



Leyla Şahin v. Turkey: A Case of Judicial Retreat

Question(s) at stake:

1) Whether a ban on wearing the Islamic headscarf at universities constitutes a justified interference with the right to freedom of thought, conscience, and religion under Article 9 of the European Convention on Human Rights (ECHR), and whether such a restriction can be deemed necessary in a democratic society for the protection of the rights and freedoms of others and the maintenance of public order, laiklik (secularism), and gender equality. 2) Whether a university rector's circular (genelge) satisfies the requirement that restrictions on rights be prescribed by law.

Outcome of the ruling:

The European Court of Human Rights (ECtHR) upheld Türkiye's ban on wearing the Islamic headscarf at universities, finding that the restriction did not violate the applicant's rights under the European Convention. The Court accepted the Turkish state's reliance on the principle of secularism (laiklik) and held that the restriction was necessary to protect public order and the rights and freedoms of others.

Topic(s):

- [Education](#)
- [Public Space and Institutional Sphere](#)

Keywords:

- [Hijab](#)
- [Higher education](#)
- [Laïcité](#)
- [Freedom of thought, conscience and religion](#)
- [Right to education](#)

Tag(s):

- [Headscarf](#)
- [Laiklik](#)
- [Secularism](#)

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Country:

[Turkey](#)

Official citation:

Leyla Şahin v. Turkey, App. no. 44774/98, 10 November 2005

Link to the decision:

<https://hudoc.echr.coe.int/fre?i=001-70956>

ECLI:

ECLI:CE:ECHR:2005:1110JUD004477498

Date:

10 November 2005

Jurisdiction / Court / Chamber:

European Court of Human Rights / Grand Chamber

Remedy / Procedural stage:

Final

Previous stages:

- Istanbul Administrative Court, 19 March 1999
- Istanbul Administrative Court of Appeal, 30 November 1999

- Supreme Administrative Court, 19 April 2001
- European Court of Human Rights, Fourth Section, 29 June 2004

Subsequent stages:

None

Branches / Areas of law:

Administrative Law, Constitutional Law

Facts:

The applicant, Leyla Şahin, attended Bursa University from 1993 to 1997, where she studied medicine. She wore an Islamic headscarf during that time because she considered it a requirement of her religious beliefs. On 26 August 1997, she transferred to Istanbul University.

On 23 February 1998, the Vice-Chancellor of Istanbul University issued a circular prohibiting the wearing of the Islamic headscarf or beards at lectures, courses, or examinations.

The relevant part of the circular provides:

“By virtue of the Constitution, the law and regulations, and in accordance with the case-law of the Supreme Administrative Court and the European Commission of Human Rights and the resolutions adopted by the university administrative boards, students whose ‘heads are covered’ (who wear the Islamic headscarf) and students (including overseas students) with beards must not be admitted to lectures, courses or tutorials. Consequently, the name and number of any student with a beard or wearing the Islamic headscarf must not be added to the lists of registered students. However, students who insist on attending tutorials and entering lecture theatres although their names and numbers are not on the lists must be advised of the position and, should they refuse to leave, their names and numbers must be taken and they must be informed that they are not entitled to attend lectures. If they refuse to leave the lecture theatre, the teacher shall record the incident in a report explaining why it was not possible to give the

lecture and shall bring the incident to the attention of the university authorities as a matter of urgency so that disciplinary measures can be taken.”

Following this, the applicant was denied access to multiple educational activities: an exam on 12 March 1998, enrolment in a course on 20 March 1998, a lecture on 16 April 1998, and an exam on 10 June 1998.

On 29 July 1998, Şahin applied to the Istanbul Administrative Court seeking annulment of the circular. She argued that the circular lacked a statutory basis, that the university administration did not have the authority to impose such restrictions, and that her rights under Articles 8, 9, and 14 ECHR, as well as Article 2 of Protocol No. 1, had been violated. On 19 March 1999, the Administrative Court dismissed her application, stating that the university’s actions were lawful and consistent with national case law. The Supreme Administrative Court later upheld this decision on 19 April 2001.

At the same time, disciplinary proceedings were initiated against Şahin in May 1998 due to her non-compliance with the dress code. On 26 May 1998, she received an official warning from the dean for continuing to wear the headscarf during academic activities. On 15 February 1999, she took part in a student protest held in front of the dean’s office against the dress restrictions. As a result, she faced a second disciplinary proceeding and, on 13 April 1999, was suspended from the university for one semester.

On 10 June 1999, Şahin appealed this suspension before the Istanbul Administrative Court. Her claim was dismissed on 30 November 1999. She then appealed to the Supreme Administrative Court. During the course of proceedings, Law No. 4584 came into force on 28 June 2000, granting a general amnesty for students facing disciplinary sanctions. Accordingly, Şahin’s penalties were lifted, and the Supreme Administrative Court subsequently declared her appeal unnecessary.

By this time, Şahin had decided to leave Türkiye. On 16 September 1999, she moved to Austria and enrolled at the University of Vienna to continue her medical education.

Şahin lodged an application with the ECtHR on 21 July 1998, alleging violations of her rights under Articles 8, 9, 10, and 14 of the Convention, as well as Article 2 of Protocol No. 1.

The Chamber, in its initial examination of the case, acknowledged that the university's regulations restricting the wearing of Islamic headscarves constituted an interference with the applicant's right to manifest her religion under Article 9. However, it determined that this interference satisfied the threefold test established in Article 9(2): it was prescribed by law, pursued the legitimate aims of protecting public order and the rights and freedoms of others, and could be considered necessary in a democratic society. The Chamber thus found no violation of the Convention provisions invoked.

Subsequently, the case was referred to the Grand Chamber for reconsideration under Article 43 of the Convention.

Ruling:

One of the applicant's main contentions was that the restriction was not "prescribed by law". She pointed out that the applicable Students Disciplinary Procedure Rules did not classify wearing the headscarf as a disciplinary offence. She emphasized that the 1998 circular relied on by the university administration came years after she had begun her studies and lacked a statutory foundation. She argued that Turkish courts' case law could not serve as a legitimate basis for new legal rules, and that the courts could apply existing laws rather than create prohibitions not formally enacted by Parliament.

Here the Court adopted a substantive understanding of what qualifies as "law" under the Convention. The Court stated that the notion of "law" under the Convention includes judge-made law and administrative regulations derived from constitutional principles, so long as the resulting norms are accessible, foreseeable, and sufficiently precise.

The Court also argued that the 1998 circular issued by the university had a legal basis in section 13 of Law No. 2547, which authorizes university officials to manage institutional affairs. The applicant contested the scope of the authority

granted to the university by this law, but the Court upheld the Turkish courts' interpretation that such regulations, including headscarf restrictions, were lawful under domestic law and constitutional principles.

The criticized the approach of the Turkish authorities by stating that totalitarian regimes may claim to be republics, but true democracies must be pluralistic. She stated that no other European country prohibited students from wearing the Islamic headscarf in universities. She argued that university-age students should have the freedom to decide on deeply personal matters such as religious attire.

The Court acknowledged the importance of Article 9 in democratic societies. It cited previous decisions in paragraph 98, such as *Karaduman v. Turkey* and *Dahlab v. Switzerland*, where it had found that the state was entitled to place restrictions on the wearing of the Islamic headscarf. In *Karaduman*, the Court held that compelling students who wear headscarves to uncover their hair when providing photos for administrative purposes during diploma issuance does not violate Article 9 because it aims to prevent pressuring non-religious students or students of other religions and to restrain extremist groups. In *Dahlab*, the Court questioned whether the Islamic headscarf might have a proselytizing effect, especially in the context of gender equality, which is a core value of democratic societies.

In *Şahin*, the Turkish authorities justified the restrictions on wearing the Islamic headscarf by emphasizing that secularism was necessary for upholding democratic values, serving as a guarantee of freedom of religion and protection against both arbitrary state interference and external pressure from extremist movements.

The Grand Chamber acknowledged that secularism is fundamental to Türkiye's democratic system and should be upheld to protect the integrity of that system. The Court found that extremist movements in Türkiye might impose religious symbols and societal values based on religious precepts, and that the restrictions on wearing religious symbols were viewed as a measure against this. The Court also referred to a similar discussion in *Refah Partisi*, in which it had stated that

each contracting state could take measures against political movements based on its historical experience.

The applicant also claimed a violation of the first sentence of Article 2 of Protocol No. 1, which protects the right to education. The Court examined whether this right applies to higher education and confirmed that it does. The applicant argued that the ban on wearing the Islamic headscarf violated her right to education by preventing her from attending lectures and exams. She contended that this restriction was disproportionate because her headscarf did not disrupt public order. The government justified the ban by referring to national case law, asserting that the applicant still had access to education and that the regulation fell within the state's margin of appreciation.

The Court analyzed the proportionality of the ban and whether it served a legitimate aim. The government argued that the ban was necessary to maintain public order and the integrity of the educational environment. However, the applicant argued that there was no evidence that her wearing the headscarf disrupted order or encroached on the rights of others. The applicant contended that the ban was excessive, particularly since she had been studying without issue while wearing the headscarf for several years.

In the end, the Court found that the restriction did not violate Article 2 of Protocol No. 1 and that the university's measures were within the margin of appreciation afforded to states.

Main quotations on cultural or religious diversity:

- “The Turkish Republic was founded on the principle that the State should be secular (laik). Before and after the proclamation of the Republic on 29 October 1923, the public and religious spheres were separated through a series of revolutionary reforms: the abolition of the caliphate on 3 March 1923; the repeal of the constitutional provision declaring Islam the religion of the State on 10 April 1928; and, lastly, on 5 February 1937, a constitutional amendment according constitutional status to the principle of secularism

(see Article 2 of the Constitution of 1924 and Article 2 of the Constitutions of 1961 and 1982, as set out in paragraph 29 above).” (para. 30)

- “The principle of secularism was inspired by developments in Ottoman society in the period between the nineteenth century and the proclamation of the Republic. The idea of creating a modern public society in which equality was guaranteed to all citizens without distinction on grounds of religion, denomination or sex had already been mooted in the Ottoman debates of the nineteenth century. Significant advances in women’s rights were made during this period (equality of treatment in education, the introduction of a ban on polygamy in 1914, the transfer of jurisdiction in matrimonial cases to the secular courts that had been established in the nineteenth century).” (para. 31)
- “The defining feature of the Republican ideal was the presence of women in public life and their active participation in society. Consequently, the ideas that women should be freed from religious constraints and that society should be modernised had a common origin. Thus, on 17 February 1926 the Civil Code was adopted, which provided for equality of the sexes in the enjoyment of civic rights, in particular with regard to divorce and succession. Subsequently, through a constitutional amendment of 5 December 1934 (Article 10 of the 1924 Constitution), women obtained equal political rights to men.” (para. 32)
- “The first legislation to regulate dress was the Headgear Act of 28 November 1925 (Law no. 671), which treated dress as a modernity issue. Similarly, a ban was imposed on wearing religious attire other than in places of worship or at religious ceremonies, irrespective of the religion or belief concerned, by the Dress (Regulations) Act of 3 December 1934 (Law no. 2596).” (para. 33)
- “Under the Education Services (Merger) Act of 3 March 1924 (Law no. 430), religious schools were closed and all schools came under the control of the Ministry of Education. The Act is one of the laws with constitutional status that are protected by Article 174 of the Turkish Constitution.” (para. 34)

- “In Turkey, wearing the Islamic headscarf to school and university is a recent phenomenon which only really began to emerge in the 1980s. There has been extensive discussion on the issue and it continues to be the subject of lively debate in Turkish society. Those in favour of the headscarf see wearing it as a duty and/or a form of expression linked to religious identity. However, the supporters of secularism, who draw a distinction between the başörtüsü (traditional Anatolian headscarf, worn loosely) and the türban (tight, knotted headscarf hiding the hair and the throat), see the Islamic headscarf as a symbol of a political Islam. As a result of the accession to power on 28 June 1996 of a coalition government comprising the Islamist Refah Partisi, and the centre-right Doğru Yol Partisi, the debate has taken on strong political overtones. The ambivalence displayed by the leaders of the Refah Partisi, including the then Prime Minister, over their attachment to democratic values, and their advocacy of a plurality of legal systems functioning according to different religious rules for each religious community was perceived in Turkish society as a genuine threat to republican values and civil peace (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II).” (para. 35)
- “For more than twenty years the place of the Islamic headscarf in State education has been the subject of debate across Europe. In most European countries, the debate has focused mainly on primary and secondary schools. However, in Turkey, Azerbaijan and Albania it has concerned not just the question of individual liberty, but also the political meaning of the Islamic headscarf. These are the only member States to have introduced regulations on wearing the Islamic headscarf in universities.” (para. 55)
- “In France, where secularism is regarded as one of the cornerstones of republican values, legislation was passed on 15 March 2004 regulating, in accordance with the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in State primary and secondary schools. The legislation inserted a new Article L. 141-5-1 in the Education Code which

provides: 'In State primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited. The school rules shall state that the institution of disciplinary proceedings shall be preceded by dialogue with the pupil.'

- The Act applies to all State schools and educational institutions, including post-baccalaureate courses (preparatory classes for entrance to the grandes écoles and vocational training courses). It does not apply to State universities. In addition, as a circular of 18 May 2004 makes clear, it only concerns '... signs, such as the Islamic headscarf, however named, the kippa or a cross that is manifestly oversized, which make the wearer's religious affiliation immediately identifiable'." (para. 56)
- "In Belgium there is no general ban on wearing religious signs at school. In the French Community a decree of 13 March 1994 stipulates that education shall be neutral within the Community. Pupils are in principle allowed to wear religious signs. However, they may do so only if human rights, the reputation of others, national security, public order, and public health and morals are protected and internal rules complied with. Further, teachers must not permit religious or philosophical proselytism under their authority or the organisation of political militancy by or on behalf of pupils. The decree stipulates that restrictions may be imposed by school rules. On 19 May 2004 the French Community issued a decree intended to institute equality of treatment. In the Flemish Community, there is no uniform policy among schools on whether to allow religious or philosophical signs to be worn. Some do, others do not. When pupils are permitted to wear such signs, restrictions may be imposed on grounds of hygiene or safety." (para. 57)
- "In other countries (Austria, Germany, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom), in some cases following a protracted legal debate, the State education authorities permit Muslim pupils and students to wear the Islamic headscarf." (para. 58)

- “In Germany, where the debate focused on whether teachers should be allowed to wear the Islamic headscarf, the Constitutional Court stated on 24 September 2003 in a case between a teacher and the Land of Baden-Württemberg that the lack of any express statutory prohibition meant that teachers were entitled to wear the headscarf. Consequently, it imposed a duty on the Länder to lay down rules on dress if they wished to prohibit the wearing of the Islamic headscarf in State schools.” (para. 59)
- “In Austria there is no special legislation governing the wearing of the headscarf, turban or kippa. In general, it is considered that a ban on wearing the headscarf will only be justified if it poses a health or safety hazard for pupils.” (para. 60)
- “In the United Kingdom a tolerant attitude is shown to pupils who wear religious signs. Difficulties with respect to the Islamic headscarf are rare. The issue has also been debated in the context of the elimination of racial discrimination in schools in order to preserve their multicultural character (see, in particular, *Mandla v. Dowell*, The Law Reports 1983, pp. 548-70). The Commission for Racial Equality, whose opinions have recommendation status only, also considered the issue of the Islamic headscarf in 1988 in the *Altrincham Grammar School* case, which ended in a compromise between a private school and members of the family of two sisters who wished to be allowed to wear the Islamic headscarf at the school. The school agreed to allow them to wear the headscarf provided it was navy blue (the colour of the school uniform), kept fastened at the neck and not decorated.
- In *R. (On the application of Begum) v. Headteacher and Governors of Denbigh High School* ([2004] EWHC 1389 (Admin)), the High Court had to decide a dispute between the school and a Muslim pupil wishing to wear the jilbab (a full-length gown). The school required pupils to wear a uniform, one of the possible options being the headscarf and the shalwar kameeze (long traditional garments from the Indian subcontinent). In June 2004 the High Court dismissed the pupil’s application, holding that there had been no

violation of her freedom of religion. However, that judgment was reversed in March 2005 by the Court of Appeal, which accepted that there had been interference with the pupil's freedom of religion, as a minority of Muslims in the United Kingdom considered that a religious duty to wear the jilbab from the age of puberty existed and the pupil was genuinely of that opinion. No justification for the interference had been provided by the school authorities, as the decision-making process was not compatible with freedom of religion." (para. 61)

- "In Spain there is no express statutory prohibition on pupils' wearing religious head coverings in State schools. By virtue of two royal decrees of 26 January 1996, which are applicable in primary and secondary schools unless the competent authority - the autonomous community - has introduced specific measures, the school governors have power to issue school rules which may include provisions on dress. Generally speaking, State schools allow the headscarf to be worn." (para. 62)
- "In Finland and Sweden the veil can be worn at school. However, a distinction is made between the burka (the term used to describe the full veil covering the whole of the body and the face) and the niqab (a veil covering all the upper body with the exception of the eyes). In Sweden mandatory directives were issued in 2003 by the National Education Agency. These allow schools to prohibit the burka and niqab, provided they do so in a spirit of dialogue on the common values of equality of the sexes and respect for the democratic principle on which the education system is based." (para. 63)
- "In the Netherlands, where the question of the Islamic headscarf is considered from the standpoint of discrimination rather than of freedom of religion, it is generally tolerated. In 2003 a non-binding directive was issued. Schools may require pupils to wear a uniform provided that the rules are not discriminatory and are included in the school prospectus and that the punishment for transgressions is not disproportionate. A ban on the burka is regarded as justified by the need to be able to identify and communicate

with pupils. In addition, the Equal Treatment Commission ruled in 1997 that a ban on wearing the veil during physical education classes for safety reasons was not discriminatory.” (para. 64)

- “In a number of other countries (Russia, Romania, Hungary, Greece, the Czech Republic, Slovakia and Poland), the issue of the Islamic headscarf does not yet appear to have given rise to any detailed legal debate.” (para. 65)

Main legal texts quoted in the decision:

Domestic law

- Articles 2, 4, 10, 13, 14, 24, 42, and 143 of the Constitution
- Higher-Education Act (Law no. 2547), transitional section 17
- Students Disciplinary Procedure Rules
- Circular issued by the Vice Chancellor of Istanbul University on 23 February 1998

European Convention on Human Rights

- Article 8 of the European Convention on Human Rights
- Article 9 of the European Convention on Human Rights
- Article 10 of the European Convention on Human Rights
- Article 14 of the European Convention on Human Rights
- Article 2 of Protocol No. 1 of the European Convention on Human Rights

Cases cited in the decision:

- *Airey v. Ireland*, App. no. 6289/73, 9 October 1979
ECLI:CE:ECHR:1979:1009JUD000628973 *Arrowsmith v. the United Kingdom*, App. no. 7050/75, 12 October 1978
ECLI:CE:ECHR:1978:1012DEC000705075

- *Barthold v. Germany*, App. no. 8734/79, 25 March 1985
ECLI:CE:ECHR:1985:0325JUD000873479
- *Buscarini and Others v. San Marino*, App. no. 24645/94, 18 February 1999
ECLI:CE:ECHR:1999:0218JUD002464594
- *C. v. the United Kingdom*, App. no. 10358/83, 15 December 1983
ECLI:CE:ECHR:1983:1215DEC001035883
- *Campbell and Cosans v. the United Kingdom*, App. nos. 7511/76 and 7743/76, 25 February 1982
ECLI:CE:ECHR:1982:0225JUD000751176
- *Casado Coca v. Spain*, App. No. 15450/89, 24 February 1994
ECLI:CE:ECHR:1994:0224JUD001545089
- Case “relating to certain aspects of the laws on the use of languages in education in Belgium”, App. nos. 1474/62 and others, 23 July 1968
ECLI:CE:ECHR:1968:0723JUD001474162
- *Cha'are Shalom Ve Tsedek v. France*, App. no. 27417/95, 27 June 2000
ECLI:CE:ECHR:2000:0627JUD002741795
- *Chassagnou and Others v. France*, App. nos. 25088/94, 28331/95, and 28443/95, 29 April 1999
ECLI:CE:ECHR:1999:0429JUD002508894
- *Costello-Roberts v. the United Kingdom*, App. no. 13134/87, 25 March 1993
ECLI:CE:ECHR:1993:0325JUD001313487
- *Cumpănă and Mazăre v. Romania*, App. no. 33348/96, 17 December 2004
ECLI:CE:ECHR:2004:1217JUD003334896
- *Dahlab v. Switzerland*, App. no. 42393/98, 15 February 2001
ECLI:CE:ECHR:2001:0215DEC004239398
- *De Wilde, Ooms and Versyp v. Belgium*, App. nos. 2832/66, 2835/66, and 2899/66, 18 June 1971
ECLI:CE:ECHR:1971:0618JUD000283266

- *Delcourt v. Belgium*, App. no. 2689/65, 17 January 1970
ECLI:CE:ECHR:1970:0117JUD000268965
- *Durmaz and Others v. Turkey*, App. nos. 46506/99, 46569/99, 46570/99, and 46939/99, 4 September 2001
ECLI:CE:ECHR:2001:0904DEC004650699
- *Fayed v. the United Kingdom*, App. no. 17101/90, 21 September 1994
ECLI:CE:ECHR:1994:0921JUD001710190
- *Georgiou v. Greece*, App. no. 45138/98, 13 January 2000
ECLI:CE:ECHR:2000:0113DEC004513898
- *Göç v. Turkey*, App. no. 36590/97, 11 July 2002
ECLI:CE:ECHR:2002:0711JUD003659097
- *Golder v. the United Kingdom*, App. no. 4451/70, 21 February 1975
ECLI:CE:ECHR:1975:0221JUD000445170
- *Karaduman v. Turkey*, App. no. 16278/90, decision 3 May 1993
ECLI:CE:ECHR:1993:0503DEC001627890
- *Kokkinakis v. Greece*, App. no. 14307/88, 25 May 1993.
ECLI:CE:ECHR:1993:0525JUD001430788
- *Gorzelik and Others v. Poland*, App. no. 44158/98, 17 February 2004 ECLI:
ECLI:CE:ECHR:2004:0217JUD004415898
- *Hasan and Chaush v. Bulgaria*, App. no. 30985/96, 26 October 2000 ECLI:
ECLI:CE:ECHR:2000:1026JUD003098596
- *K. and T. v. Finland*, App. no. 25702/94, 12 July 2001 ECLI:
ECLI:CE:ECHR:2001:0712JUD002570294
- *Kalaç v. Turkey*, App. no. 20704/92, 1 July 1997 ECLI:
ECLI:CE:ECHR:1997:0701JUD002070492
- *Karaduman v. Turkey*, App. no. 16278/90, Commission decision of 3 May 1993 ECLI: ECLI:CE:ECHR:1993:0503DEC001627890

- *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, App. nos. 5095/71, 5920/72, and 5926/72, 7 December 1976 ECLI: ECLI:CE:ECHR:1976:1207JUD000509571
- *Kokkinakis v. Greece*, App. no. 14307/88, 25 May 1993 ECLI: ECLI:CE:ECHR:1993:0525JUD001430788
- *Kramelius v. Sweden*, App. no. 21062/92, Commission decision of 17 January 1996 ECLI: ECLI:CE:ECHR:1996:0117DEC002106292
- *Kruslin v. France*, App. no. 11801/85, 24 April 1990 ECLI: ECLI:CE:ECHR:1990:0424JUD001180185
- *Lukach v. Russia*, App. no. 48041/99, 16 November 1999 ECLI: ECLI:CE:ECHR:1999:1116DEC004804199
- *Mamatkulov and Askarov v. Turkey*, App. nos. 46827/99 and 46951/99, 4 February 2005 ECLI: ECLI:CE:ECHR:2005:0204JUD004682799
- *Manoussakis and Others v. Greece*, App. no. 18748/91, 26 September 1996 ECLI: ECLI:CE:ECHR:1996:0926JUD001874891
- *Marckx v. Belgium*, App. no. 6833/74, 13 June 1979 ECLI: ECLI:CE:ECHR:1979:0613JUD000683374
- *Murphy v. Ireland*, App. no. 44179/98, 10 July 2003 ECLI: ECLI:CE:ECHR:2003:0710JUD004417998
- *Otto-Preminger-Institut v. Austria*, App. no. 13470/87, 20 September 1994 ECLI: ECLI:CE:ECHR:1994:0920JUD001347087
- *Pichon and Sajous v. France*, App. no. 49853/99, 2 October 2001 ECLI: ECLI:CE:ECHR:2001:1002DEC004985399
- *Podkolzina v. Latvia*, App. no. 46726/99, 9 April 2002 ECLI: ECLI:CE:ECHR:2002:0409JUD004672699
- *Serif v. Greece*, App. no. 38178/97, 14 December 1999 ECLI: ECLI:CE:ECHR:1999:1214JUD003817897

- *Refah Partisi (the Welfare Party) and Others v. Turkey*, App. nos. 41340/98, 41342/98, 41343/98, and 41344/98, 13 February 2003 ECLI: ECLI:CE:ECHR:2003:0213JUD004134098
- *Sulak v. Turkey*, App. no. 24515/94, Commission decision of 17 January 1996 ECLI: ECLI:CE:ECHR:1996:0117DEC002451594
- *The Sunday Times v. the United Kingdom (No. 1)*, App. no. 6538/74, 26 April 1979 ECLI: ECLI:CE:ECHR:1979:0426JUD000653874
- *Tepeli and Others v. Turkey*, App. no. 31876/96, 11 September 2001 ECLI: ECLI:CE:ECHR:2001:0911DEC003187696
- *United Communist Party of Turkey and Others v. Turkey*, App. no. 19392/92, 30 January 1998 ECLI: ECLI:CE:ECHR:1998:0130JUD001939292
- *Valsamis v. Greece*, App. no. 21787/93, 18 December 1996 ECLI: ECLI:CE:ECHR:1996:1218JUD002178793
- *Wingrove v. the United Kingdom*, App. no. 17419/90, 25 November 1996 ECLI: ECLI:CE:ECHR:1996:1125JUD001741990
- *X. v. the United Kingdom*, App. no. 5962/72, Commission decision of 13 March 1975 ECLI: ECLI:CE:ECHR:1975:0313DEC000596272
- *X. v. the United Kingdom*, App. no. 8844/80, Commission decision of 9 December 1980 ECLI: ECLI:CE:ECHR:1980:1209DEC000884480
- *Yanasik v. Turkey*, App. no. 14524/89, Commission decision of 6 January 1993 ECLI: ECLI:CE:ECHR:1993:0106DEC001452489
- *Young, James and Webster v. the United Kingdom*, App. nos. 7601/76 and 7806/77, 13 August 1981 ECLI: ECLI:CE:ECHR:1981:0813JUD000760176

Commentary

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Leyla Şahin v. Turkey is one of the most controversial judgments in the ECtHR's history, not only for its legal reasoning, but for the profound political and societal

impact it had, particularly in Türkiye.

Sehiya Didovic, the Secretary-General of “Nahla”, a Bosnia and Herzegovina-based NGO advocating for women’s education rights, published an open letter to the Strasbourg judges while the *Leyla Şahin* case was before the ECtHR. This letter discussed the potential impacts of the ruling on the educational rights and socioeconomic status of women living in Europe. Ms Didovic urged the court to thoroughly consider the potential ramifications and impacts of the ruling, as well as the years of human rights activism and struggles that have gone into addressing this issue, when making its decision (Lindholm 2016).

Naturally, the case was also followed closely by the Turkish public, generating reactions across the political spectrum. Ironically, despite the Court affirming the Turkish courts’ stance, prominent political figures, including Prime Minister Erdogan, expressed disappointment with the outcome. In contrast, then President Sezer welcomed the ruling, seeing it as a final affirmation of Türkiye’s secular (“*laik*”) order and a resolution to the contentious headscarf debate (Altıparmak 2004).

What Sezer failed to foresee, though, were the deeper implications of the judgment. While the ECtHR upheld the state’s position, it also issued a judgment that carried troubling assumptions about Türkiye’s legal and political structure. In the end, rather than resolving the tensions around the headscarf issue, the Court’s reasoning arguably deepened them, casting doubt on its own impartiality in cases involving Islam and Muslims. The title of the 2004 Human Rights Watch report on the Chamber ruling, “A Certain Lack of Empathy”, aptly reflects the Grand Chamber’s ruling, which disregards the rights claims of Muslim women who are affected by these bans. This raised lasting concerns about the ECtHR’s legitimacy, both in Türkiye and beyond.

Ruling

In paragraphs 55 to 65, the Grand Chamber gave a comparative overview of how various Council of Europe (CoE) member states address the headscarf issue. This was to illustrate that no European consensus exists on the matter and to justify

the decision to grant Türkiye a wide margin of appreciation. The Court also highlighted that countries like Albania, Azerbaijan, and Türkiye have distinct historical and political contexts, suggesting that the headscarf carries a specific “political element” in these states.

However, this framing leaves out key facts. Firstly, as Judge Tulkens noted in her dissenting opinion, there was, in fact, a clear European consensus on the matter: no other CoE member state had a headscarf ban for university students. The Court, however, bundled different headscarf cases across CoE states without addressing the different contexts of each case. None of these cases were about university students.

Moreover, referencing a “political” dimension in the three Muslim-majority countries without elaborating on what this entails or acknowledging the political and institutional contexts in which these restrictions developed undermines the Court’s reasoning. These countries have experienced periods of authoritarian rule, including military intervention, yet the Court does not examine how these historical circumstances shaped state approaches to religious visibility or the particular understanding of secularism on which such restrictions were based.

The Court’s references to its own case law throughout the ruling are also misleading. When citing *Karaduman v. Turkey*, the Court uses the term “*secular universities*”, a legally non-existent category in Turkish law. The Court also cites *Refah Partisi and Others v. Turkey*, the trial of a political party that was closed down by the Turkish state in part due to its policy of lifting headscarf bans. By invoking the logic of *Refah* in *Şahin*, the Court paints a picture of a looming “Islamist threat” to Turkish democracy, suggesting that the headscarf ban was necessary in this context as well.

Furthermore, the invocation of Ottoman history in the judgment is underdeveloped and misleading. Rather than providing a detailed or historically grounded analysis, the Court gestures vaguely at a pre-republican and early republican past of Türkiye to justify contemporary clothing restrictions. It ends up employing history more as a rhetorical device than as a reasoned argument.

The Court also stated that universities still accommodated religious practices “habitually observed”, a vague and reductionist claim that ignores the diversity of religious expression.

Prescribed by law

As Kerem Altıparmak stated in his 2004 article on the Chamber judgment, the Court’s treatment of Turkish administrative law gives the impression that some judges may have misunderstood very basic legal provisions.

Both the Chamber and the Grand Chamber justified the rector’s authority by invoking Article 13(b) of the Higher Education Law No. 2547, which grants general supervisory powers over university order and security. However, the Court interpreted this provision as conferring broad regulatory authority sufficient to impose restrictions on fundamental rights. In Turkish law, such general oversight clauses are common in the founding statutes of public institutions, but they do not grant power to issue binding, rights-restricting regulations (Altıparmak 2004). Under the Turkish constitution, restrictions on fundamental rights must be based on formal legislation, a criterion that an administrative circular does not fulfil.

Nevertheless, the ECtHR applied its autonomous interpretation of the term “law”, understanding it to mean any legal norm that is accessible, foreseeable, and of adequate quality, regardless of whether it takes the form of a formal act of parliament. This interpretation of the Court is not at all controversial in itself. It reflects the Court’s aim to develop autonomous legal concepts that accommodate the diversity of legal systems, particularly the differences between civil law and common law traditions, and to overcome the limits of domestic legal classifications when assessing social realities.

However, as Altıparmak states, the problem lies not in the interpretive approach itself, but in the result of this approach in the case at hand, which is to undermine the protection of human rights. By accepting an administrative circular as a sufficient legal basis for restricting a fundamental right, the Court effectively authorized a limitation that would be unconstitutional under Turkish law.

In doing so, the ECtHR blurred the line between judicial oversight and legislative deference. Rather than acting as a bulwark against executive overreach, it appeared to empower administrative bodies to impose rights-restricting regulations without any formal legislative mandate.

No violation - margin of appreciation

The Court referred to the case of *Dahlab v. Switzerland* and reiterated that religious symbols like the headscarf can be restricted by states if they pose risks to public safety or the rights of others.

However, in *Şahin*, instead of assessing the actual situation at Istanbul University, the Court generalized its reasoning. It effectively replaced the context of this case with broader assumptions about Islam, Turkish society, and potential extremist movements. This reasoning overlooked key questions regarding this case: Was there evidence of extremist religious activity at the university? Had students faced pressure or disruptions due to the headscarf? Were disciplinary measures attempted and found insufficient before imposing a full ban? By not addressing such questions, the Court treated the case abstractly and ruled that universities may justifiably ban headscarves to protect public order and secular principles. This approach went beyond resolving an individual rights claim and was closer to judicial rulemaking based on generalized fears rather than verified context (Altıparmak 2004).

This line of reasoning implicitly assumes that all, or most, students who wear headscarves are linked to extremist movements and constitute a danger to others. By failing to conduct any judicial inquiry into whether students wearing headscarves in all Turkish universities pose a threat to others, the Court basically assumes that they do (Lindholm 2016).

Conclusion

Today, Türkiye's headscarf bans are a thing of the past, yet the political relevance of the matter endures. The Strasbourg stage of the historic headscarf case stands not as an illustration of how the ECtHR can overcome the ideological stance of a state with a Convention-based human rights law approach, but as a stark

reminder of how the ECtHR can abdicate its responsibility to uphold fundamental rights by using margin of appreciation. The Court not only failed to substantiate the existence of any concrete threat posed by the applicant's headscarf, but also endorsed an abstract and ideologically charged narrative advanced by the Turkish state, one that frames the visibility of Muslim religious symbols as inherently destabilizing. By invoking an unfounded association with extremism, the Court validated a narrative rooted in suspicion and control, rather than true democratic pluralism. To shield its approach, the Court cloaked its ruling under “*laiklik*”, treating the very particular Turkish understanding of secularism as an unquestionable constitutional identity rather than a contestable policy choice (Moe 2016).

In the end, the ruling ignored the millions of Turkish women who wear the headscarf for diverse and often deeply personal reasons, but also effectively denied them equal citizenship by denying them the right to earn a university degree and enter professional life. Throughout this ruling and in other headscarf cases, the Court's conflation of gender equality with the restriction of religious dress reinforces the orientalist trope that Muslim women's agency can only be protected through the denial of their religious expression (Skeet 2013).

The legacy of *Leyla Şahin v. Turkey* is therefore not one of balancing rights with secular order or of carefully implementing the controversial margin of appreciation, but of judicial retreat. It reveals a serious inconsistency in the Court's approach to religious freedom when Islam is involved. Far from resolving the headscarf debate in Türkiye or anywhere else, the judgment has entrenched mistrust toward the ECtHR and raised uncomfortable but urgent questions about the Court's impartiality, cultural bias, and commitment to equal rights for all (Akyol 2004).

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Suggested citation of this case-law comment:

Aydil, Ahmet Said (2026): Leyla Şahin v. Turkey: A Case of Judicial Retreat, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CURED1101TR013, <https://doi.org/10.48509/CURED1101TR013>.