[TRANSLATION]

(...)

THE FACTS

The applicants, whose names are listed in the appendix, are Turkish nationals and live in Istanbul. Before the Court, they were represented by Mr H. Tuna, a member of the Istanbul Bar.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are pupils at the İmam-Hatip Secondary Schools in the Eyüp, Tuzla, Pendik, Ümraniye and Kadıköy districts of Istanbul, and their parents. The İmam-Hatip Secondary Schools are State-funded religious schools.

The applicants explained that, with certain exceptions, on enrolling at the İmam-Hatip Secondary Schools the pupils concerned had produced identity photographs that showed them wearing the headscarf. The pupils had always worn the Islamic headscarf to school, in accordance with both their own and their parents' religious beliefs. As a general rule, they had started to wear the Islamic headscarf at the onset of puberty at the age of 12.

However, from 26 February 2002 onwards pupils wearing the headscarf had been refused access to the schools. Pupils attending school in the headscarf had been seen by the school educational psychologist, who had attempted to justify the need for the rules. These measures were based on a directive which the Istanbul Regional Governor's Office had issued to the district education officers on 12 February 2002. The relevant sections of the directive provided:

> "Pupils are enrolled at the İmam-Hatip Secondary Schools only once a document signed by the parents has been lodged confirming that the pupils will comply with the rules on dress. In addition, a letter was sent on 4 October 1999 requesting compliance with this practice.
>
> However, we have been informed that a small number of pupils do not comply with the rules on dress.
>
> Their persistent failure to comply with the rules shows that they are not acting innocently. Their decision to wear the headscarf at school thus amounts to a rejection of the rules on dress and a protest against the education system.
>
> That being so, disciplinary proceedings will be taken against head teachers or members of the teaching staff who fail to ensure rigorous compliance with the rules on dress ... Furthermore, all sporting, cultural and social activities that are liable to

cause tension at school and unsettle the pupils must cease and links between the schools and associations, foundations and boarding schools [promoting such practices] must be severed.

In the light of this, you are requested to take all necessary measures to reintegrate these pupils into our education system, to refuse pupils who do not obey the rules on dress access to school premises and to institute disciplinary proceedings against them without delay under the Rules for Promoting and Ensuring Discipline in Secondary Schools dependent on the Ministry of Education [*Milli Eğitim Bakanlığı Ortaöğretim Kurumları Ödül ve Disiplin Yönetmeliği* – 'the disciplinary rules']. [Likewise,] proceedings must be brought against head teachers or members of the teaching staff who fail to apply the disciplinary rules diligently."

On 2 March 2002 a further memorandum issued by the Chief Education Officer at the Istanbul Regional Governor's Office was sent to the district offices. The relevant sections of the memorandum stated:

"The İmam-Hatip Secondary Schools are vocational secondary schools that are part of our State education system ...

It would appear that some girls in these schools do not comply with the rules on dress. Their acts are concerted and conscious and the girls are supported by certain groups outside the school which are exploiting this issue. [Consequently,] it is clear that these girls are, under the political and ideological influence of groups both inside and outside the school, putting pressure on head teachers, members of the teaching staff and pupils who do not share their views. [It is further established that,] although they attend school, neither they, nor their supporters among the boys, go to classes.

On enrolling, all pupils in these schools are informed of the school rules and give a written undertaking to comply with them. However, with the help of their supporters, some pupils have for ideological reasons stated and demonstrated by their conduct a determination to pursue their studies without obeying the rules.

Rule 12a. of the Rules on Dress for Staff and Pupils in Schools dependent on the Ministry of Education and Other Ministries (no. 17849 of 25 October 1992) states: 'On school premises, girls shall not wear any head covering and their hair shall be clean and tidy' ...

An exception to this rule is made in Rule 12c.(3), which provides '[i]n İmam-Hatip schools, girls may cover their heads only during Koran lessons'.

Further, in judgment no. 1994/484 the Supreme Administrative Court dismissed an appeal brought by a parent whose daughter, a pupil at an İmam-Hatip Secondary School, was required to remove her headscarf under the disciplinary rules published in the Official Gazette of 31 January 1985. It found that 'such behaviour at school is the symbol of a vision that is contrary to the fundamental principles of the Republic'.

Accordingly, it is necessary to ensure continuity within the education system and to make schools accessible to everyone by establishing a calm environment at school and harmonising practice when applying the rules to pupils who do not obey the rules on dress or wish to pursue their studies ..."

The memorandum characterised the failure to comply with the rules on dress as a concerted attack on the fundamental principles of the Republic and gave the head teachers eleven instructions on how to deal with breaches. In the first instance, pupils were to be informed of the relevant

rules, which were to be applied strictly. In the event of repeated transgressions, the pupil was to be given an immediate warning and disciplinary proceedings were to be commenced. The head teachers were also requested to prevent those who supported such misconduct for political and ideological ends from meeting within the vicinity of the school.

The applicants produced to the Court eleven documents signed by a group of people (pupils, parents and third parties) who had gathered outside the İmam-Hatip Secondary Schools in Kadıköy and Ümraniye attesting that on 28 February, 1, 4, 28 and 29 March 2002, the head teachers, accompanied by members of the security forces, had prevented pupils wearing the headscarf from entering the schools.

At 9.30 a.m. on 19 March 2002 a meeting was organised outside the İmam-Hatip Secondary School in Eyüp. According to a report by the security forces, one T. Ün, who claimed to be a member of the ÖNDER Association (an association formed by former pupils of the İmam-Hatip Secondary Schools), was arrested on suspicion of provocation. The report also stated that about a hundred headscarf-wearing pupils had demonstrated outside the school shouting slogans such as "If you are in [the school], come on out", "Citizens! Do not sleep! Defend your pupils", "Citizens, do not sleep! Your turn will come". After warnings by the security forces, thirty-one pupils were taken to the police station at 11 a.m. that same day for identity checks. They were released at 4 p.m.

Similarly, at 9 a.m. on 9 April 2002 one of the applicants, Necmi Aköz, the father of Miraç Aköz, a pupil at the İmam-Hatip Secondary School in Kadıköy, was arrested by police officers at a gathering outside the school and taken to Kadıköy police station. He was accused of inciting pupils to disobey the rules on dress. He was released at 1.45 p.m., after the police had taken a statement.

On 16 April 2002 one of the applicants, Hayrunnisa Sümeyye Torpil, lodged a request with the Eyüp Police Court for a declaration that the head teachers of the İmam-Hatip Secondary School in Eyüp had prevented her from wearing her headscarf to school as her religious beliefs required. The Police Court decided the same day that it had no jurisdiction to hear the request.

A further request to the same end was rejected by the Eyüp Police Court on 20 May 2002. It found that there was no reason to make any declaration since the act complained of was lawful.

In the meantime the applicants lodged a criminal complaint against the head teachers of the İmam-Hatip Secondary Schools and the police. They alleged that denying pupils wearing the headscarf access to school violated their fundamental right to education and was therefore a criminal offence.

The applicants have produced to the Court a decision dated 3 April 2002 in which the public prosecutor at the Court of Cassation declared a

complaint against the Istanbul Regional Governor unfounded after deciding that his actions complied with the rules on dress.

The applicants have also produced an opinion issued by the Human Rights Committee attached to the Istanbul Regional Governor's Office on 27 March 2002 after 174 petitions were lodged.

Citing the principle of secularism enunciated in the Turkish Constitution and the risk that the principle of neutrality in State education would be undermined, arguments that had already been expounded at length by the Constitutional Court in a judgment of 7 March 1989, the Human Rights Committee concluded that the rules on dress were consistent with the Constitution and human rights. It noted that the State was required by Article 2 of Protocol No. 1 to take measures to uphold fundamental rights such as freedom of religion and the right to education, and stated that the existence of the İmam-Hatip schools showed that the State had taken concrete measures to secure those rights. It further pointed out that, by its very nature, the right to education required State regulation.

In that connection, the Human Rights Committee noted that the main reason the rules on pupils' dress had been introduced was to protect the principle of secularism and added that the country's highest courts had on a number of occasions ruled that the rules were consistent with constitutional principles. Furthermore, the pupils who had not complied with the rules on dress had been informed of the reasons for the rules on enrolling at the school and had given a written undertaking to comply with them. However, the pupils concerned and those who supported them for ideological reasons had shown that they did not intend to abide by the rules. The Human Rights Committee concluded that such conduct was not protected in a State committed to the rule of law.

At the same time, on 11 April 2002 a parliamentary commission which had been set up to look into the events that had taken place in the İmam-Hatip Secondary Schools in Istanbul in March 2002 adopted its opinion. It noted in particular that the forcible removal of certain pupils by the security forces had caused social unrest. Consequently, it advised against any further use of force. It also noted that the events had occurred as a result of the rules on dress for which the National Assembly and the executive were responsible.

B. Relevant domestic law and practice

1. The Constitution

Article 24, in its relevant parts, provides as follows:

> "Everyone shall have the right to freedom of conscience and religious conviction.
>
> ...

No one shall be compelled to participate in prayers, worship or religious services or to reveal his or her religious beliefs and convictions; no one shall be censured or prosecuted for his religious beliefs or convictions.

Education and instruction in religion and ethics shall be provided under the supervision and control of the State. Instruction in religious culture and in morals shall be a compulsory part of the curricula of primary and secondary schools. Other religious education and instruction shall be a matter for individual choice, with the decision in the case of minors being taken by their legal guardians."

2. The Basic Law on State Education

Section 12 of the Basic Law on State Education (Law no. 1739, which was published in the Official Gazette of 24 June 1973), provides:

"Secularism is the cornerstone of the Turkish State-education system. Religious culture and moral instruction are among the compulsory subjects taught in primary and secondary schools and other schools of the same level."

3. Rules on dress and disciplinary proceedings

Rules 11 and 12 of the Rules on Dress for Staff and Pupils in Schools dependent on the Ministry of Education and Other Ministries (22 July 1981) lay down the rules governing pupils' dress. The relevant parts provide:

Rule 11 – Lower secondary school

"a. Girls

Girls shall wear a black uniform with a white collar. On school premises, they shall not wear any head covering and their hair shall be clean and tidy. Long hair should be worn in plaits and tied ...

b. Boys

Boys shall wear a jacket, shirt and trousers. They shall wear a tie ..."

Rule 12 – Upper secondary school

"a. Girls

Girls shall wear a non-revealing knee-length sleeveless uniform without splits. The colour of the uniform shall be decided by the school. Beneath the uniform, a short-sleeved or long-sleeved blouse with closed collar or, depending on the season, a pullover shall be worn that matches the uniform. On school premises, girls shall not wear any head covering and their hair shall be clean and tidy. Long hair should be worn in plaits and tied ...

b. Boys

Boys shall wear a jacket, shirt and trousers. They shall wear a tie ...

c. Girls and boys

(1) In workshops, laboratories or other places of work, they shall wear an apron or dungarees.

(2) For sports lessons and activities, pupils should wear the dress recommended by the school administration.

(3) In İmam-Hatip schools, girls may cover their heads only during Koran lessons ..."

Rule 17 of the Rules for Promoting and Ensuring Discipline in Secondary Schools dependent on the Ministry of Education published in the Official Gazette of 31 January 1995 (*Milli Eğitim Bakanlığı Ortaöğretim Kurumları Ödül ve Disiplin Yönetmeliği*) provides that the penalty for failing to comply with the rules on dress is a reprimand.

It also lays down that the penalty for wearing symbols that are liable to result in discrimination or for acting with intent to isolate, rebuke or show contempt for a person or group of persons on account of their language, sex, political ideas or philosophical beliefs, race, religion or branch of a religion is temporary suspension.

4. Relevant case-law on the Islamic headscarf

In a judgment of 7 March 1989 that was published in the Official Gazette of 5 July 1989, the Constitutional Court ruled that a statutory provision permitting the headscarf to be worn in higher-education institutions on religious grounds was unconstitutional, as it contravened the principle of secularism laid down by the Constitution. It stated that the principle of secularism intrinsically encompassed religious neutrality and precluded the grant of privileges to individual religions. It considered the headscarf to have obvious religious connotations. In Turkey, where the majority of the population were Muslims, presenting the wearing of the Islamic headscarf as a mandatory religious duty would result in discrimination between practising Muslims, non-practising Muslims and non-believers on grounds of dress, with anyone who refused to wear the headscarf undoubtedly being regarded as opposed to religion or as non-religious. Accordingly, allowing the headscarf to be worn would be liable to undermine order both inside and outside the university (for a more detailed summary of the Constitutional Court judgment, see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 39, ECHR 2005-XI).

5. The İmam-Hatip Secondary Schools and religious education

The İmam-Hatip Secondary Schools were set up in the 1950s under section 4 of the Education Services (Merger) Act (Law no. 430), which was passed on 3 March 1924. They form part of the Turkish State-education system and are dependent on the Ministry of Education. They are not denominational schools.

Section 32 of the Basic Law on State Education defines the İmam-Hatip Secondary Schools as follows:

"The İmam-Hatip Secondary Schools are secondary-level teaching institutions opened by and dependent on the Ministry of Education. They shall provide vocational teaching for religious functionaries such as imams, *hatips* [readers of the Koran] and

> teachers of the Koran. They shall offer a curriculum providing vocational training and preparation for higher education."

Approximately 40% of the subjects taught in these schools are primarily aimed at teaching Islamic theology. The remainder of the curriculum is taken up by general subjects. According to information furnished by the applicants, in 1999 there were 604 İmam-Hatip Secondary Schools in Turkey attended by 134,224 pupils. Once they have completed their secondary-school education, pupils may enrol at the theology faculties after sitting a general examination. Parents send their children to these schools not just to enable them to become future religious functionaries but also to allow them to pursue advanced studies in general subjects while at the same time receiving a sound religious grounding. Many practising families who are dissatisfied with the limited time and facilities devoted to religious studies in the general education system have philosophical affinities with the curriculum offered by the vocational schools for religious functionaries. A section of the population has thus deflected these schools from their original purpose – which was to train modern, professional clerics – and has gradually turned them into general secondary-education schools with a religious vocation (for more detailed information, see "Teaching of religion and morals in the Turkish education system", Mehmet Zeki Aydın and Ural Manço, Centre for Islam in Europe, www.flwi.ugent.be).

Furthermore, a form of religious instruction has been organised in most parts of Turkey in the form of courses on the Koran (*Kuran Kursu*). These courses are not part of the Ministry of Education's curriculum but are run under the auspices of the Religious Affairs Office, the senior authority responsible for overseeing the management and conduct of Islamic affairs in Turkey.

6. The Assemblies and Processions Act

Section 10 of the Assemblies and Processions Act (Law no. 2911), which came into force on 8 October 1983, provides:

> "In order for a meeting to be held, the regional or provincial governor's office for the area in which the demonstration is to take place must be given at least 72 hours' notice before the start of the meeting. Notice must be given during working hours and be signed by all the members of the executive board ..."

Section 22 of the Act prohibits assemblies and processions on the public highway, or in parks, places of worship or buildings occupied by public authorities. Assemblies on the public highway have to comply with the safety regulations and must not impede members of the public or public transport. Lastly, section 24 lays down that assemblies or processions that do not comply with the provisions of the Act shall be broken up by the regional security forces after a warning has been issued to the participants.

COMPLAINTS

The applicants argued that the measures in issue violated Articles 3, 5, 6, 7, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1. In their submission, they were not required to exhaust domestic remedies as these had been shown to be ineffective by the settled case-law of the domestic courts.

1. The parents alleged that the ban on wearing the Islamic headscarf in the İmam-Hatip Secondary Schools violated their children's right to education, as set out in the first sentence of Article 2 of Protocol No. 1.

They further submitted that the measures had also infringed the parents' rights under the second sentence of Article 2 of Protocol No. 1. They had enrolled their children at the İmam-Hatip Secondary Schools in the belief that they would receive an education consistent with their religious convictions. However, the measures that had been imposed from 26 February 2002 onwards had deprived them of that right.

2. The applicants complained under Article 9 of the Convention that the ban on wearing the Islamic headscarf in the İmam-Hatip Secondary Schools constituted an unjustified infringement of their right to freedom of religion and in particular their right to manifest their religion.

3. The applicants also alleged a violation of Article 14 of the Convention, taken in conjunction with Articles 8, 9 and 10 of the Convention, and of Article 2 of Protocol No. 1. In their submission, the ban on wearing the Islamic headscarf necessarily constituted discriminatory conduct as Muslims regarded wearing the headscarf as a religious duty. Further, the ban imposed by the Turkish authorities constituted sexual discrimination, as Muslim boys were able to study in State schools without being subjected to any form of ban. They added that the only pupils who were denied access to State schools were those who wore the headscarf, even though the rules on dress contained a number of restrictions that were not complied with in practice (such as the rule proscribing the miniskirt).

4. The applicants argued that their right of access to a court within the meaning of Article 6 of the Convention had been violated, in that the domestic courts had failed to grant them a declaration recognising that the ban on wearing the Islamic headscarf had been implemented. They further alleged that the ban on pupils wearing the headscarf at school constituted punishment without law and thus infringed the rule requiring offences and punishments to be strictly defined by law, within the meaning of Article 7 of the Convention, as it had no basis in Turkish law.

5. The applicants argued that their right to freedom of association within the meaning of Article 11 of the Convention had been infringed by their forcible attendance at the police station for assembling outside the İmam-Hatip Secondary Schools. They further alleged that the security forces had used disproportionate force that had resulted in injuries to the children.

6. The applicants complained under Article 13 of the Convention that they had not had an effective remedy before the domestic courts to voice the complaints which they had now lodged with the Court.

7. The applicant Necmi Aköz alleged a violation of Article 5 § 1 of the Convention on account of his arrest on 9 April 2002. He also alleged that he had not been informed of the reasons for his arrest.

Similarly, the thirty-one pupils who were arrested on 19 March 2002 complained that they had been deprived of their liberty for taking part in a peaceful assembly outside the school. They submitted that their rights under Article 5 § 1 of the Convention had thereby been violated.

8. Relying on Article 1 of Protocol No. 1, the applicants complained that the measures in issue had violated their right to the peaceful enjoyment of their possessions in that their daughters had been deprived of an education that would have afforded them access to certain professions.

9. Lastly, in reliance on the same facts and without giving any details, the applicants alleged a violation of Article 3 of the Convention.

THE LAW

The applicants submitted that the rules prohibiting pupils from wearing the Islamic headscarf in the İmam-Hatip Secondary Schools and the measures that had been taken under those rules violated Articles 3, 5, 6, 7, 8, 9, 10, 11, 13 and 14 of the Convention, and Articles 1 and 2 of Protocol No. 1.

The Court notes that the applicants did not refer their complaints under the Convention to the domestic courts, as they maintained that the domestic remedies had been rendered ineffective by the domestic courts' settled case-law on the Islamic headscarf.

The Court does not consider it necessary to verify whether or not the applicants had domestic remedies available to them within the meaning of Article 35 § 1 of the Convention for their complaints under the Convention as the application is, in any event, inadmissible for other reasons which are set out below (see, to the same effect, *Phull v. France* (dec.), no. 35753/03, ECHR 2005-I).

A. The complaint under the first sentence of Article 2 of Protocol No. 1

The applicants complained of a violation of the right to education within the meaning of the first sentence of Article 2 of Protocol No. 1, which provides:

> "No person shall be denied the right to education."

The parents complained that, in breach of the first sentence of Article 2 of Protocol No. 1, their daughters had been deprived of the right to education, as the ban on wearing the headscarf in the İmam-Hatip Secondary Schools had deprived them of their right of access to school.

The Court reiterates that the right to education, as set out in the first sentence of Article 2 of Protocol No. 1, guarantees everyone within the jurisdiction of the Contracting States "a right of access to educational institutions existing at a given time". However, this right is not absolute, but may be subject to limitations; these are permitted by implication since "the right of access by its very nature calls for regulation by the State". The national authorities enjoy a certain margin of appreciation in defining regulations, although the final decision as to the observance of the Convention's requirements rests with the Court. In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. Furthermore, a limitation will not be compatible with that Article unless there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Such restrictions must not conflict with other rights enshrined in the Convention and its Protocols either. The provisions of the Convention and its Protocols must be considered as a whole (see *Leyla Şahin*, cited above, §§ 152-56).

In the instant case, the Court observes that the measures taken against the pupils were clearly foreseeable, as the pupils had undertaken to comply with the rules on dress when they enrolled.

However, the applicants maintained that the rules were not compatible with the Turkish Constitution as there was no constitutional or legislative provision that prohibited wearing the Islamic headscarf at school. In the alternative, they argued that the school authorities' tolerance of the headscarf over an extended period had led them to believe that the exception that permitted pupils to wear the Islamic headscarf during Koran lessons had become the rule and that the headscarf could now be worn on school premises.

With regard to the question whether there were any constitutional or legislative provisions to prohibit pupils from wearing the Islamic headscarf, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. In that connection, it would merely observe that section 12 of the Basic Law on State Education provides: "Secularism is the cornerstone of the Turkish State-education system." Further, and as was noted in the aforementioned *Leyla Şahin* judgment (§ 99), the Constitutional Court and Supreme Administrative Court have stated that allowing pupils to wear the Islamic headscarf is incompatible with the principle of secularism since the headscarf is in the

process of becoming the symbol of a vision that is contrary to women's freedom and the fundamental principles.

Nor can the Court accept the applicants' submission that by tolerating the wearing of the Islamic head scarf on school premises the school authorities tacitly permitted it to be worn, in breach of the rules.

That argument does not stand up to examination when the evidence is considered. On enrolling in an İmam-Hatip school both the pupils and their parents were informed of the tenor of the rules on dress and undertook to comply with them. From 1999 in particular, in view of the increasing number of protests against the rules, the Istanbul Regional Governor asked the schools to take special care to ensure that they were scrupulously applied in a spirit of dialogue with a view to preserving a calm environment at school. Consequently, without excluding the possibility that, depending on the context, there might be slight differences in the ways the rules are applied, such conduct on the part of the authorities cannot make the rules unforeseeable (see, to the same effect, *Leyla Şahin*, cited above, § 95).

Likewise, regard being had to the circumstances of the case and the wording of the domestic authorities' decisions, the restriction may be regarded as having pursued the legitimate aims of protecting the rights and freedoms of others and of preventing disorder.

As to whether the measures were proportionate, the Court observes at the outset that secondary schools in Turkey have compulsory rules on dress which have to be complied with by all pupils without distinction. Rule 12 of the relevant rules requires girls to wear a uniform and not to wear any head covering at school. By virtue of an exception to this rule that applies in İmam-Hatip schools, girls are allowed to cover their heads during Koran lessons. Consequently, it cannot be said that there is a strict prohibition on wearing the Islamic headscarf but a set of rules which allow the headscarf to be worn during Koran lessons.

It should be noted that school rules of this kind are general rules that apply to all pupils independently of their religious beliefs and serve among other things the legitimate aim of preserving the neutral character of secondary education, which is intended to protect adolescents when they are at an impressionable age (see, *mutatis mutandis*, *Çiftçi v. Turkey* (dec.), no. 71860/01, ECHR 2004-VI). On this subject, the Convention institutions have consistently said that the regulation of educational institutions may vary in time and in place according to the needs and resources of the community (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, § 5, Series A no. 6), and that the competent authorities must be left some discretion in this sphere (see, *mutatis mutandis*, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 53, Series A no. 23; *Çiftçi*, cited above; *X v. the United Kingdom*, no. 8160/78, Commission decision of 12 March 1981,

Decisions and Reports (DR) 22, p. 27; and *40 mothers v. Sweden*, no. 6853/74, Commission decision of 9 March 1977, DR 9, p. 27).

Furthermore, it was only after the pupils had refused, in breach of the rules, to remove the headscarf on the school premises that the İmam-Hatip school authorities decided to refuse access to pupils wearing the headscarf. The measures were thus taken as a last resort with a view to restoring calm in the schools where disturbances related to the protests were spreading after the school authorities' attempts at mediation had failed.

The Court further notes that in its opinion of 27 March 2002 the Human Rights Committee attached to the Istanbul Regional Governor's Office, whose opinion had been sought by the rules' opponents, concluded that the rules were justified both by the principle of secularism enunciated in the Turkish Constitution and by the need to prevent any undermining of the principle of school neutrality, two arguments that had been expounded by the Constitutional Court in its judgment of 7 March 1989. In that judgment, the Constitutional Court had regard to the need to comply with the principle of pluralism, especially in countries where the vast majority of the population adhered to a specific religion and where the manifestation of its rights and symbols, without any restriction on the place or manner of such manifestation, might put pressure on pupils who either did not practise that religion or adhered to another religion. The Human Rights Committee also stated that the very existence of the İmam-Hatip schools showed that the State had taken concrete measures to secure the right to education, which by its nature required State regulation. However, stressing the importance of the rule of law and referring to the Turkish courts' decisions on the contested rules, the Committee drew the petitioners' attention to the fact that the request supported by certain movements from outside the education sector for permission to wear the Islamic headscarf in all parts of the school was liable to lead to unrest and disturbances in the schools.

These principles appear to the Court to be clear and perfectly legitimate.

In conclusion, the Court finds that the restriction in issue and the related measures were justified in principle and proportionate to the pursued aims of protecting the rights and freedoms of others, preventing disorder and preserving the neutrality of secondary education. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

B. The complaint under the second sentence of Article 2 of Protocol No. 1

The parents maintained that the impugned measures had infringed their rights under the second sentence of Article 2 of Protocol No. 1, which provides:

> "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

They said that they had enrolled their children at İmam-Hatip schools in the belief that they would receive an education that was consistent with their religious beliefs. However, the measures that had been taken on and after 26 February 2002 had deprived them of that right.

The Court reiterates that the second sentence of Article 2 aims first and foremost at safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of "democratic society" as conceived by the Convention (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 50). Article 2 of Protocol No. 1 enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme. Given the States' discretion in this sphere, the aforementioned provision forbids the State "to pursue an aim of indoctrination that might be regarded as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded" (see *Valsamis v. Greece*, 18 December 1996, §§ 26-27, *Reports of Judgments and Decisions* 1996-VI, and *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53).

The Court notes, firstly, that the İmam-Hatip Secondary Schools, where Islamic theology is widely taught, are State secondary schools whose primary role is to train future religious functionaries. Moreover, many parents enrol their children in these schools not just with a view to their becoming future religious functionaries but also to enable them to pursue their general secondary education while receiving a sound religious grounding.

The parents have not suggested that the teaching of Islamic theology in these schools is an attempt at indoctrination, or complained of the manner in which the curriculum is set and planned (compare *Kjeldsen, Busk Madsen and Pedersen*, cited above). They seek an exemption from the rules which prevent their daughters from wearing the Islamic headscarf when they are not attending Koran lessons and unrestricted permission for them to wear the headscarf at school, in accordance with their religious beliefs.

On this point, the Court observes that the second sentence of Article 2 principally implies that the State, in fulfilling the functions assumed by it with regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53) in a calm atmosphere free from unrestrained proselytism.

Although their primary function is to train future religious functionaries, the İmam-Hatip Secondary Schools are not religious schools and are part of the Turkish State-education system. Consequently, they are not exempt from the principle of secularism. A State that establishes State schools of

this kind cannot be released from its role as a neutral arbiter and guarantor of religious pluralism. In that connection, it is incumbent on the competent authorities to be very careful to ensure, within the bounds of their margin of appreciation, that when, out of respect for pluralism and the freedom of others, they permit students to manifest their religious beliefs on school premises, such manifestation does not become ostentatious and thus a source of pressure and exclusion. The need for such care is made all the more acute by the fact that the meaning or impact of the public expression of a religious belief will differ according to time and context (see, *mutatis mutandis*, *Leyla Şahin*, cited above, § 109).

The parents considered it unacceptable that their daughters should have been denied access to school for adhering to a religious precept. However, in that connection the Court considers it sufficient to note that both the parents and the pupils were informed of the consequences of not obeying the rules. It should also be noted that the refusal of access to the schools concerned has not been accompanied by disciplinary measures and that the pupils are free to continue to attend the schools provided they comply with the rules on dress.

Furthermore, the obligation on the pupils not to cover their heads on school premises, except when attending Koran lessons, does not deprive their parents of their right "to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions" (see, *mutatis mutandis*, *Valsamis*, cited above, § 31 *in fine*).

Consequently, the rules on dress and related measures in the instant case do not infringe the right set out in the second sentence of Article 2 of Protocol No. 1. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

C. The complaint under Article 9 of the Convention

The parents also relied on Article 9 of the Convention, which reads:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to 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."

The Court reiterates that, while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's

religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares.

Article 9 lists a number of forms which manifestation of a religion or belief may take, namely worship, teaching, practice and observance. Nevertheless, it does not protect every act motivated or influenced by a religion or belief and does not always guarantee the right to behave in public in a manner governed by that belief (see *Leyla Şahin*, cited above, §§ 105 and 212).

In the instant case, the Court has found (see above) that the obligation imposed on pupils to wear a school uniform and not to cover their heads at school is a general rule applicable to all pupils irrespective of their religious beliefs. Consequently, in the light of the considerations set out above with respect to Article 2 of Protocol No. 1, even assuming that the applicants' right to manifest their religion has been interfered with, the Court finds no appearance of a violation of Article 9 of the Convention (see, with respect to Articles 8 and 10 and *mutatis mutandis*, *Stevens v. the United Kingdom*, no. 11674/85, Commission decision of 3 March 1986, DR 46, p. 245).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

D. The complaints under Articles 3, 8, 10, 13 and 14 of the Convention and Article 1 of Protocol No. 1

The applicants alleged violations of Articles 3, 8, 10, 13 and 14 of the Convention and of Article 1 of Protocol No. 1.

The Court reiterates that treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. It manifestly did not reach that level in the instant case.

As regards the applicants' complaints under Articles 8 and 10, they are a mere reformulation of their complaints under Article 2 of Protocol No. 1 and Article 9 of the Convention in respect of which the Court has found no appearance of a violation.

As to the complaints under Article 14, taken alone or in conjunction with the other provisions relied on by the applicants, the Court observes that the rules on school dress are unconnected with a pupil's affiliation to a religion but pursue, *inter alia*, the legitimate aims of preventing disorder and protecting the rights and freedoms of others. The manifest purpose of the rules is to preserve neutrality and secularism within schools – thus protecting adolescents at an age when they are impressionable – and to protect the interests of the education system. Furthermore, analogous rules also apply to boys at the İmam-Hatip Secondary Schools.

As regards the complaints under Article 13, there is no evidence before the Court to show that the applicants did not have an effective remedy

available to them. In addition to the administrative remedies which they used, it was open to them to apply to the administrative courts for judicial review of the school authorities' decisions. However, they chose not to do so in the light of the settled case-law on the subject.

With regard to the complaint under Article 1 of Protocol No. 1 the Court notes that, according to the information in the case file, the pupils concerned are still able to resume their secondary education, as no disciplinary penalties have been imposed on them. As to loss of earnings, the position under the Court's settled case-law is that future income only becomes a "possession" once it has been earned or an enforceable claim to it exists.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

E. The complaints under Articles 5 and 11 of the Convention

1. Necmi Aköz and thirty-one of the pupils alleged that they had been arrested in violation of Article 5 of the Convention.

The Court reiterates that on the question whether detention is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down an obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness.

In the present case, the thirty-one pupils were arrested on 19 March 2002 and taken to a police station on the ground that they had contravened the Assemblies and Processions Act (Law no. 2911). They were briefly deprived of their liberty and released some hours later, without being brought before a court.

Mr Aköz was arrested on 9 April 2002 at a gathering organised outside the İmam-Hatip Secondary School in Kadıköy on suspicion of inciting others to break the law. He was held at the police station for five hours to enable a statement to be taken.

In the light of all these circumstances, there is no evidence to suggest that these deprivations of liberty were arbitrary (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 78, *Reports* 1998-VII).

It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The same applicants alleged a violation of Article 11 of the Convention on account of the police intervention in their peaceful assembly. However, even assuming that the applicants have exhausted the available domestic remedies, the Court has not seen any prima facie evidence to show that the measures taken by the security forces in order to break up the

unauthorised assembly constituted a disproportionate interference with their rights.

It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

F. The complaints under Articles 6 and 7 of the Convention

1. The applicants maintained that their right of access to a court for the purposes of Article 6 of the Convention had been violated by the domestic courts' refusal to grant them a declaration confirming that the ban on wearing the Islamic headscarf had been put into effect.

However, the Court finds no connection between that refusal and the issue of access to a court. The applicants could have lodged an application for judicial review with the administrative courts without first obtaining a declaration as to the facts. However, they chose not to do so in the light of the settled case-law on the subject.

It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As regards the complaint under Article 7 of the Convention, the Court notes that that provision embodies the principle that only the law can define a crime and prescribe a penalty. It also prohibits the retrospective application of criminal law (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). It is abundantly clear that a refusal to allow pupils access to school premises pursuant to the school rules cannot be considered a penalty arising out of a criminal conviction. Consequently, Article 7 § 1 is not applicable in the present case.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Appendix

List of the applicants

1. Şefika Köse, mother of Sabire Köse
2. Sabire Köse, born in 1987, pupil at İmam-Hatip Secondary School, Eyüp
3. Ahmet Direk, father of Ayşe Direk
4. Ayşe Direk, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
5. Yunus Torpil, father of Hayrunnisa Sümeyye Torpil

6. Hayrunnisa Sümeyye Torpil, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
7. Ayşe Nur Yetgil, mother of Melike İzgördü
8. Melike İzgördü, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
9. Adem Torpil, father of Fatma Torpil
10. Fatma Torpil, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
11. Halil Yıldız, father of Esma Yıldız
12. Esma Yıldız, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
13. Ahmet Doğan, father of Ümmü Gülsüm Doğan
14. Ümmü Gülsüm Doğan, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
15. Hüseyin Demir, father of Merve Demir
16. Merve Demir, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
17. Zekeriya Kayış, father of Tuba Kayış
18. Tuba Kayış, born in 1986, pupil at İmam-Hatip Secondary School, Kadıköy
19. Mehmet Yücel, father of Zeynep Yücel
20. Zeynep Yücel, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
21. Ali Usta, father of Zeynep Usta
22. Zeynep Usta, born in 1989, pupil at İmam-Hatip Secondary School, Tuzla
23. Sevdiye Süer, mother of Hilal Süer
24. Hilal Süer, born in 1985, pupil at İmam-Hatip Secondary School, Tuzla
25. Gülhanım Demir, mother of Aysel Demir
26. Aysel Demir, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
27. Türkan Özçelik, mother of Dilek Özçelik
28. Dilek Özçelik, born in 1986, pupil at İmam-Hatip Secondary School, Tuzla
29. Hacı Arslan, father of Fatma Arslan
30. Fatma Arslan, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
31. Azime Akkuş, mother of Tuğba Akkuş
32. Tuğba Akkuş, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
33. Satılmış Aşaroğlu, mother of Tuba Aşaroğlu
34. Tuba Aşaroğlu, born in 1988, pupil at İmam-Hatip Secondary School, Kadıköy
35. Cemal Karagöz, father of Ayşe Karagöz
36. Ayşe Karagöz, pupil at İmam-Hatip Secondary School, Tuzla
37. Dilaver Kılınç, father of Safiye Kılınç
38. Safiye Kılınç, born in 1985, pupil at İmam-Hatip Secondary School, Tuzla
39. Osman Albayrak, father of Sare and Semra Albayrak
40. Sare Albayrak, born in 1984, pupil at İmam-Hatip Secondary School, Tuzla
41. Semra Albayrak, born in 1986, pupil at İmam-Hatip Secondary School, Tuzla
42. Ağa Dede Çelik, father of Neslihan Çelik
43. Neslihan Çelik, born in 1986, pupil at İmam-Hatip Secondary School, Tuzla
44. Yaşar Kurcan, father of Fatma Kurcan
45. Fatma Kurcan, born in 1983, pupil at İmam-Hatip Secondary School, Tuzla
46. İrfan Yılmaz, father of Özlem Yılmaz
47. Özlem Yılmaz, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
48. Hikmet Okuyucu, father of Ayşe Okuyucu
49. Ayşe Okuyucu, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
50. Hacı Ali Puşti, father of Ayşegül Puşti
51. Ayşegül Puşti, born in 1986, pupil at İmam-Hatip Secondary School, Tuzla

52. Ümmü Ekinci, mother of Tuğba Ekinci
53. Tuğba Ekinci, born in 1987, pupil at İmam-Hatip Secondary School, Tuzla
54. Ayşe Sarı, mother of Dilek Sarı
55. Dilek Sarı, born in 1986, pupil at İmam-Hatip Secondary School, Pendik
56. Şule Doruk, pupil at İmam-Hatip Secondary School, Pendik
57. Tuğba Şahin, born in 1985, pupil at İmam-Hatip Secondary School, Pendik
58. Hacer Küçük, born in 1986, pupil at İmam-Hatip Secondary School, Tuzla
59. Gülşah Demirkan, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
60. Ümmühan Güleç, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
61. Ayşe Yılmaz, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
62. Beyza Ormancı, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
63. Azize Turan, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
64. Zübeyde Gür, born in 1984, pupil at İmam-Hatip Secondary School, Eyüp
65. Vildan Yıldırım, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
66. Neşe Arslan, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
67. Mevhibe Sümeyye Kahya, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
68. Seval Yenituran, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
69. Gamze Ünal, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
70. Reyhan Güler, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
71. Zeynep Akın, born in 1982, pupil at İmam-Hatip Secondary School, Eyüp
72. Narin Yıldız, born in 1984, pupil at İmam-Hatip Secondary School, Eyüp
73. Tuğba İşler, born in 1986, pupil at İmam-Hatip Secondary School, Eyüp
74. Seval Gürsoyn, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
75. Ceylan Şimşek, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
76. Meryem Topçu, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
77. Yasemin Yüksel, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
78. Gülşen Balekoğlu, born in 1987, pupil at İmam-Hatip Secondary School, Eyüp
79. Elif Can, born in 1985, pupil at İmam-Hatip Secondary School, Eyüp
80. Mehmet Kalafat, father of Rabia Kalafat
81. Rabia Kalafat, born in 1985, pupil at İmam-Hatip Secondary School, Ümraniye
82. Gülbahar Savaşan, mother of Ayşegül and Nurdan Savaşan
83. Ayşegül Savaşan, born in 1984, pupil at İmam-Hatip Secondary School, Kadıköy
84. Nurdan Savaşan, born in 1986, pupil at İmam-Hatip Secondary School, Kadıköy
85. Halil Sağlam, father of Betül Sağlam
86. Betül Sağlam, born in 1983, pupil at İmam-Hatip Secondary School, Kadıköy
87. Hüsniye Şengüneş, mother of Merve Şengüneş
88. Merve Şengüneş, born in 1987, pupil at İmam-Hatip Secondary School, Kadıköy
89. Süleyman Anbarkaya, father of Fatma Nur Anbarkaya
90. Fatma Nur Anbarkaya, born in 1985, pupil at İmam-Hatip Secondary School, Kadıköy
91. Nebahat Güneysu, mother of Kübra Güneysu
92. Kübra Güneysu, born in 1985, pupil at İmam-Hatip Secondary School, Kadıköy

93. Necmi Aköz, father of Miraç Aköz
94. Miraç Aköz, born in 1986, pupil at İmam-Hatip Secondary School, Kadıköy