EUROPEAN COURT OF HUMAN RIGHTS

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GRAND CHAMBER JUDGMENT
LEYLA ŞAHİN v. TURKEY

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment[1] in the case of ***Leyla Şahin v. Turkey*** (application no. 44774/98).

The Court held:

- by sixteen votes to one, that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the European Convention on Human Rights;
- by sixteen votes to one, that there had been **no violation of Article 2 of Protocol No. 1** (right to education);
- unanimously, that there had been **no violation of Article 8** (right to respect for private and family life);
- unanimously, that there had been **no violation of Article 10** (freedom of expression);
- unanimously, that there had been **no violation of Article 14** (prohibition of discrimination).

(The judgment is available in English and French.)

1. Principal facts

The applicant, Leyla Şahin, is a Turkish national who was born in 1973. She has lived in Vienna since 1999, when she left Istanbul to pursue her medical studies at the Faculty of Medicine at Vienna University. She comes from a traditional family of practising Muslims and considers it her religious duty to wear the Islamic headscarf.

At the material time she was a fifth-year student at the faculty of medicine of Istanbul University. On 23 February 1998 the Vice-Chancellor of the University issued a circular directing that students with beards and students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials.

In March 1998 the applicant was refused access to a written examination on one of the subjects she was studying because was wearing the Islamic headscarf. Subsequently the university authorities refused on the same grounds to enrol her on a course, or to admit her to various lectures and a written examination.

The faculty also issued her with a warning for contravening the university's rules on dress and suspended her from the university for a semester for taking part in an unauthorised assembly that had gathered to protest against them. All the disciplinary penalties imposed on the applicant were revoked under an amnesty law.

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

2. Procedure and composition of the Court

The application was lodged with the European Commission on Human Rights on 21 July 1998 and transmitted to the Court on 1 November 1998. It was declared admissible on 2 July 2002. The Chamber held a hearing in public in Strasbourg on 19 November 2002.

In its judgment of 29 June 2004 the Chamber held that there had been no violation of Article 9 and that no separate question arose under Articles 8 and 10, Article 14 taken together with Article 9, and Article 2 of Protocol No. 1 to the Convention.

On 27 September 2004 the applicant asked for the case to be referred to the Grand Chamber, in accordance with Article 43[1] of the Convention. On 10 November 2004 a panel of the Grand Chamber accepted her request. The Grand Chamber held a hearing in public in Strasbourg on 18 May 2005.

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

Luzius **Wildhaber** (Swiss), ***President***,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Boštjan M. **Zupančič** (Slovenian),
Riza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Corneliu **Bîrsan** (Romanian)
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Nina **Vajić** (Croatian),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
Egbert **Myjer** (Netherlands),
Sverre Erik **Jebens** (Norwegian), ***judges***,

and also Lawrence **Early**, ***Deputy Grand Chamber Registrar***.

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[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17 member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

3. Summary of the judgment[1]

Complaints

The applicant complained under Article 9 that she had been prohibited from wearing the Islamic headscarf at university, of an unjustified interference with her right to education, within the meaning of Article 2 of Protocol No. 1 and of a violation of Article 14, taken together with Article 9, arguing that the prohibition on wearing the Islamic headscarf obliged students to choose between education and religion and discriminated between believers and non-believers. Lastly, she relied on Articles 8 and 10.

Decision of the Court

Article 9

Like the Chamber, the Grand Chamber proceeded on the assumption that the circular in issue, which placed restrictions of place and manner on the right to wear the Islamic headscarf in universities, constituted an interference with the applicant's right to manifest her religion.

As to whether the interference had been "prescribed by law", the Court noted that the circular had been issued by the Vice-Chancellor within the statutory framework set out in section 13 of Law no. 2547 and in accordance with the regulatory provisions that had been adopted earlier. According to the applicant, the circular was not compatible with transitional section 17 of that law, which did not proscribe the headscarf but instead provided that students were free to dress as they wished provided that their choice did not contravene the law.

The Court reiterated that, under its case-law, "law" was the provision in force as the competent courts had interpreted it. In that connection, it noted that the Constitutional Court had ruled that freedom of dress in institutions of higher education was not absolute. The Constitutional Court had held that authorising students to "cover the neck and hair with a veil or headscarf for reasons of religious conviction" in the universities was contrary to the Constitution. That decision of the Constitutional Court, which was both binding and accessible, as it had been published in the Official Gazette of 31 July 1991, supplemented the letter of transitional section 17 and followed the Constitutional Court's previous case-law. In addition, the Supreme Administrative Court had by then consistently held for a number of years that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the Republic. Furthermore, regulations on wearing the Islamic headscarf had existed at Istanbul University since 1994 at the latest, well before the applicant enrolled there.

In these circumstances, the Court found that there was a legal basis for the interference in Turkish law and that it would have been clear to the applicant, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from the date the circular was issued in 1998, that she was liable to be refused access to lectures and examinations if she continued to wear the headscarf.

[1] This summary by the Registry does not bind the Court.

The Court considered that the impugned interference primarily pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order.

As to whether the interference was necessary, the Court noted that it was based in particular on the principles of secularism and equality. According to the case-law of the Constitutional Court, secularism, as the guarantor of democratic values, was the meeting point of liberty and equality. The principle prevented the State from manifesting a preference for a particular religion or belief; it thereby guided the State in its role of impartial arbiter, and necessarily entailed freedom of religion and conscience. It also served to protect the individual not only against arbitrary interference by the State but from external pressure from extremist movements. The Constitutional Court added that freedom to manifest one's religion could be restricted in order to defend those values and principles.

Like the Chamber, the Grand Chamber considered that notion of secularism to be consistent with the values underpinning the Convention. Upholding that principle could be considered necessary to protect the democratic system in Turkey.

The Court also noted the emphasis placed in the Turkish constitutional system on the protection of the rights of women. Gender equality – recognised by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe – had also been found by the Turkish Constitutional Court to be a principle implicit in the values underlying the Constitution.

In addition, like the Constitutional Court, the Court considered that, when examining the question of the Islamic headscarf in the Turkish context, there had to be borne in mind the impact which wearing such a symbol, which was presented or perceived as a compulsory religious duty, may have on those who chose not to wear it. As had already been noted, the issues at stake included the protection of the "rights and freedoms of others" and the "maintenance of public order" in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith. Imposing limitations on the freedom to wear the headscarf could, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since that religious symbol had taken on political significance in Turkey in recent years.

The Court did not lose sight of the fact that there were extremist political movements in Turkey which sought to impose on society as a whole their religious symbols and conception of a society founded on religious precepts.

Against that background, it was the principle of secularism which was the paramount consideration underlying the ban on the wearing of religious symbols in universities. In such a context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire, including, as in the case before the Court, the Islamic headscarf, to be worn on university premises.

As regards the conduct of the university authorities, the Court noted that it was common ground that practising Muslim students in Turkish universities were free, within the limits imposed by educational organisational constraints, to manifest their religion in accordance

with habitual forms of Muslim observance. In addition, a resolution that had been adopted by Istanbul University on 9 July 1998 showed that various other forms of religious attire were also forbidden on the university premises.

When the issue of whether students should be allowed to wear the Islamic headscarf had surfaced at Istanbul University in 1994 in relation to the medical courses, the university authorities had reminded them of the relevant rules. Further, throughout the decision-making process that had culminated in the resolution of 9 July 1998 the university authorities had sought to adapt to the evolving situation in a way that would not bar access to the university to students wearing the Islamic headscarf, through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises.

As to how compliance with the internal rules of the educational institutions should have been secured, it was not for the Court to substitute its view for that of the university authorities. Besides, having found that the regulations pursued a legitimate aim, it was not open to the Court to apply the criterion of proportionality in a way that would make the notion of an institution's "internal rules" devoid of purpose. Article 9 did not always guarantee the right to behave in a manner governed by a religious belief and did not confer on people who did so the right to disregard rules that had proved to be justified.

In those circumstances, and having regard to the Contracting States' margin of appreciation, the Court found that the interference in issue was justified in principle and proportionate to the aims pursued, and could therefore be considered to have been "necessary in a democratic society". It therefore found no violation of Article 9.

Article 2 of Protocol No. 1

Contrary to the decision of the Chamber on this complaint, the Grand Chamber was of the view that, having regard to the special circumstances of the case, the fundamental importance of the right to education and the position of the parties, the complaint under Article 2 of Protocol No. 1 could be considered as separate from the complaint under Article 9 and therefore warranted separate examination.

On the question of the applicability of Article 2 of Protocol No. 1, the Court reiterated that it was of crucial importance that the Convention was interpreted and applied in a manner which rendered its rights practical and effective, not theoretical and illusory. Moreover, the Convention was a living instrument which had to be interpreted in the light of present-day conditions. While the first sentence of Article 2 essentially established access to primary and secondary education, there was no watertight division separating higher education from other forms of education. In a number of recently adopted instruments, the Council of Europe had stressed the key role and importance of higher education in the promotion of human rights and fundamental freedoms and the strengthening of democracy. Consequently, it would be hard to imagine that institutions of higher education existing at a given time did not come within the scope of the first sentence of Article 2 of Protocol No 1. Although that Article did not impose a duty on the Contracting States to set up such institutions, any State that did so was under an obligation to afford an effective right of access to them. In a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision.

Consequently, the Court considered that any institutions of higher education existing at a given time came within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions was an inherent part of the right set out in that provision.

In the case before it, by analogy with its reasoning on the question of the existence of interference under Article 9, the Court accepted that the regulations on the basis of which the applicant had been refused access to various lectures and examinations for wearing the Islamic headscarf constituted a restriction on her right to education, notwithstanding the fact that she had had access to the university and been able to read the subject of her choice in accordance with the results she had achieved in the university entrance examination. As with Article 9, the restriction was foreseeable and pursued legitimate aims and the means used were proportionate.

The measures in question manifestly did not hinder the students in performing the duties imposed by the habitual forms of religious observance. Secondly, the decision-making process for applying the internal regulations satisfied, so far as was possible, the requirement to weigh up the various interests at stake. The university authorities judiciously sought a means whereby they could avoid having to turn away students wearing the headscarf and at the same time honour their obligation to protect the rights of others and the interests of the education system. Lastly, the process also appeared to have been accompanied by safeguards – the rule requiring conformity with statute and judicial review – that were apt to protect the students' interests.

Further, the applicant could reasonably have foreseen that she ran the risk of being refused access to lectures and examinations if, as subsequently happened, she continued to wear the Islamic headscarf after 23 February 1998.

In these circumstances, the ban on wearing the Islamic headscarf had not impaired the very essence of the applicant's right to education and, in the light of the Court's findings with respect to the other Articles relied on by the applicant. Neither did it conflict with other rights enshrined in the Convention or its Protocols. The Court therefore found that there had been no violation of Article 2 of Protocol No. 1.

Articles 8, 10 and 14

The Court did not find any violation of Articles 8 or 10, the arguments advanced by the applicant being a mere reformulation of her complaint under Article 9 and Article 2 of Protocol No. 1, in respect of which the Court had concluded that there had been no violation.

As regards the complaint under Article 14, the Court noted that the applicant had not provided detailed particulars in her pleadings before the Grand Chamber. Furthermore, as had already been noted, the regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued, among other things, the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions.

Consequently the Court held that there had been no violation of Articles 8, 10 or 14.

Judges Rozakis and Vajić expressed a joint concurring opinion and Judge Tulkens expressed a dissenting opinion. These opinions are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Press contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)
Emma Hellyer (telephone: +00 33 (0)3 90 21 42 15)
Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)
Beverley Jacobs (telephone: +00 33 (0)3 90 21 54 21)
Fax: +00 33 (0)3 88 41 27 91

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