

Press release issued by the Registrar

CHAMBER JUDGMENT
HASAN AND EYLEM ZENGİN v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Hasan and Eylem Zengin v. Turkey* (application no. 1448/04).

The Court held unanimously that:

- there had been a **violation of Article 2 of Protocol No. 1** (right to education) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court held that the finding of a violation provided in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. Under Article 46 (binding force and execution of judgments), it considered that the above violation originated in a problem with the implementation of the religious instruction syllabus in Turkey and the absence of appropriate methods to ensure respect for parents' convictions. Consequently, it also held that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 would also represent an appropriate form of compensation. Lastly, the applicants were awarded, jointly, 3,726.80 euros (EUR) for costs and expenses less the sum of EUR 850 granted in legal aid. (The judgment is available in English and French.)

1. Principal facts

Hasan Zengin and his daughter Eylem Zengin, are Turkish nationals who were born in 1960 and 1988, respectively, and live in Istanbul.

Mr Zengin and his family are followers of Alevism, a branch of Islam which has deep roots in Turkish society and history and represents one of the most widespread faiths in Turkey (after the Hanafite branch of Islam, which is one of the four schools of Sunni Islam). Alevism was influenced by certain pre-Islamic beliefs and two great Sufis of the 12th and 14th centuries. Its religious practices differ from those of the Sunni schools in certain aspects such as prayer, fasting and pilgrimage. In particular, according to the applicant, Alevis do not pray five times daily as in the Sunni rite but express their devotion through religious songs and dances (*semah*); they do not attend mosques, but meet regularly in *cemevi* (meeting and worship rooms); and, do not consider the pilgrimage to Mecca as a religious obligation.

¹ Under Article 43 of the Convention, 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.

At the time the present application was lodged, Eylem Zengin was attending the seventh grade of the State school in Avcılar, Istanbul. As a pupil at a State school, she was obliged to attend classes in religious culture and ethics. Under Article 24 of the Turkish Constitution and section 12 of Basic Law no. 1739 on national education, religious culture and ethics is a compulsory subject in Turkish primary and secondary schools.

Mr Zengin submitted requests in 2001 to the Directorate of National Education and before the administrative courts for his daughter to be exempted from lessons in religious culture and ethics. Pointing out that his family were followers of Alevism, he claimed that, under international treaties such as the Universal Declaration of Human Rights, parents had the right to choose the type of education their children were to receive. He also alleged that the course in question was incompatible with the principle of secularism and was not neutral as it was essentially based on the teaching of Sunni Islam.

All his requests were dismissed, lastly on appeal before the Supreme Administrative Court in a judgment of 5 August 2003, on the ground that the course in religious culture and ethics was in accordance with the Constitution and Turkish legislation.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 January 2004 and declared admissible on 6 June 2006. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian),
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Mindia **Ugrekheldze** (Georgian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish), *judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants maintained, in particular, that the way in which religious culture and ethics were taught in Turkey infringed Miss Zengin's right to freedom of religion and her parents' right to ensure her education in conformity with their religious convictions as guaranteed under Article 2 of Protocol No. 1 (right to education) and Article 9 (freedom of thought, conscience and religion). The applicants notably alleged that the course's syllabus lacked objectivity because no detailed information about other religions was included and was taught

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

from a religious perspective which praised the Sunni interpretation of the Islamic faith and tradition.

Decision of the Court

Article 2 of Protocol No. 1

Firstly, the Court determined whether the course's content-matter was taught in an objective, critical and pluralist manner. To that end, it examined the Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks submitted by the applicants.

It found that the syllabus for teaching in primary schools and the first cycle of secondary school and the relevant textbooks gave greater priority to knowledge of Islam than to that of other religions and philosophies.

In particular, the syllabus included study of the prophet Mohamed and the Koran. Pupils had to learn several *suras* from the Koran by heart and study, with the support of illustrations, daily prayers. They also had to sit written tests.

The textbooks did not just give a general overview of religions but provided specific instruction in the major principles of the Muslim faith, including its cultural rites, such as the profession of faith, the five daily prayers, Ramadan, pilgrimage, the concepts of angels and invisible creatures and belief in the other world.

On the other hand, pupils received no teaching on the confessional or ritual specificities of the Alevi faith, even though its followers represented a large proportion of the Turkish population. Information about the Alevis was taught in the 9th grade but the Court, like the applicants, considered that the fact that the life and philosophy of the two great Sufis, who had had a major impact on the movement, were only taught at such a late stage was insufficient to compensate for the shortcomings of the primary and secondary school teaching.

The Court therefore found that religious culture and ethics lessons in Turkey could not be considered to meet the criteria of objectivity and pluralism necessary for education in a democratic society and for pupils to develop a critical mind towards religion. In the applicants' case, the lessons did not respect the religious and philosophical convictions of Ms Zengin's father.

Secondly, the Court examined whether appropriate means existed in the Turkish educational system to ensure respect for parents' convictions.

Following a decision by the Supreme Council for Education of July 1990, it was possible for children "of Turkish nationality who belong to the Christian or Jewish religion" to be exempted from religious culture and ethics lessons. That decision necessarily suggested that the lessons were likely to create conflict for Christian or Jewish children between the religious instruction given by the school and their parents' religious or philosophical convictions. Like the Council of Europe's European Commission against Racism and Intolerance (ECRI), the Court considered that that situation was open to criticism: if the course intended to be about different religious cultures, there was no reason to make it compulsory for Muslim children alone.

The fact that parents were obliged to inform the school authorities of their religious or philosophical convictions was an inappropriate way to ensure respect for freedom of conviction. Moreover, in the absence of any clear text, the school authorities always had the option of refusing exemption requests, as in Ms Zengin's case.

Consequently, the Court considered that the exemption procedure did not use appropriate methods and did not provide sufficient protection to those parents who could legitimately consider that the subject taught was likely to raise a conflict of values in their children. That was especially so where no choice had been envisaged for the children of parents who had a religious or philosophical conviction other than that of Sunni Islam and where the exemption procedure involved the heavy burden of disclosing their religious or philosophical convictions.

Accordingly, the Court concluded that there had been a violation of Article 2 of Protocol No. 1.

Article 9

The Court considered that no separate issue arose under Article 9.

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

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