



Veiled Injustice: The ECtHR's Enduring Stance against the Headscarf

Question(s) at stake:

Whether the Turkish authorities' enforcement of a school dress code, and the resulting restriction on the applicants' access to education arising from the ban on Islamic headscarves, violated the applicants' rights under the European Convention on Human Rights (ECHR).

Outcome of the ruling:

The European Court of Human Rights (ECtHR) declared the applicants' complaints inadmissible under several articles of the Convention. It concluded that the enforcement of the school dress code, which included a ban on wearing the Islamic headscarf, was not incompatible with the applicants' rights to freedom of expression or religion. The Court found that the dress code pursued legitimate aims, such as preserving neutrality and secularism in schools. It also rejected the applicants' complaints about arbitrary detention, noting that their brief detentions were neither arbitrary nor disproportionate. The Court found no violation of the right to peaceful assembly, as the measures taken to disperse the assembly were proportionate to the circumstances.

Topic(s):

- [Education](#)

Keywords:

- [Freedom of thought, conscience and religion](#)
- [Laïcité](#)
- [Religious and cultural symbols](#)
- [Margin of appreciation](#)

Tag(s):

- [Laiklik](#)
- [Secularism](#)
- [İmam-Hatip Schools](#)

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Official citation:

Köse and Others v. Turkey, App. no. 26625/02, 24 January 2006

Link to the decision:

<https://hudoc.echr.coe.int/eng?i=001-90405>

ECLI:

ECLI:CE:ECHR:2006:0124DEC002662502

Date:

24 January 2006

Jurisdiction / Court / Chamber:

European Court of Human Rights

Remedy / Procedural stage:

Final

Previous stages:

None

Subsequent stages:

None

Branches / Areas of law:

Administrative Law, Constitutional Law

Facts:

The applicants, a total of 94 people, consisted of students and their parents. The case arose after the enforcement of a dress code for students at Imam-Hatip Secondary Schools – schools within the state education system that provide training for religious functionaries such as imams and Quran reciters (Hatip) and religious education teachers. The applicants state that they were attending the schools with their headscarves until the enforcement of a directive issued by the Istanbul Regional Governor's Office on 12 February 2002, requiring strict compliance with dress codes that required female students to have long plaited hair and also prohibited head coverings.

Rules 11 and 12 of the 1981 Rules on Dress for Staff and Pupils prescribe specific attire for boys and girls in both lower and upper secondary schools, emphasizing cleanliness, orderliness, and uniformity. Only in Quranic lessons are girls allowed to wear headscarves.

A February 2002 directive mandated immediate and strict enforcement of these dress code rules. The directive frames compliance as a moral duty, stating that deviations from the dress code threaten the integrity of the educational environment.

From 26 February 2002 on, the implementation of this directive led to immediate consequences for students and their families. Students wearing headscarves were denied entry to school premises, barring them from attending classes. School administrators took measures such as engaging educational psychologists to rationalize the directive to students and parents. Furthermore, warnings and disciplinary threats were issued against those perceived as non-compliant, including students, parents, and school staff.

The policy also provoked organized resistance, with demonstrations occurring outside schools in early March 2002. These protests, supported by parents and activists, were met with interventions from security forces, including detentions.

The applicants, faced with the enforcement of the dress code, filed criminal complaints against those responsible for implementing the directive, arguing that it infringed upon their fundamental rights, and requested judicial declarations to halt its enforcement. These efforts were unsuccessful. The Istanbul Regional Governor's Office, through its Human Rights Committee, explicitly supported the dress code, emphasizing its necessity in maintaining the secular character of the education system. This position was grounded in Section 12 of the Basic Law on State Education (Law no. 1739), which asserts that secularism is a "cornerstone" of state education. A parliamentary commission investigating the unrest similarly upheld the legitimacy of the policy, framing the issue as a legislative matter while advising against the use of excessive force in future enforcement.

As a last resort, the applicants brought their case to the European Court of Human Rights (ECtHR) without exhausting domestic remedies, citing entrenched judicial interpretations and the ineffectiveness of domestic remedies. They contended that the headscarf bans in Imam-Hatip Secondary Schools violated their children's right to education and the parents' right to educate their children in accordance with their religious convictions (Article 2 of Protocol No. 1). They further argued that the ban infringed on their freedom of religion (Article 9), subjected them to discrimination on religious and gender grounds (Article 14), and deprived them of access to effective legal remedies (Article 13). Additionally, they claimed that the domestic courts' failure to recognize the illegality of the ban violated their right to a fair trial (Article 6) and that the absence of a clear legal basis for the restrictions amounted to punishment without law (Article 7).

The applicants also raised specific complaints concerning the arrest and detention of students and parents during protests, alleging violations of their right to liberty and security (Article 5), their right of peaceful assembly (Article 11), and the prohibition of inhuman and degrading treatment (Article 3). They maintained that the measures in question not only disrupted educational opportunities but also

limited their future educational and professional opportunities, thereby infringing on their right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1).

Ruling:

The Court stated that the right to education is not absolute and may be subject to limitations. Still, such limitations must pursue legitimate aims and be proportionate. The Court found that the measures taken by the Turkish authorities were foreseeable, as the pupils and parents had agreed to comply with the rules upon enrolment, which included dress codes prohibiting the headscarf. The Court emphasized that past tolerance towards students who wore headscarves was irrelevant, and that the rules were clear and applied consistently. The Court concluded that the bans were justified in principle and proportionate to the aims of maintaining order and neutrality in the school environment, citing the previous case of *Leyla Şahin v. Turkey*.

The applicants also claimed that the bans violated their rights as parents to ensure their children received an education in line with their religious beliefs, as guaranteed by the second sentence of Article 2 of Protocol No. 1. The Court noted that this provision aims to safeguard pluralism in education and to prevent any form of unwanted indoctrination. The Court stated that, in this case, the parents do not have a problem with the type of education the pupils are getting. The issue concerns the dress code in the context of Imam-Hatip Secondary Schools. The Court found that while these schools provide a religious education, they are part of the secular Turkish state education system, which must remain neutral and respect religious pluralism.

The applicants also invoked Article 9 ECHR. The Court acknowledged the importance of freedom of religion, but again stated that the manifestation of religious beliefs, particularly in public spaces like schools, can be subject to limitations, provided these limitations are prescribed by law and necessary in a democratic society. As the Court had previously argued in its case law, in public education, states have a margin of appreciation in this regard.

The Court found that the treatment did not reach the minimum severity required for an Article 3 violation.

The complaints under Articles 8 and 10 ECHR were deemed a reformulation of earlier claims, which had already been dismissed.

Regarding Article 14 ECHR, the Court emphasized that the school dress code was not based on religious affiliation. The applicants also failed to demonstrate that they lacked effective remedies under Article 13 ECHR, as they could have sought judicial review of the school authorities' decisions.

On Article 1 of Protocol No. 1, the Court noted that the future earnings of students were not considered a "possession". As such, this part of the application was deemed manifestly ill-founded.

The Court rejected the applicants' complaints under Articles 5 and 11 ECHR regarding arrest and freedom of assembly. The detention of the applicants was deemed lawful, as it was based on national law and served legitimate purposes, while the police intervention in breaking up the unauthorized assembly was not found to be disproportionate.

Finally, the Court found no violation of Articles 6 and 7 ECHR. The applicants' lack of access to a declaration confirming the enforcement of the headscarf ban did not constitute a breach of the right to a fair trial, as they could have pursued judicial review. The complaint under Article 7 was dismissed, as the refusal to allow school access was not considered a criminal penalty.

Thus, the application was unanimously declared inadmissible.

Main quotations on cultural or religious diversity:

"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 [...].

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 Imam-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.

Although their primary function is to train future religious functionaries, the Imam-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 [...].

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' [...].

In the instant case, the Court has found [...] 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".

Main legal texts quoted in the decision:

Domestic law

- Article 24 of the Turkish Constitution
- Section 12 of the Basic Law on State Education

- Rules 11 and 12 of the Rules on Dress for Staff and Pupils in Schools Dependent on the Ministry of Education and Other Ministries
- Rule 17 of the Rules for Promoting and Ensuring Discipline in Secondary Schools Dependent on the Ministry of Education
- Section 32 of the Basic Law on State Education
- Section 10 of the Assemblies and Processions Act

European Convention on Human Rights

- Articles 3, 5, 6, 7, 8, 9, 10, 11, 13, and 14 of the European Convention Human on Rights
- Articles 1 and 2 of Protocol Number 1 of the European Convention on Human Rights

Cases cited in the decision:

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ECLI:CE:ECHR:2004:0617DEC007186001
- *Kokkinakis v. Greece*, App. no. 14307/88, 25 May 1993
ECLI:CE:ECHR:1993:0525JUD001430788
- *Leyla Şahin v. Turkey*, App. no. 44774/98, 10 November 2005
ECLI:CE:ECHR:2005:1110JUD004477498
- *Phull v. France*, App. no. 35753/03, 11 January 2005
ECLI:CE:ECHR:2005:0111DEC003575303
- *Steel and Others v. The United Kingdom*, App. no. 24838/94, 23 September 1998
ECLI:CE:ECHR:1998:0923JUD002483894
- *Valsamis v. Greece*, App. no. 21787/93, 18 December 1996
ECLI:CE:ECHR:1996:1218JUD002178793

Commentary

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Köse and Others v. Turkey is one of the many headscarf cases addressed by the ECtHR over the years. Issued in 2006, shortly after the controversial *Leyla Şahin*

judgment, the *Köse* decision did not introduce elements that had not already been present in *Şahin*. Even compared with the very recent case of *Mikyas and others v. Belgium* from 2024, which also ended up being a decision of inadmissibility, the Court's stance and reasonings have not changed much.

Still, a unique aspect of *Köse* is that the applicants were students attending "İmam-Hatip" schools. These are secondary schools that aim to provide vocational education for future imams, Quran reciters, and religion teachers. Accordingly, the curriculum of these schools differed from that of ordinary secondary schools, with more focus on Islamic education. For the Court, this interesting characteristic played no part in the outcome, since the İmam-Hatip schools were also part of the unified education system, and the Court treated these schools as it would have treated an ordinary secondary school.

What is an "İmam-Hatip" school?

In the 1920s and 1930s, as part of the secularization of Türkiye, the new regime introduced a unified education system through the Law on Tevhid-i Tedrisat (Unification of Education). This was one of the reforms of the single-party rule of Mustafa Kemal Atatürk, which is still protected by the Constitution as having an unamendable character. Although İmam Hatip schools were initially established in 1924 under the same law, the sudden secularization reforms meant the removal of religious functions from civil service. This meant there were not enough applications to sustain these schools, as there was no longer a viable function for religious education. Thus, in 1930, these schools were shut down.

Towards the late 1940s, during the single-party rule period (1923–1946) of the Cumhuriyet Halk Partisi (Republican People's Party, CHP), debates started emerging regarding religious education. These debates were largely driven by public demand, particularly due to the lack of imams and other religious personnel needed for essential services such as burials (Uzun 2012). The discussions were further intensified by the onset of Türkiye's transition to a multi-party system, marked by the establishment of the Demokrat Parti (Democratic Party, DP) in 1946. The emergence of the DP, which directly challenged the CHP's

dominance, added political pressure and contributed to the growing discourse on the role of religion in public life.

Only in 1951, a year after the first-ever democratic parliamentary elections in Türkiye and the subsequent government change, did the new DP government start establishing the İmam-Hatip schools. These schools combined Islamic religious studies, including training for imams and hatips (reciters and teachers of the Quran), with a broader curriculum in subjects like Turkish literature, science, and social studies.

Rights of others

A recurring theme in the Court's rulings on headscarf cases is an abstract concern for the "rights of others", often framed as the need to protect public order, secularism, or neutrality. In this particular case, the Turkish state argues that people who wear headscarves, meaning people who believe this to be a religious commandment, undermine the rights of other people who may not necessarily share this belief

This argument typically comes at the expense of the rights of the applicants themselves, whose personal religious freedoms are directly impacted by such bans. There is little to no acknowledgment of the applicants' autonomy and their right to participate in society while living according to their faith.

Furthermore, the mere sight of a headscarf is often treated as a highly disruptive element in public spaces, with no evidence to support this, a stance that is deeply troubling. The Court seems to view the headscarf as inherently problematic, associating it with division, extremism, or challenges to the Turkish model of secularism (*laiklik*). By framing the headscarf in this way, the Court reinforces false stereotypes and deepens social divisions rather than fostering understanding or respect for religious diversity.

This case in particular, where the Court applied the same approach even to schools primarily designed to teach Islam, shows the severity of this prejudiced view toward headscarves. If they pose such a danger to "others" in such a school, where would they ever be acceptable?

Neutrality or uniformity?

The Court's endorsement of headscarf bans, as exemplified by the *Köse* case, often hinges on the argument that such measures are necessary to maintain the neutrality of the state or the educational system. However, this claim is accepted by the Court with little to no scrutiny. Neutrality, as traditionally understood, implies that the state refrains from endorsing or discriminating against any particular religion or belief. Yet, in practice, these measures can impose a majoritarian uniform identity that excludes all or some religious expression. For instance, this vision, particularly in Türkiye, has often been tied to the ideological project of modernizing and "Westernizing" the country (Özbudun 2011). In this sense, the secularism or neutrality promoted by Türkiye and similar states could be critiqued as ideological stances rather than true neutrality, as they often reflect specific political or cultural agendas rather than an impartial position.

Shifts in tone and consistency

While there have been some shifts in the tone of the Court's rulings and decisions in headscarf cases over time, particularly in recent cases, the central argument regarding state neutrality and the protection of the rights of "others" remains largely unchanged. Even when the Court has softened its language or emphasized the need to balance religious freedoms with other concerns, the underlying assumption that religious symbols like the headscarf pose a challenge to state neutrality and to an undefined abstract right of others continues to dominate its reasoning.

This consistency can be critiqued from the perspective of how the Court views the role of religion in public life. By framing the headscarf as a potential source of division and conflict, the Court aligns itself with an understanding of neutrality that is more concerned with the avoidance of religious expression than with fostering genuine pluralism. This raises the question of whether the Court's approach might be inadvertently contributing to the exclusion of certain religious groups from the public sphere. As the apex authority over everything related to the Convention, the Court not only wields the power to facilitate more human

rights protection across states but also the power to endorse discriminatory practices with poor and unfair reasonings. For example, after the Court's 2004 Chamber ruling in *Leyla Şahin v. Turkey*, some scholars argued that the Court's tone and framing seemed to suggest that headscarf bans in universities in Türkiye were not only a policy choice to be left to the Turkish authorities' discretion, but almost a positive duty to protect other students (Altıparmak 2004).

Current state of affairs

Today in Türkiye, these bans no longer exist. The *laiklik* principle is still enshrined in the Constitution, but as part of gradual democratization reforms in the early 2010s, the headscarf bans were lifted in public offices and schools. Yet, to this day, the headscarf bans and their socio-economic and divisive political legacy are an issue brought up both by their supporters and their fervent opponents.

This shouldn't come as a surprise given the widespread, generational socio-economic effects these bans had in Türkiye (Güveli 2011). The implementation of headscarf bans in secondary schools, universities, public offices, and even private employment raises significant questions about what individuals are supposed to do when faced with such restrictions. If wearing a headscarf is an essential part of an individual's religious belief and identity, does this mean that they must choose between their faith and their right to participate in society or emigrate to study abroad in a place where such bans do not exist? In many cases, individuals are left with the agonizing decision to relinquish a vital aspect of their identity in order to gain access to education, public service, or employment.

The problem may be solved for Türkiye, notwithstanding the firm support of *laiklik* policies in the Court's case law, but for other European states who have growing Muslim populations, this issue will persist for the foreseeable future.

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

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Suggested citation of this case-law comment:

Aydil, Ahmet Said (2026): Veiled Injustice: The ECtHR's Enduring Stance against the Headscarf, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CURED1101TR010, <https://doi.org/10.48509/CURED1101TR010>.