



Headscarf Bans and the ECtHR: Balancing Secularism and Rights in Türkiye

Question(s) at stake:

Whether a ban on a university professor wearing the Islamic headscarf while performing her professional duties, and her being deemed to have resigned for continuing to wear it, violated her freedom of religion and constituted discrimination.

Outcome of the ruling:

The European Court of Human Rights held that the ban on a university professor wearing the Islamic headscarf while performing her professional duties was justified by the principle of secularism and the requirement of neutrality for public servants in Türkiye. Consequently, it found the application alleging a violation of Article 9 of the ECHR to be manifestly ill-founded.

Topic(s):

- [Education](#)
- [Employment](#)

Keywords:

- [Freedom of thought, conscience and religion](#)
- [Laïcité](#)
- [Hijab](#)
- [Margin of appreciation](#)
- [Religious and cultural symbols](#)
- [Institutional / Organizational aspects](#)
- [Attire](#)
- [Termination of employment](#)

- [Types and actors](#)
- [Public sector](#)
- [Teachers](#)

Tag(s):

- [Secularism](#)
- [Laiklik](#)
- [Deemed resignation](#)

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Country:

[Turkey](#)

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Kurtulmuş v. Turkey, App. no. 65500/01, 24 January 2006

Link to the decision:

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ECLI:

ECLI:CE:ECHR:2006:0124DEC006550001

Date:

24 January 2006

Jurisdiction / Court / Chamber:

European Court of Human Rights

Remedy / Procedural stage:

Final

Previous stages:

- Supreme Administrative Court (27 June 2000)
- Supreme Administrative Court (9 December 1999)
- Istanbul Administrative Court (27 April 1999)

Subsequent stages:

None

Branches / Areas of law:

Administrative Law; Education Law

Facts:

The applicant was an associate professor at Istanbul University. She obtained her doctorate in 1992 and her professorship in 1996. She wore her headscarf during this time. In 1998, disciplinary proceedings were initiated against her for failing to comply with the dress code for public servants, and she was suspended pending the outcome of the investigation. After the investigation, the applicant received a warning and a two-year prohibition on promotion for persistent non-compliance with the dress code.

Despite these measures, the applicant continued to wear a headscarf at the university. As a result, she was deemed to have resigned from her post in accordance with the regulations. On 30 July 1998, the applicant applied for the annulment of this decision, arguing that the measure had no legal basis. The Istanbul Administrative Court dismissed her application, citing evidence that showed she had persistently ignored the dress code regulations.

At the time the case arose, paragraph 5 of the Rules on Dress applicable to Staff in State Institutions (*Kamu Kurum ve kuruluşlarında çalışan personelin kılık-kıyafet yönetmeliği*) provided:

“Female members of staff

Clothes shall be clean, proper, ironed and plain. Shoes shall be plain, low-heeled and polished. **No head covering shall be worn on work premises;** hair shall be properly brushed and gathered, and nails cut. Trousers, blouses, and sleeveless or open-necked suits are prohibited. Skirts shall not be split or less than knee-length. Open shoes (sandals) shall not be worn.

Male members of staff

Clothes shall be clean, proper, ironed and plain. Shoes shall be plain and polished [...]. No head covering shall be worn on work premises [...]. Male members of staff shall not wear a beard and must shave every day [...]. Ties shall be obligatory.”

She appealed the decision and argued that the applicable provisions only prescribed warnings and reprimands for violating the dress rules and the measure applied was unduly harsh and incompatible with the ECHR (European Convention on Human Rights).

The Supreme Administrative Court upheld the decision.

The applicant applied to the ECtHR on the grounds that her rights under Articles 6, 7, 8, 9, 10, and 14 of the ECHR and Article 1 of Protocol No. 1 to the ECHR had been violated.

The applicant argued that the rules were not enforced in practice for other clothing items listed in the dress code. She claimed that applying these rules solely to public employees wearing the headscarf constituted a violation of Article 14 in conjunction with Article 9. She also contended that these rules disproportionately affected Muslim women rather than Muslim men, thereby constituting “sexual discrimination.”

Additionally, the applicant claimed a violation of her right to the peaceful enjoyment of her possessions, as the measure had deprived her of her only source of income and left her unable to access social security services.

Ruling:

In its decision, the Court emphasized the vital importance for democratic societies of the freedom of religion and conscience protected by Article 9. Stating that

Article 9 is crucial for the protection of the principle of “pluralism”, which has been achieved over centuries, the Court emphasized that it is nevertheless possible to restrict it and that the legitimate interests to do so are set out in paragraph 2 of Article 9.

Recognizing that states may impose restrictions on public officials, the Court nevertheless stated that public officials are also beneficiaries of Article 9 and that the ECtHR will examine whether in a democratic system a fair balance has been struck as to the necessity and proportionality of the restrictions to be applied in the circumstances of each individual case.

In this case, the Court found that the domestic courts pursued the legitimate aim of protecting the rights of others and maintaining public order.

The Court cited the cases of *Dahlab v. Switzerland*, App. no. 42393/98, 15 February 2001 and *Leyla Şahin v. Turkey*, App. no. 44774/98, 10 November 2005 to emphasize the discretion of the national decision-making bodies when it comes to regulating the permissibility of religious clothes in educational institutions. The Court recalled that, as in *Dahlab*, the national authorities can ban the wearing of the hijab by teachers in state schools to ensure neutrality.

The Court then turned to the *Şahin* case and claimed that one of the fundamental principles of the Turkish state was to uphold secularism, and that it is accepted that a state can compel its servants to adhere to its constitutional principles.

The Court found that the rules on dress applied equally to all public servants. The rules stemmed from the importance of protecting the secular order of the state and the neutrality of public services. The Court stated that the applicant, who applied to this job of her own will, should have foreseen this and avoided wearing “ostentatious” religious symbols.

The Court also stated that the extent and form of regulations when it comes to restricting the wearing of the hijab to protect the aforementioned legitimate aims must be left to the national authorities.

Consequently, the complaint under Article 9 was found to be manifestly ill-founded and was dismissed.

The Court reiterated that the dress rules had the aim of protecting the secular order of the state and the rights of the other and that they were unrelated to the applicant's religion and sex. Thus, it found no violation of Article 14.

It also found the complaints under Articles 6, 7, 8, 10 and Article 1 of Protocol No. 1 inadmissible.

Main quotations on cultural or religious diversity:

- “It [...] falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of religion and the legitimate interest of a democratic State in ensuring that its public service properly furthers the purposes enumerated in Article 9 § 2 [...]. Likewise, where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions (see *Leyla Şahin*, cited above, § 109). In this context, in *Leyla Şahin* (§ 111) and *Dahlab v. Switzerland* ((dec.) no. 42393/98, ECHR 2001-V), the Court found that in a democratic society the State was entitled to place restrictions on the wearing of the Islamic headscarf if it was incompatible with the pursued aim of protecting the rights and freedoms of others and public order. In particular, with reference to the decisions of the domestic authorities in *Dahlab*, it stressed the importance of ensuring the neutrality of State education in schools.”
- “[T]he Court has consistently stated that upholding the principle of secularism is undoubtedly one of the fundamental principles of the Turkish State [...]. It is that principle, and not objections to the way a person dresses as a result of his or her religious beliefs, that is the paramount consideration

underpinning the rules.”

- “As to the complaint under Article 14 of the Convention, taken alone or in conjunction with Article 9, the Court notes that the rules on wearing the Islamic headscarf are unrelated to the applicant’s religious affiliation or her sex, but pursue, among other things, the legitimate aim of protecting public order and the rights and freedoms of others. The manifest purpose of the rules is to preserve both secularism within education institutions and its corollary, the principle of the neutrality of the public service. Furthermore, male members of staff are also subject to analogous rules requiring them not to express their religious beliefs in an ostentatious manner. Consequently, the considerations that led the Court to conclude that no violation can be found of Article 9 of the Convention apply equally to the complaint under Article 14, taken alone or in conjunction with that provision.”

Main legal texts quoted in the decision:

Domestic law

- Article 5 of the Rules on Dress applicable to Staff in State Institutions (*Kamu Kurum ve kuruluşlarında çalışan personelin kılık-kıyafet yönetmeliği*)
- Paragraphs 4, 5 (g), 9 (m), and 15 of the Disciplinary Procedure Rules for Public Servants and Administrators in Higher-Education Institutions (*Yüksek Öğretim Kurumları Yönetici, Öğretim Elemanı ve Memurları Disiplin Yönetmeliği*)
- Article 19 and 125 of Law no. 657 on State Employees (*Devlet Memurları Kanunu*)
- Law no. 4455 Amnesty for Public Servants and State Employees (Disciplinary Penalties)
- Article 17 of Law 2547 of 25 October 1990

European Convention on Human Rights

- (Article 9) Freedom of thought, conscience and religion 6
- (Article 6-1) Access to court

- (Article 7) No punishment without law
- (Article 8) Right to respect for private and family life 10
- (Article 14) Prohibition of discrimination
- (P1-1) Protection of property

Cases cited in the decision:

- Kokkinakis v. Greece, App. no. 14307/88, judgment of 25 May 1993
ECLI:CE:ECHR:1993:0525JUD001430788
- Vogt v. Germany, App. no. 17851/91, judgment of 26 September 1995
ECLI:CE:ECHR:1995:0926JUD001785191
- Levages Prestations Service v. France, App. no. 21920/93, judgment of 23 October 1996
ECLI:CE:ECHR:1996:1023JUD002192093
- K.D.B. v. the Netherlands, App. no. 21981/93, judgment of 27 March 1998
ECLI:CE:ECHR:1998:0327JUD002198193
- Buscarini and Others v. San Marino, App. no. 24645/94, judgment of 18 February 1999
ECLI:CE:ECHR:1999:0218JUD002464594
- Rekvényi v. Hungary, App. no. 25390/94, judgment of 20 May 1999
ECLI:CE:ECHR:1999:0520JUD002539094
- Meftah and Others v. France, App. nos. 32911/96, 35237/97, and 34595/97, judgment of 26 July 2002
ECLI:CE:ECHR:2002:0726JUD003291196
- Leyla Sahin v. Turkey, App. no. 44774/98, judgment of 10 November 2005
ECLI:CE:ECHR:2005:1110JUD004477498
- Saltuk v. Turkey, App. no. 31135/96, 28 decision of August 1999
ECLI:CE:ECHR:1999:0824DEC003113596
- Dahlab v. Switzerland, App. no. 42393/98, decision of 15 February 2001
ECLI:CE:ECHR:2001:0215DEC004239398
- De Jorio v. Italy, App. no. 73936/01, judgment of 6 March 2003
ECLI:CE:ECHR:2004:0603JUD007393601
- Nazif Yavuz v. Turkey, App. no. 69912/01, judgment of 27 May 2004
ECLI:CE:ECHR:2006:0112JUD006991201

Commentary

Headscarf Bans and the ECtHR: Balancing Secularism and Rights in Türkiye

The issue of the headscarf (hijab) has been at the centre of numerous social, legal, historical, and political debates throughout the history of Türkiye. One of the most important “Kemalist” principles was secularism (inspired by the French tradition of *laïcité*, the Kemalist secular principle was called “*laiklik*”), and the dress code reforms were undertaken in this direction. Kemalism, also known as Atatürkism, is a political and ideological framework established by Mustafa Kemal Atatürk. It forms the foundation of the principles and reforms he implemented to transform Türkiye from the remnants of the Ottoman Empire into a secular nation state. National authorities, aiming to remove religion from the public sphere and strictly implementing these reforms, imposed restrictions specifically on the headscarf (Seggie 2011).

Wearing the headscarf was prohibited for students at all levels of education, and public workers were also banned from wearing them while on duty. Although legislative amendments were attempted in 1990 and 2008 to lift the ban on headscarves for university students, the Turkish Constitutional Court annulled these amendments on the grounds that they were anti-secular. In the 1990s, after Türkiye recognized the binding jurisdiction of the ECtHR, petitions began to be made against the “laik” state policies that clashed with the Convention rights of the applicants.

Case at hand

An interesting fact about this case is that, even though she faced disciplinary action later, Ms Kurtulmuş wore a headscarf during the years in which she completed her doctorate and obtained her professorship. Despite the presence of the dress code during this period, women who wore headscarves could still receive education and even take up academic positions, if there were no complaints against them and the approach of the university administrations was lenient. One could attribute this to the lack of popular support for these bans. According to a survey conducted in the year the decision for this case was announced, 76% of the population did not support the bans (Güveli 2011). These

prohibitions, backed by a minority of society, particularly the financial elite, reflected the “top-down” reformist approach imposed by the military and high judiciary (Güveli 2011).

During the period when the dispute in question arose, the headscarf debates had flared up again. In 1997, following the “post-modern” military coup (so called because it was carried out through a military memorandum published on media channels), the then-Islamist Welfare (Refah) Party was dissolved (Özkır 2019). One of the reasons for Refah’s dissolution was the party’s agenda of lifting the headscarf ban. During this period, headscarf-wearing public officials were dismissed from their positions; in some cases, public officials were even dismissed due to their wives wearing headscarves (*Suküt v. Turkey*, App. no. 59773/00, 11 September 2007).

Shadow of Şahin

Since this ruling was issued shortly after the landmark *Leyla Şahin v. Turkey* case, it did not pose a significant challenge to the ECtHR. A court that deemed the ban on headscarves for university students to be compliant with the Convention was unlikely to find the ban on headscarves for a professor to be contrary to it.

Similar to the *Şahin* ruling, the Court accepted the legitimate aims of protecting the rights of others and maintaining public order as put forward by national authorities and deemed the headscarf ban necessary and proportionate in a democratic society. In this context, the Court applied the margin of appreciation and allowed national authorities to determine the extent and form of regulations regarding the restriction of wearing the hijab.

Additionally, the court stated that one of the fundamental aims of the Republic of Türkiye is to protect secularism. Although it did not delve deeply into this matter, it can be inferred that the Court did not deviate from its position in the *Şahin* ruling. There the Court found secularism and the headscarf to be incompatible, arguing that the headscarf contradicts the principle of pluralism, does not align with women’s rights, and that such bans could actually contribute to pluralism.

Moreover, referring to the *Dahlab v. Switzerland* decision, the ECtHR emphasized the principle of “neutrality” in educational institutions, applying the same approach to a university professor in the present case. The court did not consider the significant difference between the teacher’s role in the *Dahlab* case, involving primary school children, and Ms Kurtulmuş’s position as a university professor. The Court also failed to address how Ms Kurtulmuş’s headscarf compromised neutrality.

This raises the crucial issue of defining “neutrality”. In a country characterized by ethnic and religious diversity, various forms of clothing and symbols are present. Attempting to enforce a rigid dress code aimed at standardizing the appearance of public servants can in fact undermine pluralism and equal access to public employment. One could argue that a genuinely “neutral” state should embrace the diversity within its society and refrain from disproportionately restricting certain individuals from public service. However, in this case, a debatable secular understanding of neutrality seems to be accepted by both the national authorities and the Court, and ironically this is not a “neutral” stance. The irony lies in the fact that, by imposing a uniform standard under the guise of neutrality, the state is effectively taking a non-neutral position that marginalizes certain groups, thereby contradicting its own principle of impartiality.

The ECtHR also stated that states can require public officials to act in accordance with their constitutional principles, and, given the place of secularism in the Turkish Constitution, concluded that these bans were legitimate. The ECtHR, seemingly ignoring that one of the primary aims of the Turkish Constitution is to ensure that the fundamental rights and freedoms granted to its citizens are recognized in accordance with the principle of equality, shifted away from a “rights-centred” paradigm. Instead, in its assessment of Turkish law, the Court prioritized secularism among the constitutional principles at stake.

This raises the question: did the Turkish state institute these bans to protect women’s rights and pluralism, or were they about preserving an ideological understanding of secularism?

Impact

The impact of rulings like *Şahin*, *Dahlab*, and *Kurtulmuş* on the lives of the Muslim women who choose to wear headscarves cannot be overlooked. Studies have shown the substantial social and economic effects of headscarf bans, but even without such studies, these impacts could be predicted. The economic and social contributions that women, excluded from both education and professional life, are unable to provide to their families cannot be fully measured. However, existing studies indicate that these women and their families, marginalized from social life, experience generational effects (Güveli 2011).

Conclusion

In both *Şahin* and *Kurtulmuş*, the ECtHR went on to characterize the headscarf as an oppressive form of attire, showing complete disregard for Muslim women's agency and claiming with no actual basis that the headscarf endangers the rights of others in universities. The Court did not resort to any fact-finding missions, did not take into consideration NGO reports, and ignored the socio-economic impact of the "headscarf issue" altogether. Since universities are spaces for the free exchange of ideas and pluralism, and also gateways to professional life and full participation in society, the Court's approach effectively implies an incompatibility between a plural democratic society and the headscarf.

Usually, the concern for the ECtHR is that potentially transformative rulings might be unpopular in the short term with the public of the states concerned. The Court must strike a balance between upholding the Convention and considering the legal and cultural contexts of the member states. The Court must aim to ensure that the rulings and decisions, even if controversial, will ultimately promote and protect human rights in a way that can be integrated into national frameworks. However, in the context of *Şahin* and *Kurtulmuş*, where public sentiment clearly and overwhelmingly favoured greater rights protection (Güveli 2011), the Court's persistent rulings in the opposite direction have created confusion. This raises the unsettling question of whether the Court harbours an implicit bias against the Islamic nature of the headscarf and the profiles of the applicants.

Notably, the lifting of Türkiye's headscarf bans in 2013 occurred through a domestic democratization package, an outcome achieved not with the support of the ECtHR's stance, but rather in spite of it.

Literature related to the main issue(s) at stake:

- Aydil, Ahmet Said. 2026. "Leyla Şahin v. Turkey: A Case of Judicial Retreat". *Cultural and Religious Diversity under State Law across Europe*, DOI: [10.48509/CURED1101TR013](https://doi.org/10.48509/CURED1101TR013).
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- Høstmælingen, Njål. 2016. "The Hijab in Strasbourg: Clear Conclusions, Unclear Reasoning". In W. Cole Durham and R. Torfs (eds), *Islam, Europe and Emerging Legal Issues*, 89-111. London: Routledge.
- Lindholm, Tore. 2016. "The Strasbourg Court Dealing with Turkey and the Human Right to Freedom of Religion or Belief: An Assessment in Light of Leyla Şahin v. Turkey". In W. Cole Durham, R. Torfs (eds), *Islam, Europe and Emerging Legal Issues*, 147-169. London: Routledge.
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- Ulusoy, Ali. 2004. "Avrupa İnsan Hakları Mahkemesi'nin Üniversitelerde Türban Yasağına İlişkin Kararlar Hakkında Notlar". *Ankara Üniversitesi Hukuk Fakültesi Dergisi*: 125-134.

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