 300 million Orthodox Christians worldwide and towards the Orthodox Christians minority in Türkiye.

We express serious concern about what is reported as and appears to be a longstanding infringement on the rights and freedoms of the Christian Orthodox minority in Türkiye. While we do not wish to prejudge the accuracy of these allegations, we are concerned that they appear to indicate that the continuing prohibition of education at the Heybeliada Theological School is in contravention of Türkiye's human rights international obligations. Most notably we are concerned that the above described allegations appear to violate article 18 of the International Covenant on Civil and Political Rights (ICCPR) providing that everyone "shall have the right to freedom of thought, conscience and religion" including the freedom "to manifest his religion or belief in worship, observance, practice and teaching", article 26 of the ICCPR which prohibits any discrimination on grounds such as religion and national origin, and article 27 of the ICCPR which stipulates that ethnic, religious or linguistic minorities such as the Greek-Orthodox community of Türkiye shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language, as well as articles 2(2) and 13 of the International Covenant on Economic, Social and Cultural Rights protecting the right of everyone to education without discrimination, including on the ground of religion or national origin.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and standards** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility under the mandates provided to us by the UN Human Rights Council to seek to clarify all cases and situations brought to our attention, we would be grateful for your comments on the following matters:

1. Please provide any additional information or comments in relation to the above-mentioned allegations.
2. Please provide clarifications on how the alleged developments, if confirmed, are compatible with your Excellency's Government's obligations under the provisions cited in the annex below and, if necessary, how it plans to remediate any inconsistencies with the international human rights standards.
3. In particular, please provide more information on the legal grounds for the continued forced closure of the HTS.
4. Please provide clarifications on how your Excellency's Government is upholding the international standards stemming from the United

Nations General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, in particular article 6(e) of the Declaration which protects the right "to teach a religion or belief in places suitable for these purposes" and article 6(g) which protects the right "to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief" as well as the right under article 4(2) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities "express their characteristics and to develop their culture, language, religion, traditions and customs".

5. Please provide clarifications on how your Excellency's Government is ensuring the protection of the rights of the Christian Orthodox religious minority and the Greek-Orthodox ethno-religious minority in Türkiye, as provided, *inter alia*, by article 27 of the International Covenant on Civil and Political Rights.
6. Please provide clarifications on the alleged differential treatment of your Excellency's Government towards the Orthodox Greeks and Sunni Muslims in Türkiye, most notably on the alleged differential treatment towards the private religious schools of the mentioned comparative groups, and the compliance of such differential treatment with the international non-discrimination standards.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Fernand de Varennes
Special Rapporteur on minority issues

Farida Shaheed
Special Rapporteur on the right to education

Annex

Reference to international human rights law

In connection with the alleged facts and concerns, we would like to remind your Excellency's Government of its legal obligations under international law applicable to the issues brought forth.

We firstly recall that the **Universal Declaration of Human Rights** recognizes in article 1 that "all human beings are born free and equal in dignity and rights". In addition, article 18 recognizes the "right to freedom of thought, conscience and religion" including the right "either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance". Understood within the context of minority rights, this means that States should refrain from practices which discriminate against or impede the religious freedoms of minority groups on their territory.¹

We would also like to recall your Excellency's Government's obligation under **International Covenant on Civil and Political Rights (ICCPR)**, ratified by Türkiye on 23 September 2003. **Article 27** of the Covenant provides that ethnic, religious or linguistic minorities existing in State parties to the Covenant shall not be denied their right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own **religion**, or to use their own language. In addition, **article 18 (1)** of the ICCPR stipulates that everyone "shall have the right to freedom of thought, conscience and **religion**" including the "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and **teaching**". Moreover, article 18(2) protects the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Article 18(3) of the Covenant finally stipulates that any limitations on religious freedoms must be those which are "prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".

In relation to State obligations pursuant to article 27 of the ICCPR, we recall **CCPR General Comment No. 23: article 27 (Rights of Minorities)**, adopted by the Human Rights Committee on 8 April 1994. In particular, we draw attention to the conclusion that State parties may have certain positive obligations to take action to "protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group" (CCPR/C/21/Rev.1/Add.5, para 6.2).

In relation to State obligations pursuant to article 18 of the ICCPR, we remind your Excellency's Government of the **General Comment No. 22: article 18 (Freedom of Thought, Conscience or Religion)**, adopted by the Human Rights Committee on 30 July 1993. In particular, we recall the Committee's conclusion that "the freedom to manifest religion or belief in worship, observance, practice and teaching" should be interpreted broadly, and that the freedom of religion includes "the freedom to establish seminaries or religious schools" (CCPR/C/21/Rev.1/Add.4, para 4).

¹ E/CN.4/Sub.2/AC.5/2005/2, para 4

We would further like to refer to your Excellency's Government's obligation under **International Covenant on Economic, Social and Cultural Rights (ICESCR)** acceded by Türkiye on 23 September 2003. **Article 2(2)** of the Covenant provides that the States Parties should "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status". Moreover, we highlight that under article 13, States Parties to undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Article 13 also protects the liberty of individuals and bodies to establish and direct educational institutions.

In relation to State obligations pursuant to article 15.1(a) of the ICESCR, which guarantee the right of everyone to take part in cultural life, we would like to refer your Excellency's Government to **General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)**, of the Committee on Economic, Social and Cultural Rights. In particular, we recall the conclusion that, as it pertains to minority rights, the right to cultural life includes the duty of States "to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves" (E/C.12/GC/21, para 32). Moreover, General comment no. 21 concludes that minorities have "the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership" (E/C.12/GC/21, para 32).

We further bring to your attention your Excellency's Government's obligations pursuant to the **Treaty of Lausanne**, ratified by Türkiye on 3 August 1923. Under **article 38** of the treaty, Türkiye agreed that "all inhabitants of [Türkiye] shall be entitled to free exercise, whether in public or private, of any creed, **religion** or belief, the observance of which shall not be incompatible with public order and good morals". In addition to that, **article 40** of the treaty specifically provides that the Turkish nationals belonging to non-Muslim minorities "shall enjoy the same treatment and security in law and in fact as other Turkish nationals". In particular, article 40 states that "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".

In addition to the above cited international law, we would like to bring your Excellency's Government attention to other international standards, best practices, and recommendations which are relevant to the issues raised.

In relation to State obligations pursuant to article 27 of the ICCPR, we would like to remind your Excellency's Government of the international standards stemming from the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (hereinafter, "the Declaration"), adopted by consensus by the UN General Assembly (UNGA) on 18 December

1992 (A/RES/47/135). Article 2.1 of the Declaration recognizes the right of persons belonging to a minority to “to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination”. Article 2.2 recognizes “the right to participate effectively in cultural, **religious**, social, economic and public life”. Article 3.1 recognizes that persons belonging to minorities can exercise their rights “individually as well as in community with other members of their group, without any discrimination”. Moreover, we call your Excellency’s government attention to specific State duties with regards to minorities, as set out in articles 1, and 4.2 of the Declaration. Article 1 calls on States to adopt measures, both legislative and otherwise, to protect the existence and promote the identity of persons belonging to “national or ethnic, cultural, religious and linguistic minorities”. Article 4.2 of the Declaration calls on States to “create **favorable conditions** to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”.

We would further like to call your Excellency’s Government attention to the **2005 Working Group on Minorities’ commentary on the application of the Declaration**. Concerning the duty to protect the existence of minorities, the Working Group concluded that this included “their physical existence, their **continued existence on the territories on which they live** and their continued access to the material resources required to continue their existence on those territories” (E/CN.4/Sub.2/AC.5/2005/2, para 24). In relation to the right of persons to belonging to minorities to exercise their rights collectively, the Working Group concluded that the collective manifestation of rights can be achieved through “associations, cultural manifestations or educational institutions, or in any other way” (E/CN.4/Sub.2/AC.5/2005/2, para 53). In addition, in relation to the interpretation of the “national law” exception to expressions of minority rights found at article 4.2 of the Declaration, the Working Group concluded that a “State is not free to adopt whatever prohibitions against minorities’ cultural practices that it wants” and should limit restrictions to those which are “based on reasonable and objective grounds” (E/CN.4/Sub.2/AC.5/2005/2, para 56).

We further recall the **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**, adopted by the UNGA on 25 November 1981 (A/RES/36/55). Article 4.1 states that States should “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief”. In addition, we highlight article 6(e) which outlines the right “[t]o teach a religion or belief in places suitable for these purposes” and article 6(g) which outlines the right to “train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief”.

We also recall the **Recommendations of the Forum on Minority Issues at its sixth session: Guaranteeing the rights of religious minorities (26 and 27 November 2013)**, published on 22 January 2014. In particular, we highlight the recommendation related to the legal recognition of religious minority groups, that “States should ensure that there is no discriminatory treatment in regard to the legal and administrative recognition of all religious and belief groups” (A/HRC/25/66, para 17). Moreover, we highlight the recommendation that “States should exercise no undue influence over religious minority affairs, including with respect to the appointment of religious leaders, the functioning of places of worship, and any

legitimate religion- or belief-based activities” (A/HRC/25/66, para 20).

We remind your Excellency’s Government of the outcome of Türkiye’s participation in the third cycle of the UN Human Rights Council’s **Universal Periodic Review (UPR)** process in 2020. In particular, we recall the recommendations which were accepted by your Excellency’s Government,² in particular the recommendations to “[r]edouble efforts to guarantee freedom of religion and belief, in law and in practice” and to “[p]rovide the conditions for freedom of religion, in compliance with international standards” (A/HRC/44/14, paras 45.143, 45.144). Moreover, we recall the recommendation to “[c]ontinue efforts to consult non-Muslim minorities with a view to addressing the challenges faced by these minorities when electing members of their institutions” (A/HRC/44/14, para 45.274).

In addition to the international law and norms, standards and best practices cited above, we further bring your Excellency’s Government attention to the regional treaty law and standards relevant to the allegations raised.

In particular, we remind your Excellency’s Government of its obligations pursuant to the **Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005)** ratified by Türkiye on 18 May 1954. **Article 9** of the Convention stipulates that “everyone has the right to freedom of thought, conscience and **religion**” including the right “either alone or in community with others and in public or private, **to manifest his religion or belief, in worship, teaching, practice and observance**” and that “such freedom can be restricted only by such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”. Moreover, **article 14** provides that all the rights provided under the Convention “shall be secured without discrimination on any ground such as sex, race, colour, language, **religion**, political or other opinion, national or social origin, **association with a national minority**, property, birth or other status”.

We recall the Council of Europe’s **Declaration by the Committee of Ministers on human rights in culturally diverse societies (2009)**, which calls on member States to ensure that any limitations on fundamental freedoms, including the freedom of conscience and religion, is “prescribed by law, necessary in a democratic society and proportionate to a legitimate aim”.

We wish to call attention to the minority rights framework established by the Organization for Security and Co-operation in Europe (OSCE). In particular, we recall the **Helsinki Final Act**, the final decision adopted by consensus at the first CSCE/OSCE Summit of Heads of State or Government in 1975. In particular, we recall the fact that OSCE participating States committed to respecting fundamental rights, including the freedom of religion. More specifically, participating States committed to uphold national minorities’ “**equality before the law**” and to “afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms” (p. 6).

We also recall the **1990 Copenhagen Document**, published as the outcome document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE/OSCE. In particular, we highlight paragraph 32, which states the national

² A/HRC/44/14/Add.1, pp 6,10.

minorities have the right “to establish and maintain their own educational, cultural and religious institutions, organizations or associations,” as well as the right “to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue”. We also recall paragraph 33 of the Copenhagen Document, which calls on OSCE participating States to “protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity”.

Further, we remind your Excellency’s Government of the recommendations and best practices related to minority rights that have been published by the OSCE’s High Commissioner on National Minorities (HCNM). We recall the recommendation 41 of the HCNM’s 2012 **Ljubljana Guidelines on Integration of Diverse Societies**, which states that minorities have a right to “[f]reedom of religion and belief, and [that] opportunities for voluntary participation in the religious life of a community, should be ensured”. The explanatory notes of recommendation 41 elaborate that States should refrain from establishing “undue limitations to full participation in cultural and religious affairs” including refraining from putting in place “excessive requirements for the registration of cultural or religious organizations”.