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Unveiling the Veil Ban Dilemma: Turkey and Beyond

By Adriana Piatti-Crocker¹ and Laman Tasch²

Abstract

This article examines Turkey's veil ban policy, which has been in place since the 1980s. The dilemma is whether Muslim-veil bans impinge on the rights of expression and religion at both national and international levels or, whether states may legally justify a ban on the basis of secularism and women's rights. Even though the idea of freedom "from religion" in Turkey has been closely linked to the European notion of secularism during most of Turkey's republican history, more recently, secularism and veil bans in Turkey and in the West have been construed quite distinctly. This shows an increasing gap between European and Turkey's politics and values.

Keywords: Human rights, Muslim-veils, secularism, Turkey, women's rights.

Introduction

Scholars and practitioners of international law have recognized the obstacles that human rights must overcome to conflate individual and collective rights into a cohesive system. More specifically, the collective nature of freedom of religion has been problematic (Chirkin 2007). Religious identity is acquired within communities, but the post-World War II international human rights regime initially placed greater importance on individuals as the locus of human rights. Moreover, the universality of basic individual human rights proclaimed in treaties and declarations has also been challenged by religious practices and regional conventions.

This article examines how freedom of religion is interpreted at state and international levels, using the example of Turkey's veil ban. The issue here is whether Muslim-veil bans impinge on the rights of freedom of expression and religion, or whether states may legally justify a ban on the basis of secularism and women's rights. The requirement to wear Muslim veils as an expression of religious identity is in itself highly controversial. Some Muslim theologians argue that the Qur'an requires women to be modest and not to provoke men by their appearance, and that modesty does not always translate into covering one's head, full-body and face. This explains why there is such a great variation in Muslim veiling even among Muslim conservatives around the world. Although it is outside the scope of this work to discuss whether veiling is a requirement

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under Islamic law, the fact that there is such a debate is noteworthy because it underlines different ways to interpret and reinforce what both sides of the debate claim to be their struggle for freedom of religion. To illustrate these controversies, this article examines the case of Leyla Şahin, a medical student at the University of Istanbul, who went to the European Court of Human Rights (ECHR) to challenge a veil ban in Istanbul's university. As a Muslim woman, she claimed that the university policy-and Turkish laws-violated her rights of freedom of expression and religion.¹

The first section of this article examines general current trends on the protection of basic human rights and analyzes the universality of human rights and its problems, using as appropriate examples for this case, the European and Arab human rights agreements. A second section examines the historical evolution of secularism in Turkey since its origins during the 1920s until recent years and illustrates how this concept has been vaguely defined by political authorities. This has given court decisions ample room to construe the meaning of secularism and veil bans in Turkey. The third and last section analyzes the interpretation of Turkey's veil bans at the international (European) level and examines European Court of Human Rights (ECHR) decisions on Turkey's veil bans, including the case of university student Leyla Sahin. This discussion is significant because even though the idea of secularism and freedom "from religion" had been closely identified with the European notion of secularism since Turkey became a republic, more recently, policies of secularism and veil bans in Turkey, as compared to Western Europe, are being construed quite distinctly.

Human Rights and the Problem of Universality

The end of the cold war was seen to be the beginning of "a new world order," when the divide between western capitalist and eastern communist societies would no longer exist. Unquestionably, east vs. west conceptions of human rights have come closer together, yet the international community has also entered a period of remarkable global transition. The resulting confluence of peoples and cultures in an increasingly borderless multicultural world has created tension and conflict. According to Ayton-Shenker (2011) "there is an understandable urge to return to old conventions, traditional cultures, fundamental values, and the familiar, seemingly secure, sense of one's identity. Without a secure sense of identity amidst the turmoil of transition, people may resort to isolationism, ethnocentrism and intolerance." This is why human rights should be interpreted as a universal body of law, yet also taking into consideration the rights of cultural minorities.

In the strict sense of the term, universal human rights do not represent a given tradition nor are they oriented towards one culture to the exclusion of others. They do not impose one cultural standard, but they presuppose a minimum protection of rights necessary for human dignity. As a legal standard adopted through the United Nations and by most members of the international community, universal human rights are the result of a hard-won consensus to achieve and advance a common standard and an international system of law to protect human dignity.

Through several international agreements sponsored by the United Nations, the principle of universality of human rights has been clearly accepted and recognized in numerous international agreements. Human rights are emphasized among the purposes of the United Nations as proclaimed in its Charter, which states that human rights are "for

all without distinction.” Moreover, alongside the UN Human Rights system, regional human rights agreements have also expressly recognized individual and collective rights.

At the opposite extreme of universality is cultural relativism. Cultural relativism is the assertion that individual and group-level traditions, far from being universal, vary according to different cultural perspectives, and absence of a “common denominator” of values ensues. Some would apply this relativism to the interpretation and application of human rights in view of different cultural, ethnic and religious traditions. Indeed, whereas most members of the international community have signed and ratified the major human rights conventions, some “relativist” undertones are still present; particularly relevant for this paper are those regarding “religious rights.” For the purpose of this work, we will examine European human rights agreements and human rights treaties adopted by Muslim countries.

European Human Rights

Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms regulates freedom of religion. In addition, like UN documents, the European convention emphasizes the universal and indivisible nature of human rights and remains neutral regarding religion. Regarding Muslim veils, the convention has several legal provisions that may justify the right to wear veils, most notably articles 8 and 9 on freedom of conscience, expression, and religion. However, similarly to international agreements, Articles 8 and 9 also allow some limitations to those rights “when they are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” (European Convention of Human Rights).

Concerning collective human rights, European states have adopted several agreements, including the Framework Convention for the Protection of National Minorities, which among other principles advocates the “preservation and development of culture and identity of national minorities.” In addition, the European Charter for Regional or Minority Languages, and the OSCE Copenhagen Document of 1990 are directed to the protection of minorities. Yet, the increasing number of countries banning veils in Western Europe may be seen, at least partly, as policies that de-emphasize the protection of both individual and collective human rights to maintain the integrity of European culture.²

Islamic Human Rights

Among the various components of freedom of religion, the right to change religions and the right not to be religious have been problematic for many countries with a majority of Muslim populations, hereinafter called “Muslim countries,”³ partially because of their historical encounters with European colonization and Christian missionaries. As an alternative to the Western human rights system, the Islamic Council, a private Islamic organization based in London, adopted a Universal Islamic Declaration of Human Rights in 1987. Three years later, official representatives of 45 Muslim countries adopted the Cairo Declaration of Human Rights in Islam and in 1994 Arab states adopted an Arab Charter on Human Rights which was reformed in 2004.

In contrast to the UN and European human rights agreements, human rights documents adopted by Muslim countries or Islamic organizations make explicit references to God, Islamic law, and Shari'a. These allusions only raise questions as to whether the agreements also protect individuals who are not members of a religious group, or do not agree with the dominant interpretation of Islam. The 1981 Islamic Declaration of Human Rights⁴ emphasizes the supremacy of Islamic law; it advances the principles of non-discrimination on the basis of race, color, sex, origin and language, but does not mention religion. Freedom of religion is guaranteed under Articles 10 and 13. Article 10 establishes the "Rights of Minorities" and stipulates that "a) The Qur'anic principle of 'no compulsory religion' shall govern the religious rights of non-Muslim minorities (which means a protection from forced religious conversions); b) In a Muslim country religious minorities shall have the choice to be governed in their civil and family matters according to Islamic Law or by their own laws." Article 13 establishes the "Right to Freedom of Religion" and states that "Every person has the right to freedom of conscience and worship in accordance with his/her religious beliefs." In contrast to international and European human rights instruments, the document does not foresee a right not to believe.

The Cairo Declaration on Human Rights⁵ also emphasized its conformity with Islamic Shari'a. Article 10, the only provision regarding religious identity, states that "Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism." The 1994 Arab Charter on Human Rights⁶ refers to UDHR, ICCPR and Cairo Declaration on Human Rights but it also claims to derive its legitimacy from Islamic Shari'a. Regarding freedom of religion, Article 26 provides "freedom of beliefs, thought and opinion;" and Article 27 guarantees the free exercise of religion unless restricted "by law." In addition, Article 37 guarantees minorities a right "to enjoy their culture or to follow the teachings of their religions." The 2004 reforms of the Arab Charter⁷ continue its references to Islamic Shari'a. Article 30 is devoted specifically to freedom of religion and contains provisions similar to the European Convention except once again, of the freedoms to change one's religion or not to believe.⁸

The fact that Arab human rights instruments are explicitly based on Islamic Shari'a raises numerous concerns, particularly from the perspective of women and minority rights. Although there has been an increasing rise in Islamic feminism and efforts to find sources for gender equality within Islamic law have been shown by Islamist scholars, they have not been influential in shaping the application of Islamic Shari'a, which in most cases has resulted in discriminatory practices against women. From the perspective of Muslim veil bans in Turkey, both the European and the Islamic human rights traditions have played a significant role in shaping these policies. As it will be examined in the next sub-sections and despite its Muslim tradition, Turkey may be categorized as a "hybrid" case, where both secularism and traditional Islamic roots have been incorporated into its constitutional and institutional systems. However, secularism has been a politically and judicially constructed policy, given the ambiguous characterization of this term by Turkey's laws and regulations.

A State-Level Analysis: Turkey and "Hybrid" Secularism

The case of Turkey is particularly interesting for numerous reasons. Turkey is one of the largest predominantly “Muslim” countries in the world, but it is also a member of the European Human Rights Committee and recognizes the jurisdiction of the European Court of Human Rights to interpret domestic legislation in cases of alleged human rights violations. In addition, Turkey has sought membership in the European Union since the 1980s, providing a clear interest for Turkey to join the “West.” Finally, Turks are one of the largest Muslim immigrant communities in Europe and have important Diasporas throughout Western Europe. Yet, Muslims are a socially constructed category, and what it means to be Muslim in Turkey as in other Muslim countries is subject to debate and interpretation as seen below.

Secularism in Turkey was introduced by one of the Ataturk’s six arrows and was incorporated into the Turkish Constitution in 1928, when Islam as the state religion was excluded from the Constitution.⁹ In subsequent decades, the Turkish government responded to the growing opposition of Islamic forces by harassing the official Islamic opposition on the one hand but making concessions with informal Islamic groups on the other. For example, in March 1924, the Diyanet (Diyanet İşeri Başkanlığı) or Directorate of Religious Affairs was established by Ataturk as a governmental institution with the purpose of creating an official, government-controlled form of Islam. Since the late 1940s, the Republican People’s Party (RPP), Ataturk’s political party, which ruled with no opposition in the 1920s, 1930s and most of the 1940s, began to sponsor pilgrimages to Mecca and open Sufi convents. In addition, Sunni Islam teachings spread to elementary schools, and imam-hatip schools (private training secondary-level schools for Sunni Muslim clergy) were created.

The RPP took rather radical measures to undermine the power of Islamic religious leaders who had been influential in shaping regional politics prior to the establishment of the Republic. Despite that, unpopular authoritarian politics required some flexibility towards Islamic opposition forces that were reflected in ambiguous policies enacted by the government.

Political instability from 1950s to 1970s

Despite the efforts of the RPP to gain the support of pious Muslim voters, Turkey’s Democratic Party which appealed to religious sentiments managed to get a significant percentage of parliamentary seats during the 1950s, 60s, and 70s and allowed this party to dominate Turkey’s politics during these three decades. The Democratic Party enhanced the policy of co-opting Islamist forces. They introduced teachings of religion (Sunni Islam) as an elective course in schools, permitted the imam-hatips to function, enacted policies beneficial to Muslim sects (tariqas), and built new Sunni mosques.

By the late 1950s, the government also allowed a call for prayer to be made in Arabic (which under the RPP rule had to be made both in Turkish and Arabic); the Institute of Islamic Studies (which had been closed during the RPP rule) was reopened; and Koranic readings were broadcasted on radio. As a result, under the rule of the DP, Turkey witnessed increasing religious fervor. At the same time, Turkey witnessed violent clashes between secularist and Islamist political forces that led to military coups in 1960 and 1971.

Post-coup Turkish politics witnessed raising popularity of political forces using Islamist rhetoric and expansion of Sunni Islam in the public educational system. Despite renewed violent clashes between secularists and Islamists, police forces failed to intervene, allowing right-wing organizations and political parties, such as the increasingly radical Nationalist Movement Party (MHP) to succeed. MHP pioneered the idea of a “Turkish-Islamic synthesis” which combined Turkish descent and language with Sunni Islam as a major defining feature of Turkish identity.

In terms of secularism, Diyanet continued to use taxpayers’ money to promote state-controlled Islam. More important, in 1972 Turkish Law required all its citizens to record their religious identity. As discussed later in the article, decisions of the Turkish Constitutional Court in favor of this policy demonstrate that this was not perceived as contradicting Turkey’s secularism because it did not imply direct discrimination of religious rights.

A Delicate Balance? Secularism and Political Islam since the 1980s

In the name of re-establishing public order, the military intervened again in 1980, but also used Islamic rhetoric (Turkish-Islamic synthesis) to appease the opposition. Interestingly enough, a couple of months after the coup, the High Council for Religious Affairs (decision 77) stated that it was a duty for Muslim women who attended the imam-hatip schools (religious schools) to cover their heads with a Muslim veil. In addition, under military rule, teaching religion (exclusively Sunni Islam) in the schools was made mandatory, even when it was against the will of the parents.

Furthermore, the military allowed Saudi Arabia to sponsor the World Islamic League to finance Turkish religious teachers, to build a mosque in the Turkish parliament, and to establish Islamic centers in various universities. The military also allowed some Islamic banks and financial organizations to establish their branches in Turkey. These activities further contributed to the empowerment of Islamic groups in Turkey. Appointees for important positions were chosen from conservative groups, including the Muslim brotherhood.

It is noteworthy that the same conservative-military forces that promoted Sunni Islam through their policies also introduced a ban on Muslim veiling in public spaces. Under an administrative regulation on “Employees’ Clothing working in Public organizations and Institutions” veiling was restricted. Thus, all female students in educational institutions of any level (schools and universities) were mandated to uncover their heads. Later that year, the ban was expanded to all female civil servants. The same law also regulated personal appearance for men and women’s hair-style, dress style, and length of nails and skirts, although not all regulations were enforced. In addition, the Higher Education Council (Yükseköğretim Kurulu, YÖK) introduced a disciplinary penalty for those who deviated from established dress codes. Perhaps Turkey’s military wanted to please both secular and religious camps to prevent violent clashes between them. However, and possibly as a result of such policies, the 1980s witnessed further empowerment of the informal male-dominated Islamist groups; described in the literature as a rise of political Islam in Turkey.

Post-coup multi-party politics elected new Islamic political parties to Parliament that continued through the 1990s. Yet, in 1997 Turkish Armed Forces demanded that parliament (under the implicit threat of a coup) introduced new policies that would

undermine the strength of Islamic political forces. These reforms included increasing mandatory public schooling from five to eight years,¹⁰ government's oversight of religious orders, ending the recruitment of party members for governmental jobs, fully implementing a secular dress code, and re-evaluating foreign relations with Iran.¹¹

The Chief of Staff established the "Western Working Group" to monitor the activities of Islamic "fundamentalist" groups. It also organized a series of briefings for bureaucrats, academicians, journalists, lawyers, and judges about Islamist activities in Turkey. As a result, the military closed corporations, newspapers, national and local television stations, magazines, and student fraternities suspected of "subversive Islamic activities." In addition, the army formulated a new "concept of national security" which declared Islamic movements to be the most important threats to the Turkish Republic.

Yet, Islamic forces have continued to influence Turkish politics until today. Former Islamic Virtue Party (VP)-later banned by the Constitutional Court for its radical views- was split into two political parties both of which are still functioning in Turkey today. Its traditionalist or conservative wing formed the Felicity Party (Selamet Partisi), SP, and the moderate wing formed the Justice and Development Party (Adalet ve Kalkinma Partisi, JDP), which came to power in 2002 and it is still Turkey's ruling party. Despite its relatively moderate views, one of the most significant JDP policies has been its re-interpretation of Turkey's secularism. For example, the Turkish parliament has allowed the return to school of thousands of students who have been previously expelled from universities for wearing Muslim veils. As discussed in the following sub-sections, in the case of Leyla Şahin, the JDP-controlled government opposed the ECHR decision in support of Turkey's veil ban and successfully challenged the ban in 2010.

The Law and its Interpretation: Veil Bans and the Courts

In Turkey, veiling is more often identified with the Muslim-Sunni tradition as some non-Sunni Muslim groups (such as Alevis) do not require women to wear veils (Dressler 2008). In recent years, the battle to lift Turkey's decades old headscarf ban has become one of the prominent symbols of conservative politics and as such, the wives of legislators from the ruling JDP are increasingly veiled and the number of veiled women in general has been increasing.

Secularism is mentioned several times in the Turkish Constitution,¹² but it is never clearly defined. For example, the Constitution's Preamble states that

"no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics."^{13c}

Article 24 of Turkey's Constitution (last amended in October 2001) provides for "freedom of conscience, religious beliefs and conviction;" and guarantees both the freedom to practice religion and to be protected from the forceful participation in religion, yet it also provides for "education and instruction of religion," though under state control. However, there is no Turkish

law regulating these constitutional provisions and leaves their interpretation to judicial and administrative authorities.

Constitutional provisions regarding freedom of religion have contradictory elements. The state guarantees the right to practice freely any religion but it also limits such freedom of religion not only when it is exercised with the intent “of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets,” but also when it is “exercised with the aim of violating the indivisible integrity of the state with its territory and nation” or when exercised, it endangers the “democratic and secular order of the Turkish Republic based upon human rights” (Article 14). The state also created the Directorate of Religious Affairs and thus allowed some Muslim clerics to be salaried employees of the government, financed the construction of mosques, and published religious literature and Islam-teaching schools, in direct transgression to the concept of secularism.

Turkey’s courts have interpreted the principle of secularism with ample ambiguities, given the broad constitutional terms and a lack of legal regulations. In 1971, one of the opposition political parties filed a case with the Turkish Constitutional Court claiming that having a Directorate of Religious Affairs with government employees contradicted the constitutional principle of secularism, because religion should be separate from the state and the state could not be involved in spreading religious knowledge. The Court stated that from the legal point of view, secularism means that religion and state are separate but, unlike Western Christian countries, in Turkey the state regulates this relationship. Thus, according to this interpretation secularism in Turkey means that religion should never be sovereign and independent from state control. In other words, Turkish citizens are constitutionally guaranteed freedom of religion, but when religion crosses the boundaries of the individual and impacts public order and security, certain limitations on the freedom of religion are acceptable to prevent its “misuse.”¹⁴

A year after this decision, Turkey adopted a Population Law (Nufus Kanunu) that required all Turkish citizens to identify themselves by their religion (Article 43) on their identity cards. The Constitutional Court interpreted this requirement several times and in all cases it upheld its constitutionality. For example, a Turkish citizen of the Bahai faith argued against article 43 of the Population Law because he was not allowed to declare and record “Bahai” (a non-recognized religion in Turkey) on his identity card. In its 1986 decision, the court asserted that the Turkish Constitution guarantees freedom of religion to individuals of all religions, whether established or not. It also stated that limitations and restrictions on freedom of religion are justifiable when religion influences social life, public order and security. Again, ten years later, the Council of State refused to record an individual’s conversion to “Sky God” (Tengri Root) because this was not a recognized religion in Turkey. Yet, the court asserted that freedom of religion included a freedom to change one’s religion. Hence a person who converted from Islam to another religion had a right to have his or her religion recognized on identity cards.

The Supreme Court also upheld the constitutionality of veil bans on several occasions. In a 1998 decision, the Court claimed that veil bans were based on secularism because when religion is expressed in public spaces, including public schools, it prevents people belonging to different faiths from cooperating with each other. A few years later, the court upheld veil bans claiming that allowing the display of religious symbols in countries where a majority belongs to a single faith would discriminate against

minorities, incite radicalism among students, and disrupt public order. In sum, the Constitutional Court claimed that Muslim veils threatened Turkey's secular roots.¹⁵

During the 1999 national parliamentary elections, two women, Merve Kavakci from the radical Islamist Virtue Party and Nesrin Ünal, from the Nationalist Action Party (Milliyetçi Hareket Partisi), were elected to the legislature for the first time in the country's history. Both women wore veils, despite the fact that veiled women were not allowed to seat in parliament. Because of this policy, Ünal removed her veil before claiming her seat in parliament and asserted that the interest of the nation came before her individual freedom, but Kavakci defied the secular policy and still wore a veil. She was applauded by VP deputies but rejected by other parliamentarians, the prime minister and Turkey's president. More drastic measures ensued, including forced resignation from her position and revocation of her Turkish citizenship. In an appeal to the ECHR, the European Court found that revoking Kavakci's citizenship for wearing a veil violated the Protocol of the European Convention on Human Rights which on Article 3, guarantees that free elections should take place "under conditions which will ensure ... free expression."¹⁶

As discussed in previous pages, since the JDP's ascent to power the meaning of "secularism" and veil bans have become more relaxed. The party's 2006 Program of Development of Democratization defined religion "as one of the most important institutions of humanity, and laicism [secularism] as unavoidable condition of democracy, and as a guarantee of freedom of religion and consciousness." It emphasized that secularism should be understood as a freedom to practice religion, to express one's beliefs, and live according to them. On the other hand, the instruction of religion is "a requirement of the principle of secularism" according to the party, and the state does not have the right to intervene in matters of "family, school, property, religion, and morality."¹⁷

This interpretation of freedom of religion differs from the individualist approach of the UN and the EU and it is more similar to the approach adopted by Islamic human rights documents. Although the JDP does not explicitly refer to Islamic law (Sharia), its approach to freedom of religion as a freedom to reassert one's religion rather than a freedom "from religion" shows significant differences from previous interpretations of Turkey's secularism. It is evident that the political nature of both secularism and religious freedoms in Turkey and its judicial interpretations have evolved and changed with a stronger presence of Islamist political parties and of their views in more recent court decisions.

The ECHR: Veil Bans at the International Level

From international and regional perspectives, previous ECHR interpretations of veil bans are politically significant, given the fact that an increasing number of European countries have adopted veil bans recently. Though more restrictive, veil-ban legislation in France, Belgium, and other Western European countries sub-nationally will bring new legal challenges to the region. For Turkey, the issue of veil bans at a European court had political ramifications. Turkey's petition to join the EU had been postponed indefinitely for, among other reasons, not complying with EU standards on human rights. However, ECHR decisions have consistently supported Turkey's veil bans, on the basis that

maintaining secularism in public places is not only legal under European law but also in the best interest of a religiously and ethnically divided country like Turkey.

One of the most notorious instances where Turkey's veil ban was challenged in an international court was the case of Leyla Şahin. A university student raised by a conservative Turkish family in which women were traditionally veiled, Şahin was not allowed to register and attend classes or exams at the University of Istanbul because she wore an Islamic veil. Şahin was not the first veiled student who had been banned from attending a public university because of the veil, but she was the first one to take her case to the ECHR in 1998 and to juxtapose her interpretation of freedom of religion with the dominant view of Turkish secularism at the time. In addition, this case took place during the time when Turkey and the EU's relations were facing some difficulties. Thus, Şahin's case was also political as it presented a challenge against Turkey's human rights record.

Veil bans in public universities were common in Turkey. They were based on the constitutional principle of secularism, in accordance to university regulations, and founded on decisions of Turkey's Council of Higher Education, which banned women from wearing Islamic veils in all public educational institutions. According to university regulations:

“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.”¹⁸

Based on the principles of freedom of religion and expression, Şahin appealed to the Istanbul Administrative Court, claiming that university policies regarding headscarves infringed on her rights guaranteed by Articles 8, 9 and 14 of the European Convention of Human Rights. The Administrative Court dismissed the application, holding that a university vice chancellor, as the executive organ of the university, had power to regulate students' dress-code for the purposes of maintaining order as long as that regulatory power was exercised in accordance with relevant legislation and judgments of the Constitutional Court and the Supreme Administrative Court. Referring to the settled case-law of those courts, the Administrative Court held that neither the regulations at issue, nor the measures taken against the applicant could be considered unlawful. Şahin first appealed to the Supreme Administrative Court, but with a decision against her and as last judicial resort, she went to the ECHR.

With several changes in Turkey's political landscape, the 2005 ECHR decision came at a time when secularism and veil bans in Turkey were being re-interpreted. Nevertheless, the ECHR decision was more closely identified with the still dominant judicial interpretation of Turkish secularism. Indeed, in its final decision, the ECHR asserted that even though university regulations restricting Şahin's right to wear a veil had “interfered with the applicant's right to manifest her religion,” this interference was prescribed by law and had a legitimate purpose according to the second paragraph of Article 9 of the Convention. It was justified in principle and proportionate to the aims pursued and could therefore be regarded as having been “necessary in a democratic

society.” The ban was justified based on the European interpretation of secularism (*laïcité*) on the grounds that “in democratic societies, in which several religions coexist, it may be necessary to place restrictions on the freedoms to manifest one’s religion or belief in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.”¹⁹ Hence, Turkey had a right to place restrictions on Muslim veils to protect “the rights and freedoms of others, public order and public safety.”²⁰

The ECHR concluded that “in a country like Turkey, where the great majority of the population belongs to a particular religion, measures taken in universities to prevent certain religious movements from controlling the milieu was justifiable under Article 9 § 2 of the Convention.”²¹ Thus, the ECHR decision in this case followed previous analogous decisions and construed the meaning of “secularism” similarly to earlier interpretations of Turkish authorities and domestic courts. In Şahin’s case, with a decision against her appeal, she decided to finish her medical studies at the University of Vienna where she was allowed to wear a veil.

Two other decisions on Muslim veil bans were interpreted very similarly by the ECHR. The applicants entered their cases on the basis of Article 9 of the European Convention on Human Rights. In the first case, a Turkish female student Senay Karaduman was not allowed to obtain her university diploma because she was wearing a Muslim veil in a picture she submitted and required by the university. Ruling against Karaduman, the ECHR claimed that university regulations might be different from religious regulations and that the university diploma is not a document that verified religious (or any other cultural) identity.²² In the second case, Lucia Dahlab, a Swiss female teacher converted to Islam was required to uncover her head while teaching. After appealing to the ECHR, the court emphasized the symbolic importance of wearing hijabs in an otherwise “neutral” educational environment and rejected Dahlab’s appeal.²³

After Şahin, the court heard the case of Hasan Zengin, a Turkish *Alevi* citizen, who on behalf of his daughter appealed to the ECHR arguing that compulsory Sunni classes of religion and teachings on Turkish morals and culture were violating his daughter’s freedom of religion. The ECHR concluded that Turkey did indeed breach a requirement of objectivity and pluralism with respect to teaching diverse religious and philosophical views (Article 2 of Protocol 1 of the European Convention on Human Rights) but did not violate the freedom of religion stipulated on Article 9 of the Convention.²⁴

In 2008, the Turkish Parliament passed a law lifting the Muslim veil ban, but the law was declared unconstitutional by the Turkish Constitutional Court for violating secularism (Steinvorth 2008, Ataman and Gottschlich 2008) However, two years later, the Turkish Parliament passed another law lifting the ban. This time, the Turkish Constitutional Court did not challenge the law (Head 2010, Toksabay and Villelabeitia 2010). If the previous decisions of the ECHR are legitimate, then it remains to be seen whether lifting the ban will have adverse consequences for women and democracy in Turkey.

Shifting interpretations of Muslim veiling in Turkey: From a Hybrid Model to Veil-Friendly Legislation

In the past, both Turkey and the ECHR have interpreted very similarly the concepts of freedom of religion and the right of the state to impose certain limits on such

freedoms for the sake of secularism. Yet, in recent years, Turkey's construal of "secularism" has evolved and changed along with the rise of Islamic forces in the country. Indeed, Turkey's interpretation of religious freedoms is tilting more closely towards the Arab interpretation of freedom of religion and human rights in general and showing an increasing gap with EU and other international agreements. It is expected that other veil-ban cases will be heard soon by the ECHR since laws banning full-faced veils have been recently implemented in some Western European countries. In contrast, recent adoption of veil-friendly legislation is challenging Turkey's more traditional interpretation of secularism. Moreover, international and regional human rights agreements and Turkey's constitutional provisions are vague and make them susceptible to a variety of interpretations.

The right to wear Muslim headscarves in public spaces is particularly vulnerable to ambiguous interpretations for several reasons. First of all, Muslim veiling represents a specific interpretation of Islam. Thus wearing Muslim veils is not just an expression of religious identity; it is an expression of a particular strand of religious identity. According to Western European interpretation of freedom of religion, everyone has the right to believe or not to believe; and the government guarantees secularism or a religious-free public space. In contrast, according to Islamic human rights, freedom of religion (as any other human right) should be based on Islamic law and should be interpreted as freedom to practice one's religion. Thus, religious minorities have a right to practice their own religions, but a religious-free public space is unconceivable.

Second, European and Islamic human rights systems differ in how these rights may be limited in their application. European human rights allow for limitations on the freedom of religion if its exercise threatens "public order, health and morals" as well as the rights of others. Islamic human rights do not establish such limitations. Indeed, interpretation of human rights in Muslim countries is based on Islamic law, or left to Islamic legal scholars to construe them. According to European human rights law, "the others" might be broadly interpreted as various groups even within the religious community, thus recognizing its diversity and variety of practices associated with it. In contrast, according to Islamic human rights, "others" are religious minorities, thus they assume internal homogeneity of their religious communities and hence uniformity of religious practices.

Turkey presents a very unique case when analyzed from these perspectives. Until recently, Turkish authorities interpreted freedom of religion in a *hybrid* manner. On the one hand, political authorities and state-court decisions supported banning veils for women in all public schools and universities, and interpreted freedom of religion, non-discrimination and other individual rights more closely to the European model of secularism. On the other, unlike the European model, religious teachings and "morality" in public schools are mandatory, according to Turkey's constitution, placing Turkey more closely to the "freedom of religion" as it is interpreted by Islamic human rights law. Thus, secularism was interpreted as a freedom to practice religion but under a tight control of the state. However, with the advent to power of reformist Islamists under the leadership of the JDP, freedom of religion is going through a process of legal re-interpretation, as a right to practice one's religion, and secularism is being re-invented as a social order which accommodates such freedoms. Under this new interpretation, it is not up to the state (or international institutions) to determine how an individual may

practice his or her religion. Hence, Muslim veils are not viewed any longer as an obstacle to a secular order and have been allowed in public schools since 2010.

As Turkey's interpretation of freedom of religion has shifted from an emphasis on individual rights and a religion-free secular order to collective rights and religion-friendly secularism, the question of whether the Turkish conceptualization of human rights in general is shifting closer towards the Islamic view is raised. Such changes may have important consequences not only for the rights of women whose interpretation of religious freedom does not involve wearing veils but also for the future of Turkey-EU relations, where Muslim veils are increasingly perceived as a symbolic association with radical Islam and generally unfriendly to women's and others' human rights in general.

Notes

¹ Given the ethnic and religious divide in Turkey, veil bans were introduced to maintain secularism and religious neutrality in the country's public realm.

² Justification for veil ban laws in Europe have been based generally on three major arguments; the need to preserve secularism, or the exclusion of religion from the public sphere, the notion that Muslim veils are a symbol of Islamic fundamentalism thus a threat to the security of a nation, and the view that Muslim veils are a symbol of women's oppression.

³ Even though most of these countries have significant percentages of non-Muslim people, we refer to them as "Muslim countries," for pedagogical reasons.

⁴ 1981 Universal Islamic Declaration of Human Rights,
<http://www.alhewar.com/ISLAMDECL.html>

⁵ 1993 Cairo Declaration on Human Rights in Islam
<http://www1.umn.edu/humanrts/instree/cairodeclaration.html>

⁶ 1994 Arab Charter on Human Rights
<http://www1.umn.edu/humanrts/instree/arabhrcharter.html>

⁷ 2004 Arab Charter on Human Rights
<http://www1.umn.edu/humanrts/instree/loas2005.html>

⁸ It also allows for limitations on this freedom for the same reasons as ICCR and European Convention. It reads:

Article 30 1. Every person shall have the right to freedom of thought, belief and religion, which may be subject only to such limitations as are prescribed by law. 2. Freedom to manifest or practice one's religion or beliefs or to perform rituals, either individually or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects freedoms and human rights, to protect public safety, public order, health or morals or the fundamental rights and freedoms of others. 3. Parents and legal guardians are guaranteed the freedom to ensure the religious and moral education of their children.

⁹ Ataturk is the founder of the modern Republic of Turkey.

¹⁰ This new policy would negatively affect the imam-hatips and Koranic courses, because until then, children were sent to study once the mandatory five years had been completed.

¹¹ The so called 28 February Process had transformative effects on Islamic forces in Turkey and it was the first political measure since the 1940s that Turkish secularists introduced to prevent the rise of political Islam.

¹² The Constitution of the Republic of Turkey

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

¹³ The Constitution of the Republic of Turkey

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

¹⁴ Turkish Constitutional Court, October 21, 1971, No. 1971/76.

http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar8

¹⁵ See *Hasan and Eylem Zengin v. Turkey* (Application no. 1448/04), European Court on Human Rights, 9 October 2007.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=1448/04&sessionid=83208969&skin=hudoc-en>. Web. 3 December, 2011.

¹⁶ Yet, up to this point, Kavakci's citizenship has not been restored.

¹⁷ *Adalet ve Kalkınma Partisi. Kalkınma ve Demokratikleşme Programı* [Justice and Development Party. Development and Democratisation Program] Ankara: Adalet ve Kalkınma Partisi, 2006, p. 11.

¹⁸ *Leyla Şahin v Turkey*. Application No. 44774/98. European Court on Human Rights, 10 November 2005.

¹⁹ *Ibid*, 18.

²⁰ *Ibid*, 18.

²¹ *Ibid*, 18. Yet, as Judge Tulkens stated in the Sahin case, “[a]bove all, the message that needs to be repeated over and over again is that the best means of preventing and combating fanaticism and extremism is to uphold human rights.” *Leyla Sahin v Turkey*. Application No 44774/78. Judgment of the Grand Chamber of the European Court of Human Rights of 10 November 2005, dissenting opinion of Judge Tulkens para 20.

²² *Karaduman v Turkey*. Application N. 16278/90. European Court of Human Rights. Judgment of 3 May 1993.

²³ *Dahlab v Switzerland*. Application No 42393/98. Decision of the European Court of Human Rights of 15 February 2001.

²⁴ *Ibid*, 16.

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