

Hasan and Eylem Zengin v. Turkey - 1448/04

Judgment 9.10.2007 [Section II]

Article 2 of Protocol No. 1

Respect for parents' philosophical convictions

Right to education

Refusal to exempt a State school pupil whose family was of the Alevi faith from mandatory lessons on religion and morals: *violation*

Article 46

Article 46-2

Execution of judgment

Indication of an appropriate form of redress (for a violation of Article 2 of Protocol No. 1): *measures to make national education system and relevant domestic law Convention compliant*

Facts – Hasan Zengin and his daughter Eylem Zengin are Turkish nationals who were born in 1960 and 1988 respectively. Mr Zengin and his family are followers of Alevism, a branch of Islam which has deep roots in Turkish society and history. Its religious practices differ from those of the Sunni schools in certain aspects such as prayer, fasting and pilgrimage. Alevism is one of the most widespread faiths in Turkey (after the Hanafite branch of Islam, which is one of the four schools of Sunni Islam). At the time the application was lodged, Eylem Zengin was attending the seventh grade of a state school in 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 to the Directorate of National Education and before the administrative courts for his daughter to be exempted from lessons in religious culture and ethics. He pointed out, in particular, that his daughter was a follower of Alevism, and that no teaching was provided on her faith. He relied on the right of parents to choose the type of education their children were to receive. The requests for exemption were dismissed, lastly on appeal before the Supreme Administrative Court.

Law – Examination of the Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks showed that 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. This in itself could not be viewed as indoctrination, since, notwithstanding the State's secular nature, Islam was the majority religion practiced in Turkey. Given that attendance at these classes was likely to influence the minds of young children, it was appropriate to examine whether the information or knowledge was disseminated in an objective, critical and pluralist

manner. The Alevi faith was a religious conviction which had deep roots in Turkish society and history and had features which were particular to it. It was thus distinct from the Sunni understanding of Islam which was taught in schools. The expression "religious convictions", within the meaning of the second sentence of Article 2 of Protocol No. 1, was applicable to this faith. In the "religious culture and morals" lessons, the religious diversity which prevailed in Turkish society was not taken into account. In particular, pupils received no teaching on the confessional or ritual specificities of the Alevi faith, although the proportion of the Turkish population belonging to it was very large. Certain information about the Alevis was taught in the 9th grade, but, in the absence of instruction in the basic elements of this faith in primary and secondary school, this was insufficient to compensate for the shortcomings in the teaching. Accordingly, the instruction provided in the school subject "religious culture and ethics" could not be considered to meet the criteria of objectivity and pluralism, enabling pupils to develop a critical mind with regard to religious matters, nor to respect the religious and philosophical convictions of the parent of a pupil who belonged to the Alevi faith, on the subject of which the syllabus was clearly lacking.

It remained to be established whether appropriate means existed in the Turkish education system to ensure respect for parents' convictions. The class in question was a compulsory subject, but a possibility for exemption had existed since 1990 children of Turkish nationality whose parents belonged to the Christian or Jewish religion, provided they affirmed their adherence to one of those religions. According to the Government, this possibility for exemption could be extended to other convictions if such a request was submitted. Nonetheless, whatever the scope of this exemption, the fact that parents were obliged to inform the school authorities of their religious or philosophical convictions made this an inappropriate means of ensuring respect for their freedom of conviction. In the absence of any clear text, the school authorities always had the option of refusing such requests. In consequence, the exemption procedure was not an appropriate method and did not provide sufficient protection to those parents who could legitimately consider that the subject taught was likely to give rise in their children to a conflict of allegiance between the school and their own values. No possibility for an appropriate choice had been envisaged for the children of parents who had a religious or philosophical conviction other than that of Sunni Islam, where the procedure for exemption was likely to subject those parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions.

Conclusion: violation (unanimously).

Articles 41 and 46 – Damages: finding of a violation sufficient.

The Court concluded that, with regard to religious instruction, by failing to meet the requirements of objectivity and pluralism and to provide an appropriate method for ensuring respect for parents' convictions, the Turkish educational system was inadequate. The violation found originated in a problem related to implementation of the syllabus for religious instruction in Turkey and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, the Court considered that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 would represent an appropriate form of compensation.

(See also *Folgerø and Others v. Norway* [GC], 15472/02, 29 June 2007, Information Note 98, judgment concerning a country which has a State religion and a State church)

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