CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF LEYLA ŞAHİN v. TURKEY

(Application no. 44774/98)

JUDGMENT

STRASBOURG

29 June 2004

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
10/11/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Leyla Şahin v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr R. TÜRMEN,
Mr M. FISCHBACH,
Mr J. CASADEVALL, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 2 July and 19 November 2002, 9 December 2003 and 8 June 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44774/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ms Leyla Şahin ("the applicant"), on 21 July 1998.

2. The applicant alleged that a ban on wearing the Islamic headscarf in higher-education institutions violated her rights and freedoms under Articles 8, 9, 10 and 14 of the Convention, and Article 2 of Protocol No. 1.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 52 § 1). This case was assigned to the newly composed Fourth Section.

6. By a decision of 2 July 2002 the Chamber declared the application admissible.

7. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 November 2002 (Rule 59 § 3).

There appeared before the Court:

– *for the Government*
Mr. Ş. ALPASLAN, *Agent*,
Mr S. GÜRAN,
Mr B. YILDIZ, *Counsel*,
Ms D. KILISLIOĞLU,
Ms B. ÖZAYDIN,
Ms M. GÜLŞEN, *Advisers*;

– *for the applicant*
Mr S. GROSZ, *Counsel*,
Mr H. TUNA,
Mr A. SELAMET
Mr M. EMERY
Mr M. ERBAY
Mr M. ÖZKAYA *Advisers*,
Ms L. ŞAHIN, *Applicant*.

The Court heard addresses by Mr Grosz, Mr Alpaslan and Mr Güran.

9. Both the applicant (on 21 November 2002, 9 May, 4 July and 25 September 2003) and the Government (on 5 and 18 March, 7 and 13 November 2003) lodged written observations and additional evidence (Rule 59 §§ 1 and 4, and Rule 60). On 11 December 2003, without providing any explanation, the Government withdrew from the case file the observations and appendices they had lodged on 7 and 13 November 2003.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1973 and has lived in Vienna since 1999, when she left Istanbul to pursue her medical studies at the Faculty of Medicine at Vienna University. She comes from a traditional family of practising Muslims and considers it her religious duty to wear the Islamic headscarf.

A. Circular of 23 February 1998

11. On 26 August 1997 the applicant, who was then in her fifth year at the Faculty of Medicine at the University of Bursa, enrolled at the Cerrahpaşa Faculty of Medicine at the University of Istanbul. She says that she wore the Islamic headscarf during the four years she spent studying medicine at the University of Bursa and continued to do so until February 1998.

12. On 23 February 1998 the Vice-Chancellor of Istanbul University issued a circular regulating students' admission to the university campus. 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' (wearing 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, if students whose names and numbers are not on the lists insist on attending tutorials and entering lecture theatres, they must be advised of the position and, should they refuse to leave, their names and numbers must be noted 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 what has happened in a report explaining why it has not been possible to give the lecture and shall bring the matter to the attention of the university authorities as a matter of urgency so that disciplinary measures can be taken."

13. On 12 March 1998, in accordance with the aforementioned circular, the applicant was denied access by invigilators to a written examination on oncology because she was wearing the Islamic headscarf. On 20 March 1998 the secretarial offices of the chair of orthopaedic traumatology refused to allow her to enrol because she was wearing a headscarf. On 16 April 1998 she was refused admission to a neurology lecture and on 10 June 1998 to a written examination on public health, again for the same reason.

B. The application for an order setting aside the circular of 23 February 1998

14. On 29 July 1998 the applicant lodged an application for an order setting aside the circular of 23 February 1998. In her written pleadings, she submitted that the circular and its implementation infringed her rights guaranteed by Articles 8, 9 and 14 of the Convention and Article 2 of Protocol No. 1, in that there was no statutory basis for the circular and the education authority had no regulatory power in this sphere.

15. In a judgment of 19 March 1999, the Istanbul Administrative Court dismissed the application, holding that by virtue of section 13(b) of the Higher-Education Act (Law no. 2547 – see paragraph 50 below) a

university vice chancellor, as the executive organ of the university, had power to regulate students' dress in order to maintain order. That regulatory power had to be exercised in accordance with the relevant legislation and the 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 regulation in issue, nor the individual measures, could be considered illegal.

16. On 19 April 2001 the Supreme Administrative Court dismissed an appeal by the applicant on points of law.

C. The disciplinary measures taken against the applicant

17. In May 1998 disciplinary proceedings were brought against the applicant under Article 6(a) of the Students Disciplinary Procedure Rules (see paragraph 48 below) as a result of her failure to comply with the rules on dress.

18. On 26 May 1998, in view of the fact that the applicant had shown by her actions that she intended to continue wearing the headscarf to lectures and/or tutorials, the dean of the faculty declared that her attitude and failure to comply with the rules on dress were not befitting of a student. He therefore decided to issue her with a warning.

19. On 15 February 1999 an unauthorised assembly gathered outside the deanery of the Cerrahpaşa Faculty of Medicine to protest against the rules on dress.

20. On 26 February 1999 the dean of the faculty began disciplinary proceedings against various students, including the applicant, for taking part in the assembly. On 13 April 1999, after hearing her representations, he suspended her from the university for a semester pursuant to Article 9(j) of the Students Disciplinary Procedure Rules (see paragraph 48 below).

21. On 10 June 1999 the applicant lodged an application with the Istanbul Administrative Court for an order quashing the decision to suspend her.

22. On 20 August 1999 Istanbul University submitted its observations on her application. It argued, *inter alia*, that the disciplinary penalty was lawful as the reason for the applicant's one-semester suspension was that she had taken part in an unauthorised assembly.

23. On 30 November 1999 the applicant's application to have the disciplinary penalty quashed was dismissed by the Istanbul Administrative Court, which held that in the light of the material in the case file and the settled case-law on the subject, the impugned measure could not be regarded as illegal.

24. Following the entry into force of Law no. 4584 of 28 June 2000 (which afforded students an amnesty for disciplinary offences and annulled

any resulting penalties or disabilities), the applicant was granted an amnesty releasing her from all the disciplinary penalties and their effects.

On 28 September 2000 the Supreme Administrative Court held that the aforementioned legislation made it unnecessary to examine the merits of the applicant's appeal on points of law against the judgment of 30 November 1999.

25. In the meantime, on 16 September 1999, the applicant had enrolled at Vienna University, where she pursued her university education.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

26. The relevant provisions of the Constitution provide:

Article 2

"The Republic of Turkey is a democratic, secular (*laik*) and social State based on the rule of law, respectful of human rights in a spirit of social peace, national solidarity and justice, adhering to the nationalism of Atatürk and resting on the fundamental principles set out in the Preamble."

Article 4

"No amendment may be made or proposed to the provisions of Article 1 of the Constitution laying down that the State shall be a Republic, the provisions of Article 2 concerning the characteristics of the Republic or the provisions of Article 3."

Article 10 § 1

"All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds."

Article 14 § 1

"None of the rights and freedoms referred to in the Constitution shall be exercised with a view to undermining the territorial integrity of the State and the unity of the nation, jeopardising the existence of the Turkish State or Republic, abolishing fundamental rights and freedoms, placing the control of the State in the hands of a single individual or group, ensuring the domination of one social class over other social classes, introducing discrimination on the grounds of language, race, religion or membership of a religious body, or establishing by any other means a political system based on such concepts and opinions."

Article 24 §§ 1 and 4

"Everyone has the right to freedom of conscience, belief and religious conviction. Prayers, worship and religious services shall be conducted freely, provided that they do not violate the provisions of Article 14. No one shall be compelled to participate in prayers, worship or religious services or to reveal his religious beliefs and convictions; nor shall he be censured or prosecuted because of his religious beliefs or convictions.

...

No one may exploit or abuse religion, religious feelings or things held sacred by religion in any manner whatsoever with a view to causing the social, economic, political or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal interest or influence thereby."

B. History and background

1. Religious dress and the principle of secularism

27. The Turkish Republic was founded on the principle that the State should be secular (*laik*). 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 26 above).

28. The main feature of the republican system was the status accorded to women's rights, with women being granted equality in the enjoyment of individual rights. The process began on 17 February 1926 with the adoption of the Civil Code, which provided for equality of the sexes in the enjoyment of civic rights, in particular as regards divorce and succession. Subsequently, through a constitutional amendment of 5 December 1934 (Article 10 of the 1924 Constitution), women obtained equal political rights with men.

29. At the time of the Ottoman Empire both the central government and religious groups required people to dress in accordance with their religious affiliations. The reforms introduced by the Republic on the question of dress were inspired by the evolution of society in the nineteenth century and sought first and foremost to create a religion-free zone in which all citizens were guaranteed equality, without distinction on the grounds of religion or denomination. The first enactment in this sphere was the Headgear Act of 28 November 1925 (Law no. 671), which treated dress as an issue relating to modernity. 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).

30. 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 for Education. This Act is one of the laws enjoying constitutional status that are protected by Article 174 of the Turkish Constitution.

31. Wearing the Islamic headscarf to school and university is a recent phenomenon in Turkey, which began 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 form of expression linked to religious identity, whereas those against regard it as a symbol of a political Islam that is seeking to establish a regime based on religious precepts and threatens to cause civil unrest and undermine the rights acquired by women under the republican system. The accession to power on 28 June 1996 of a coalition government comprising the Islamist *Refah Partisi*, and the centre-right *Doğru Yol Partisi*, has given the debate 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).

32. It should be noted in that connection that one of the matters taken into consideration by the Constitutional Court in two judgments concerning the dissolution of political parties was the use of religious symbols to political ends (judgments of 9 January 1998 in the *Refah Partisi* case and of 22 June 2001 in the *Fazilet Partisi* case). It considered that the opinions expressed by the leaders of those parties, *inter alia*, on the question whether the Islamic headscarf should be worn in the public sector and/or schools demonstrated an intention to set up a regime based on the Sharia.

2. The rules on dress in higher-education institutions and the case-law of the Constitutional Court

33. The first piece of legislation on dress in higher-education institutions was a set of regulations that was issued by the Cabinet on 22 July 1981, which required staff working for public organisations and institutions and personnel and students at State institutions to wear ordinary, sober, modern dress. The regulations also provided that female members of staff and students should not wear veils in educational institutions.

34. On 20 December 1982 the Higher-Education Authority issued a circular on the wearing of headscarves in higher-education institutions. The Islamic headscarf was banned in lecture theatres. In a judgment of 13 December 1984, the Supreme Administrative Court held that the regulations were lawful, noting:

> "Beyond being a mere innocent practice, wearing the headscarf is in the process of becoming the symbol of a vision that is contrary to the freedoms of women and the fundamental principles of the Republic."

35. On 10 December 1988 transitional section 16 of the Higher-Education Act (Law no. 2547 – "the Higher-Education Act") entered into force. It provided:

> "Modern dress or appearance shall be compulsory in the rooms and corridors of higher-education institutions, preparatory schools, laboratories, clinics and multidisciplinary clinics. A veil or headscarf covering the neck and hair may be worn out of religious conviction."

36. In a judgment of 7 March 1989 published in the Official Gazette of 5 July 1989, the Constitutional Court held that the aforementioned provision was contrary to Articles 2 (secularism), 10 (equality before the law) and 24 (freedom of religion) of the Constitution. It also found that it could not be reconciled with the principle of sexual equality implicit, *inter alia*, in republican and revolutionary values (see the Constitution – Preamble and Article 174).

In their judgment, the Constitutional Court judges explained, firstly, that secularism had acquired constitutional status by reason of the historical experience of the country and the particularities of Islam compared to other religions; secularism was an essential condition for democracy and acted as a guarantor of freedom of religion and of equality before the law. It also prevented the State from showing a preference for a religion or belief; consequently, a secular State could not invoke religious conviction when performing its legislative function.

Stressing its inviolable nature, the Constitutional Court observed that freedom of religion, conscience and worship, which could not be likened to a right to wear any particular religious attire, guaranteed first and foremost the liberty to decide whether or not to follow a religion. It explained that, once outside the private sphere of individual conscience, freedom to manifest one's religion could be restricted on public-order grounds to defend the principle of secularism.

Everyone was free to dress how he or she wished, as the social and religious values and traditions of society also had to be respected. However, when a particular dress code was imposed on individuals by reference to a religion, the religion concerned was perceived and presented as a set of values that were incompatible with those of contemporary society. In addition, in Turkey, where the majority of the population were Muslims,

presenting the wearing of the Islamic headscarf as a mandatory religious duty would result in discrimination between practising Muslims, non-practising Muslims and non-believers on grounds of dress with anyone who refused to wear the headscarf undoubtedly being regarded as opposed to religion or as irreligious.

The Constitutional Court also said that students had to be able to work and pursue their education together in a calm, tolerant and mutually supportive atmosphere without being deflected from that goal by signs of religious affiliation. It found that, irrespective of whether the Islamic headscarf was a precept of Islam, granting legal recognition to a religious symbol of that type in higher-education institutions was not compatible with the principle that State education must be neutral, as it would be liable to generate conflicts between students with differing religious convictions or beliefs.

37. On 25 October 1990 transitional section 17 of the Higher-Education Act (Law no. 2547) entered into force. It provides:

> "Choice of dress shall be free in higher-education institutions, provided that it does not contravene the laws in force."

38. In a judgment of 9 April 1991, which was published in the Official Gazette of 31 July 1991, the Constitutional Court noted that, in the light of the principles it had established in its judgment of 7 March 1989, the aforementioned provision did not allow headscarves to be worn in higher-education institutions on religious grounds and so was consistent with the Constitution. It stated, *inter alia*:

> "In higher-education institutions, it is contrary to the principles of secularism and equality for the neck and hair to be covered with a veil or headscarf on grounds of religious belief. In these circumstances, the freedom of dress which the impugned provision permits in higher-education institutions 'does not concern dress of a religious nature or the act of covering one's neck and hair with a veil and headscarf'... The freedom afforded by this provision [transitional section 17] is conditional on its not being contrary 'to the laws in force'. The judgment [of 7 March 1989] of the Constitutional Court establishes that covering one's neck and hair with the headscarf is first and foremost contrary to the Constitution. Consequently, the condition set out in the aforementioned section requiring [choice of] dress not to contravene the laws in force removes from the scope of freedom of dress the act of 'covering one's neck and hair with the headscarf'..."

3. Application of the regulations at Istanbul University

39. Istanbul University was founded in the fifteenth century and is one of the main centres of State higher education in Turkey. It is a secular University, comprising seventeen faculties (including two faculties of medicine – Cerrahpaşa and Çapa) and twelve schools of higher education. It is attended by approximately 50,000 students.

40. In 1994, following a petitioning campaign launched by female students enrolled on the midwifery course at the University High School for the Medical Professions, the Vice Chancellor circulated a memorandum in which he explained the background to the Islamic-headscarf issue and the legal basis for the relevant regulations. He said in particular:

> "The ban prohibiting female students enrolled on the midwifery course from wearing the headscarf during tutorials is not intended to infringe their freedom of conscience and religion, but to comply with the laws and regulations in force. When doing their work, midwives and nurses wear a uniform. That uniform is described in and identified by regulations issued by the Ministry of Health... Students who wish to join the profession are aware of this. Imagine a student of midwifery trying to put a baby in or to remove it from an incubator, or assisting a doctor in an operating theatre or maternity unit while wearing a long-sleeved coat."

41. The Vice Chancellor was concerned that the campaign for permission to wear the Islamic headscarf on all university premises had reached the point where there was a risk of its undermining order and causing unrest at the University, the Faculty and the Cerrahpaşa Hospital High School for the Medical Professions. He called on the students to comply with the rules on dress, reminding them, in particular, of the rights of the patients.

42. A resolution regarding the rules on dress for students and university staff was adopted on 1 June 1994 by the University executive and provides as follows:

> "The rules governing dress in universities are set out in the laws and regulations. The Constitutional Court has delivered a judgment which prevents religious attire being worn in universities.
>
> This judgment applies to all students of our University and the academic staff, both administrative and otherwise, at all levels. In particular, nurses, midwives, doctors and vets are required to comply with the regulations on dress, as dictated by scientific considerations and the legislation, during health and applied science tutorials (on nursing, laboratory work, surgery and microbiology). Anyone not complying with the rules on dress will be refused access to tutorials."

43. On 23 February 1998 a circular was distributed containing instructions on the admission of students with beards or wearing the Islamic headscarf. It was signed by the Vice Chancellor of the University of Istanbul (for the text of this circular, see paragraph 12 above).

44. After the hearing on 19 November 2002 the applicant produced a letter of 1 April 2002 which the Higher-Education Authority had sent to the university authorities inviting them to grant a request by students of the Jewish faith for their attendance to be excused during Jewish holidays.

45. On 18 March 2003 the Government produced to the Court a resolution (no. 11) adopted by the University of Istanbul on 9 July 1998, which is worded as follows:

"1. Students at the University of Istanbul shall comply with the legal principles and rules on dress set out in the decisions of the Constitutional Court and higher judicial bodies.

2. Students at the University of Istanbul shall not wear clothes that symbolise or manifest any religion, faith, race, or political or ideological persuasion in any institution or department of the University of Istanbul, or on any of its premises.

3. In the institutions and departments at which they are enrolled, students at the University of Istanbul shall comply with the rules requiring specific clothes to be worn for work-related reasons.

4. Photographs supplied by students of the University of Istanbul to their institution or department [must be taken] from the 'front' 'with head and neck uncovered'. They must be no more than six months old and make the student readily identifiable.

5. Anyone displaying an attitude that is contrary to the aforementioned points or who, through his words, writings or deeds, encourages such an attitude shall be liable to action under the provisions of the regulations relating to disciplinary proceedings against students."

4. Students Disciplinary Procedure Rules

46. The Students Disciplinary Procedure Rules, which were published in the Official Gazette of 13 January 1985, prescribe five forms of disciplinary penalty: a warning, a reprimand, temporary suspension of between a week and a month, temporary suspension of one or two semesters and expulsion.

47. Merely wearing the Islamic headscarf on university premises does not constitute a disciplinary offence. However, failure to comply with the rules on dress may entail the application of another provision of the rules.

48. By virtue of Article 6(a) of the Rules, a student whose "behaviour and attitude are not befitting of students" will be liable to a warning. A reprimand will be issued, *inter alia*, to students whose conduct is such as to lose them the respect and trust which students are required to command or who disrupt lectures, seminars, tutorials in laboratories or workshops (Article 7(a) and (e)). Students who directly or indirectly restrict the freedom of others to learn and teach or whose conduct is liable to disturb the calm, tranquillity and industriousness required in higher-education institutions or who engage in political activities in such institutions are liable to temporary suspension of between a week and a month (Article 8(a) and (c)). Article 9(j) lays down that students who organise or take part in unauthorised meetings on university premises are liable to one or two semesters' suspension.

49. The procedure for investigating disciplinary complaints is governed by Articles 13 to 34 of the Rules. Articles 16 and 33 provide that the rights of defence of students must be respected and the disciplinary board must take into account the reasons that caused the student to transgress the rules.

All disciplinary measures are subject to judicial review in the administrative courts.

5. The regulatory power of the university vice chancellors

50. Since universities are public-law bodies by virtue of Article 130 of the Constitution, they enjoy a degree of autonomy, subject to State control, that is reflected in the fact that they are run by management organs, such as the vice chancellor, with delegated statutory powers.

The relevant parts of section 13 of the Higher-Education Act (Law no. 2547) provide:

> "... (b) Vice chancellors have the following powers, competence and responsibilities:
>
> 1. To chair meetings of university boards, implement their resolutions, examine proposals by the university boards and take such decisions as shall be necessary, and ensure that institutions forming part of the university function in a coordinated manner; ...
>
> 5. To supervise and monitor the university departments and university staff at all levels.
>
> It is the vice chancellor who is primarily responsible for taking security measures and for supervising and monitoring teaching from the administrative and scientific perspectives..."

51. Both legal commentators and the administrative courts regard the monitoring and supervisory powers conferred on the vice chancellor by the aforementioned provision as including a power to issue regulations, as well as to take individual measures. Exercise of this power is subject to the requirement of lawfulness and to scrutiny by the administrative courts. Both written instruments (legislation and the Constitution) and judge-made law (the case-law of the administrative courts and the Constitutional Court) constitute valid sources of law. Similarly, regulations issued under the proper procedure will themselves be a valid source of law with which individual measures taken thereunder must comply.

C. The binding force of the reasoning in judgments of the Constitutional Court

52. In its judgment of 27 May 1999 (E. 1998/58, K. 1999/19), which was published in the Official Gazette of 4 March 2000, the Constitutional Court stated, *inter alia*:

> "The legislature and executive are bound by both the operative provisions of judgments and the reasoning taken as a whole. Judgments and the reasons stated in them lay down the standards by which legislative activity will be measured and establish guidelines for such activity."

D. Comparative law

53. In European countries, the debate on the Islamic headscarf is concerned more with primary and secondary State schools than with higher-education institutions. In the French speaking parts of Belgium, where there are no rules concerning the headscarf and disputes on the issue are generally resolved at local level, a number of State schools have refused to allow the Islamic headscarf. In the cases which have come before them, the Belgian courts have consistently held that the principles of equality and neutrality of State education take precedence over freedom of religion and have found against the complainants and their families.

54. In France, where secularism is regarded as one of the cornerstones of republican values, the question of the Islamic headscarf in State schools has given rise to a very lively debate. After the Commission on Secularism had reported to the President of the Republic with its opinion, the National Assembly approved a bill on 10 February 2004 regulating, pursuant to the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in State primary and secondary schools. Article 1 of the Act 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 a dialogue with the pupil."

55. As regards the universities, the Commission on Secularism considered that precedence should be given to the students' right to express their religious, political and philosophical convictions. However, it stated in its report that such expression should not lead to transgressions of the rules on the functioning of universities.

56. In other countries, in some cases after a protracted legal debate, the State education authorities permit Muslim pupils and students to wear the Islamic headscarf (in Germany, the Netherlands, Switzerland and the United Kingdom). Nevertheless, the legal position is not uniform. In Germany, where the debate has for several years 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. In the United Kingdom the Islamic headscarf is accepted by most teaching institutions and the rare disputes that do arise are generally resolved within the institution concerned.

57. It would appear that in a number of other countries, the issue of the Islamic headscarf has yet to give rise to any detailed legal debate (Sweden, Austria, Spain, the Czech Republic, Slovakia and Poland).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

58. The Government pleaded a failure to exhaust domestic remedies. In their submission, since the applicant had not contested the legality of the rules on dress in the administrative courts, she could not be regarded as having exhausted domestic remedies.

59. The applicant argued in her initial observations that, in view of the settled case-law of the Turkish courts, she had no effective remedy.

60. The Court notes, firstly, that on 2 July 2002 it decided, in the light of the material in its possession, to declare the case admissible and to join the issue of exhaustion to the merits.

61. Subsequently, at the Court's request, the applicant produced with her observations of 29 September 2003 the documents concerning an application to the domestic courts on 29 July 1998 for an order setting aside the circular of 23 February 1998 (see paragraphs 14-16 above) and asserted that she had exhausted domestic remedies. The Court notes that the applicant did not inform it that she had exercised the aforementioned domestic remedy until after the issue of admissibility had been examined or inform it that various disciplinary measures had been taken against her (see paragraphs 19-24 above).

62. The Court reiterates that, under its case-law, while an applicant is, as a rule, in duty bound to exercise the different domestic remedies before applying to the Convention institutions, it must be left open to the Convention institutions to accept the fact that the last stage of such remedies may be reached after the lodging of the application, as long as the remedies are exhausted before the decision on admissibility (*Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, pp. 37-38, §§ 89-93; and *Vgt Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 33, ECHR 2001-VI).

63. Having examined the information which was submitted out of time, the Court finds that the applicant, who exhausted domestic remedies on 19 April 2001 (see paragraph 16 above) before the decision on admissibility was handed down, can be regarded as having satisfied the requirements of Article 35 § 1 of the Convention. Consequently, it dismisses the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

64. The applicant submitted that the ban on wearing the Islamic headscarf in higher-education institutions constituted an unjustified interference with her right to freedom of religion, and, in particular, her

right to manifest her religion. She relied on Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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."

65. The Government denied that there had been such a breach. In their submission, there had been no interference with the applicant's right to exercise her freedom of religion. Even if there had been, it was justified under paragraph 2 of Article 9 of the Convention.

66. The Court reiterates that as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, Series A no. 260-A, p. 17, § 3; and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 73, ECHR 2000-VII).

Article 9 does not protect every act motivated or inspired by a religion or belief and does not in all cases guarantee the right to behave in the public sphere in a way which is dictated by a belief (see, among many other authorities, *Kalaç v. Turkey*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1209, § 27; *Arrowsmith v. the United Kingdom*, no. 7050/75, Commission decision of 12 October 1978, Decisions and Reports (DR) 19, p. 5; and *C. v. the United Kingdom*, no. 10358/83, Commission decision of 15 December 1983, DR 37, p. 142).

67. The Court must consider whether the applicant's right under Article 9 was interfered with and, if so, whether such interference was

"prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

A. Whether there was an interference

68. The applicant said that her manner of dressing had to be treated as the observance of a religious rule which she regarded as a "recognised practice". She maintained that the restriction and her resulting exclusion from the University of Istanbul was a clear interference with her right to freedom to manifest her religion.

69. The Government rejected that argument, saying that the university regulations were based both on rules of domestic law on students' dress and principles of international law. They submitted that Article 9 of the Convention did not afford a right to invoke one's beliefs as a reason for refusing to comply with legislation whose implementation was contemplated by the Convention and which applied generally and without distinction in the public sphere.

70. The Court notes, firstly, that, according to the material in the case file, no disciplinary proceedings have been brought against the applicant that resulted in her expulsion for failure to comply with the rules on dress. Nor has the applicant complained about the disciplinary penalties that were imposed on her before being annulled on 28 June 2000 (see paragraph 24 above). The present application, therefore, only concerns a general measure issued by the University of Istanbul, namely the circular of 23 February 1998, and its implementation in the instant case.

71. The applicant said that, by wearing the headscarf, she was obeying a religious precept and thereby manifesting her desire to comply strictly with the duties imposed by the Islamic faith. Accordingly, her decision to wear the headscarf may be regarded as motivated or inspired by a religion or belief and, without deciding whether such decisions are in every case taken to fulfil a religious duty, the Court proceeds on the assumption that the regulations in issue, which placed restrictions of place and manner on the right to wear the Islamic headscarf in universities, constituted an interference with the applicant's right to manifest her religion.

B. "Prescribed by law"

72. The applicant maintained that the ban on wearing the headscarf on university premises had no statutory basis, as it was founded on an erroneous interpretation by the university authorities of the Constitutional Court's case-law. The Constitutional Court had not held in its judgment of 9 April 1991 that the provision concerned, which established the principle of freedom of dress, was unconstitutional. In the applicant's submission, the

reasons given by the Constitutional Court for its decision had no legal value in Turkish constitutional law.

Furthermore, the fact that the authorities of the universities of Bursa and Istanbul did not follow a uniform practice meant that the rule was "not foreseeable".

73. The Government contested those submissions.

74. The Court reiterates its established case-law, according to which the words "prescribed by law" not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see, among many other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V).

75. In the instant case, the Court notes that the circular of 23 February 1998, which banned students with beards or wearing veils from access to lectures, courses and tutorials, is a regulatory provision that was issued by the Vice Chancellor of the University of Istanbul. There is no doubt that, as the executive organ of the University, the Vice Chancellor had the requisite power, subject to complying with the requirement of lawfulness (see paragraphs 15, 50 and 51 above). According to the applicant, however, that circular was not compatible with transitional section 17 of the Higher-Education Act (Law no. 2547), as that section did not impose a ban on wearing the Islamic headscarf.

76. The Court must therefore consider whether transitional section 17 of the Higher-Education Act (Law no. 2547) can constitute a legal basis for the circular. It reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (*Kruslin v. France*, judgment of 24 April 1990, Series A no. 176-A, p. 21, § 29). In that regard, it notes that in rejecting the argument that the circular was illegal, the administrative courts relied on the settled case-law of the Supreme Administrative Court and the Constitutional Court (see paragraph 15 above).

77. Further, as regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term "law" in its "substantive" sense, not its "formal" one; it has included both "written law", encompassing enactments of lower rank than statutes (*De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no 12, p. 45, § 93) and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by parliament (*Barthold v. Germany*, judgment of 25 March 1985, Series A no. 90, p. 21, § 46) and unwritten law. "Law" must be understood to include both statutory law and judge-made "law" (see, among other authorities, Sunday Times *v. United-Kingdom* (no 1), judgment of 26 April 1979, Series A no. 30, p. 30, § 47; *Kruslin*, cited above, § 29 *in fine*; and *Casado Coca v. Spain*, judgment of 24 February 1994, Series A no 285-A, p. 18, § 43). Judge-made law is

regarded as a valid source of law under Turkish law (see paragraph 51 above). In sum, the "law" is the provision in force as the competent courts have interpreted it.

78. Accordingly, the question must be examined on the basis not only of the wording of transitional section 17 of the Higher-Education Act (Law no. 2547), but also of the case-law. From that standpoint, the question of the foreseeability of the "law" concerned does not give rise to any problem, as the Constitutional Court's judgment makes it clear that authorising students to "cover the neck and hair with a veil or headscarf for reasons of religious conviction" in the universities was contrary to the Constitution (see paragraph 38 above).

That judgment of the Constitutional Court, which was both binding (see paragraph 52 above) and accessible, as it had been published in the Official Gazette of 31 July 1991 (see paragraph 38 above), supplemented the letter of transitional section 17 and followed the Constitutional Court's own previous case-law (see paragraph 36 above). In addition, the Supreme Administrative Court had for many years prior to that taken the view that the Islamic headscarf was not compatible with the fundamental principles of the Republic (see paragraph 34 above).

79. As to the manner in which the University of Istanbul applied the relevant provision, it is beyond doubt that regulations on wearing the Islamic headscarf had existed well before the applicant enrolled at the University. As shown by the University's resolution of 1 June 1994 and the memorandum issued in 1994 by the Vice Chancellor (see paragraphs 40-42 above), students, particularly those who, like the applicant, were studying a health-related subject, were required to comply with rules on dress. The rules clearly prohibited students from wearing religious attire, including the Islamic headscarf, during tutorials on health and applied sciences.

80. As regards the lack of a uniform practice in the Universities of Bursa and Istanbul, the Court considers that its task is to examine a general measure that was adopted by Istanbul University and the implementation of that measure in the light of the material in the case file and the submissions of the parties. It is precluded from conducting an assessment *in abstracto* of the practice of either university. At this stage of its examination, it only need determine whether the requirements resulting from the words "prescribed by law" were satisfied. The remaining arguments relate more to the issue of the "necessity" of the impugned interference and will be examined below (see paragraphs 111-113).

81. In these circumstances, the Court finds that there was a basis for the interference in Turkish law. The law was also accessible and sufficiently precise in its terms to satisfy the requirement of foreseeability. It would have been clear to the applicant, from the moment she entered the University of Istanbul, that there were regulations on wearing the Islamic

headscarf and, from 23 February 1998, that she was liable to be refused access to lectures if she continued to do so.

C. Legitimate aim

82. The Government submitted that the interference pursued a number of legitimate aims: maintaining public order in the universities, upholding the principle of secularism and protecting the rights and freedoms of others.

83. The applicant accepted that, in view of the importance of upholding the principle of secularism and ensuring the neutrality of universities in Turkey, the interference could be regarded as compatible with the legitimate aims set out in the second paragraph of Article 9 of the Convention.

84. Having regard to the circumstances of the case and the terms of the domestic courts' decisions, the Court finds that the impugned measure primarily pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order.

D. "Necessary in a democratic society"

1. Submissions of the parties

(a) The applicant

85. The applicant submitted that the interference with her right to freedom to manifest her religion was extremely serious in view of its purpose, nature and scope, and that particularly strong reasons were required to justify it. She explained that she was a practising Muslim and wore the Islamic headscarf because of her religious belief that Muslim women were required to cover their heads and necks. She had not expressed any opinion on or made any statement or protest against the Constitutional principles of the Turkish State, including the principle of secularism. The manner in which she had chosen to comply with what was a religious obligation was neither ostentatious nor intended as a means of protest and did not constitute a form of pressure, provocation or proselytism.

86. Furthermore, referring to the four years she had spent studying at the University of Bursa and the period from September 1997 to February 1998, she said that the Government had not shown how her wearing a headscarf had caused any disruption, disturbance or threat to the public order that had to be maintained in higher-education institutions. She added that there were no teaching institutions or universities in Turkey where she would be able to pursue her higher education if she wore the Islamic headscarf.

87. The applicant affirmed that the vast majority of Turkish people – who were deeply attached to the principle of secularism – were opposed to

theocracy, but not to the Islamic headscarf. To her mind, the ban on the headscarf was not intended to preserve the neutral, secular nature of teaching institutions. The Islamic headscarf did not challenge republican values or the rights of others and could not be regarded as inherently incompatible with the principles of secularism and of neutrality in education. Those two principles could not be construed as requiring a ban on all religious signs in educational institutions. Various examples of this were to be found in the practices of European countries.

88. In the applicant's submission, when there was a risk of tensions coming to the surface in society – as was inevitable in a pluralist society – the authorities' role in such circumstances was not to eliminate the cause of the tensions by doing away with pluralism, but to ensure that the competing groups were tolerant of each other. She complained, in that connection, of a discriminatory practice towards Muslim women, pointing out that the right not to be discriminated against in the enjoyment of the rights guaranteed by the Convention was also violated when States failed without an objective and reasonable justification to treat differently persons whose situations were significantly different (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In her view, Muslim students were in a different position from other students and consequently had to be treated differently. She added that the restriction on wearing religious symbols was not applied uniformly. The Government had not produced any evidence to suggest that non-Muslim students had been subjected to disciplinary proceedings. Furthermore, students of the Jewish faith were not prohibited from wearing the skullcap or Christian students the crucifix. To her mind, the letter of 1 April 2002 in which the Higher-Education Authority had invited the university authorities to agree to a request by students of the Jewish faith to be excused lessons during Jewish religious holidays (see paragraph 44 above) provided a concrete example of the discriminatory manner in which the university authorities were prone to act.

89. The applicant argued that it followed from the foregoing that the measure in issue did not meet a pressing social need and was not necessary in a democratic society.

(b) The Government

90. The Government began by observing that freedom to manifest one's religion was not an absolute right. When examining individual cases, the domestic and supranational courts always took into account the secular nature of the State concerned, the nature of the religious practice and the measures that had been taken with a view to preserving the neutrality of public services.

91. The Government said that the principle of secularism was a preliminary requisite for a liberal, pluralist democracy and that there were factors peculiar to Turkey that meant that the principle of secularism had

assumed particular importance there compared to the other democracies. In their submission, the fact that Turkey was the only Muslim country to have adopted a liberal democracy as that expression was understood in the western hemisphere was explained by the fact that it had strictly applied the principle of secularism. They added that protection of the secular State was an essential prerequisite to the application of the Convention in Turkey.

92. Turning to the applicant's argument that the Koran imposed a duty to wear the Islamic headscarf, the Government argued, firstly, that religious duty and freedom were two different concepts that were not easily reconciled. The former notion required, by definition, submission to divine, immutable laws, while the notion of freedom presupposed that the individual enjoyed the widest possible range of opportunities and choices. As to the headscarf, the form it took for Muslim women varied according to the country and regime. The bandanna, which left the hair partly visible, was worn by modern women at funerals or by women in rural areas. The burka (full veil covering the entire body and the face) worn by Afghan women was an obligation imposed by the Taliban when in power, in accordance with their interpretation of Islam. The chador or abaya (a black veil which covered the entire body from head to ankles) was also worn in Arabic countries and Iran. It was difficult to reconcile all those different forms of dress derived from the same religious rule with the principle of neutrality in State education.

93. The Government also pointed out that there was no ban on wearing the Islamic headscarf on private or communal premises. Pupils were free to wear it outside schools. However, in the sphere of State education, which was regarded as a public service, the principle of secularism, of which the principle of neutrality formed an integral part, applied. The situation in Turkey and the reasoning of the Turkish courts showed that the Islamic headscarf had become a sign that was regularly appropriated by religious fundamentalist movements for political ends and constituted a threat to the rights of women.

94. In the Government's submission, the request for judicial recognition of the right to wear the Islamic headscarf in public institutions was tantamount to claiming a privilege for a religion that would entail in its wake a plurality of legal statuses, a situation that was regarded by the Court as being contrary to the Convention (*Refah Partisi and Others*, cited above § 119). In that connection, they stressed that the provisions of the Sharia concerning, among other matters, criminal law, torture as punishment for crime, and the status of women were wholly incompatible with the principle of secularism and the Convention.

95. As for the applicant, the Government noted that she had chosen to pursue her medical studies; medicine was a sphere in which a conservative religious approach would undoubtedly be incompatible with hygiene

requirements and would result in discriminatory conduct towards patients of the male sex.

96. At the hearing on 19 November 2002, the Government indicated that the Istanbul University authorities had restricted the access of students with beards or wearing veils to university premises as a preventive measure following complaints by other students of pressure from students from fundamentalist religious movements. In drawing up the rules, the authorities had also had regard to the fact that in the past Istanbul University had been the scene of violent confrontations between opposing radical groups. By regulating the wearing of religious signs, they had sought to preserve the institution's neutrality.

2. The Court's assessment

(a) The relevant principles

97. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom 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 (*Kokkinakis*, cited above, p. 18, § 33).

98. The Court notes that, in the decisions of *Karaduman v. Turkey* (no. 16278/90, Commission decision of 3 May 1993, DR 74, p. 93) and *Dahlab v. Switzerland* (no. 42393/98, ECHR 2001-V), the Convention institutions found that in a democratic society the State was entitled to place restrictions on the wearing of the Islamic headscarf if it was incompatible with the pursued aim of protecting the rights and freedoms of others, public order and public safety. In the *Dahlab* case cited above, in which the applicant was a schoolteacher in charge of a class of small children, it stressed among other matters the impact that the "powerful external symbol" conveyed by her wearing a headscarf could have and questioned whether it might have some kind of proselytising effect, seeing that it appeared to be imposed on women by a precept laid down in the Koran that was hard to reconcile with the principle of gender equality.

99. Likewise, the Court has also previously stated that the principle of secularism in Turkey is undoubtedly one of the fundamental principles of the State, which are in harmony with the rule of law and respect for human rights (*Refah Partisi and Others*, cited above, § 93). In a country like Turkey, where the great majority of the population belong to a particular religion, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9 § 2 of the Convention. In that context, secular universities may regulate manifestation of the rites and symbols of the said religion by imposing restrictions as to the place and manner of such manifestation with

the aim of ensuring peaceful co-existence between students of various faiths and thus protecting public order and the beliefs of others (*Refah Partisi and Others*, cited above, § 95).

100. The Court observes at the same time that the role of the Convention machinery is essentially subsidiary. As is well established by its case-law, the national authorities are in principle better placed than an international court to evaluate local needs and conditions (see, among other authorities, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, § 48). It is for the national authorities to make the initial assessment of the "necessity" for an interference, as regards both the legislative framework and the particular measure of implementation. Although a margin of appreciation is thereby left to the national authorities, their decision remains subject to review by the Court for conformity with the requirements of the Convention (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 101, ECHR 2003-VIII).

101. In determining the scope of the margin of appreciation left to the States, regard must be had to the importance of the right guaranteed by the Convention, the nature of the restricted activities and the aim of the restrictions (see, *mutatis mutandis*, *Hatton and Others*, cited above, § 101; and *Buckley v. the United Kingdom* judgment of 25 September 1996, *Reports* 1996-IV, p. 1292, § 76). Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek*, cited above, § 84; and *Wingrove v. the United Kingdom* judgment of 25 November 1996, *Reports* 1996-V, p. 1958, § 58). In such cases, it is necessary to have regard to the fair balance that must be struck between the various interests at stake: the rights and freedoms of others, avoiding civil unrest, the demands of public order and pluralism (see, *mutatis mutandis*, *Kokkinakis*, cited above, § 31; *Manoussakis and Others v. Greece* judgment of 26 September 1996, *Reports* 1996-IV, p. 1364, § 44; and *Casado Coca*, cited above, § 55).

102. A margin of appreciation is particularly appropriate when it comes to the regulation by the Contracting States of the wearing of religious symbols in teaching institutions, since rules on the subject vary from one country to another depending on national traditions (see paragraphs 53-57 above) and there is no uniform European conception of the requirements of "the protection of the rights of others" and of "public order" (*Wingrove*, cited above, § 58; and *Casado Coca*, cited above, § 55). It should be noted in this connection that the very nature of education makes regulatory powers necessary (see, *mutatis mutandis*, *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976, Series A no. 23, p. 26, § 53, *X v. the United Kingdom*, no. 8160/78, Commission decision of 12 March 1981, DR 22, p. 27; and *40 mothers v. Sweden*, no. 6853/74, Commission

decision of 9 March 1977, DR 9, p. 27). That, of course, does not exclude European supervision, especially as such regulations must never entail a breach of the principle of pluralism, conflict with other rights enshrined in the Convention, or entirely negate the freedom to manifest one's religion or belief (see, *mutatis mutandis*, *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium* judgment of 23 July 1968, Series A no. 6, p. 32, § 5; and *Yanasik v. Turkey*, no. 14524/89, Commission decision of 6 January 1993, DR 74, p. 14).

(b) Application of the foregoing principles to the present case

103. In order to assess the "necessity" of the interference caused by the circular of 23 February 1998 imposing restrictions as to place and manner on the rights of students such as Ms Şahin to wear the Islamic headscarf on university premises, the Court must put the circular in its legal and social context and examine it in the light of the circumstances of the case. Regard being had to the principles applicable in the instant case, the Court's task is confined to determining whether the reasons given for the interference were relevant and sufficient and the measures taken at the national level proportionate to the aims pursued.

104. It must first be observed that the interference was based, in particular, on two principles – secularism and equality – which reinforce and complement each other (see paragraphs 34 and 36 above).

105. In its judgment of 7 March 1989, the Constitutional Court stated that secularism in Turkey was, among other things, the guarantor of democratic values, the principle that freedom of religion is inviolable – to the extent that it stems from individual conscience – and the principle that citizens are equal before the law (see paragraph 36 above). Secularism also protected the individual from external pressure. It added that restrictions could be placed on freedom to manifest one's religion in order to defend those values and principles.

106. This notion of secularism appears to the Court to be consistent with the values underpinning the Convention and it accepts that upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey.

107. The Court further notes the emphasis placed in the Turkish constitutional system on the protection of the rights of women (see paragraph 28 above). Gender equality – recognised by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe (see, among other authorities, *Abdulaziz, Cabales and Balkandali v. United-Kingdom*, judgment of 28 May 1985, Series A no. 77, p. 38, § 78; *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 21–22, § 67; *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280-B, p. 29, § 27; *Van Raalte v. Netherlands*, judgment of 21 February

1997, *Reports* 1997-I, p. 186, § 39, *in fine*; and *Petrovic v. Austria* judgment of 27 March 1998, *Reports* 1998-II, p. 587, § 37) – was also found by the Turkish Constitutional Court to be a principle implicit in the values underlying the Constitution (see paragraph 36 above).

108. In addition, like the Constitutional Court (see paragraph 36 above), the Court considers that, when examining the question of the Islamic headscarf in the Turkish context, there must be borne in mind the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it. As has already been noted (see *Karaduman*, decision cited above; and *Refah Partisi and Others*, cited above, § 95), the issues at stake include the protection of the "rights and freedoms of others" and the "maintenance of public order" in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith. Imposing limitations on freedom in this sphere may, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since, as the Turkish courts stated (see paragraphs 32 and 34 above), this religious symbol has taken on political significance in Turkey in recent years.

109. The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts (see paragraphs 32 and 33 above). It has previously said that each Contracting State may, in accordance with the Convention provisions, take a stance against such political movements, based on its historical experience (*Refah Partisi and Others*, cited above, § 124). The regulations concerned have to be viewed in that context and constitute a measure intended to achieve the legitimate aims referred to above and thereby to preserve pluralism in the university.

110. Having regard to the above background, it is the principle of secularism, as elucidated by the Constitutional Court (see paragraph 36 above), which is the paramount consideration underlying the ban on the wearing of religious insignia in universities. It is understandable in such a context where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women, are being taught and applied in practice, that the relevant authorities would consider that it ran counter to the furtherance of such values to accept the wearing of religious insignia, including as in the present case, that women students cover their heads with a headscarf while on university premises.

111. The applicant has been critical of the manner in which the university authorities applied the measures (see paragraphs 86-88 above). However, the Court notes that it is undisputed that in Turkish universities, to the extent that they do not overstep the limits imposed by the organisational requirements of State education, practising Muslim students

are free to perform the religious duties that are habitually part of Muslim observance. In addition, the resolution which was adopted by Istanbul University on 9 July 1998 (see paragraph 45 above) treated all forms of dress symbolising or manifesting a religion or faith on an equal footing in barring them from the university premises.

112. As stated above (see paragraph 78), it is quite clear that the Turkish courts considered the Islamic headscarf to be incompatible with the Constitution and that regulations on wearing headscarves on university premises had existed for a number of years (see paragraphs 33, 34 and 42 above). That being so, the fact that some universities may not have applied the rules rigorously – depending on the context and the special features of individual courses – does not mean that the rules were unjustified. Nor does it mean that the university authorities waived their right to exercise the regulatory power they derived from statute, the rules governing the functioning of universities and the needs of individual courses. Likewise, whatever a university's policy on the wearing of religious symbols, its regulations and the individual measures taken to implement them are amenable to judicial review in the administrative courts (see paragraph 51 above).

113. Moreover, there had already been a lengthy debate on whether students could wear the Islamic headscarf by the time the circular was issued on 23 February 1998 (see paragraphs 31 and 33-38 above). When the issue surfaced at Istanbul University in 1994 in relation to the medical courses, the university authorities reminded the students of the applicable rules (see paragraphs 40-42 above). The Court notes that, rather than barring students wearing the Islamic headscarf access to the university, the university authorities sought throughout that decision-making process to adapt to the evolving situation through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises.

114. In the light of the foregoing and having regard in particular to the margin of appreciation left to the Contracting States, the Court finds that the University of Istanbul's regulations imposing restrictions on the wearing of Islamic headscarves and the measures taken to implement them were justified in principle and proportionate to the aims pursued and, therefore, could be regarded as "necessary in a democratic society".

115. Consequently, there has been no breach of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 8 AND 10, ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 9, AND ARTICLE 2 OF PROTOCOL NO. 1

116. The applicant alleged that the ban on wearing the Islamic headscarf in higher-education institutions had infringed her right under Article 2 of Protocol No. 1 to the Convention.

She also said that it obliged students to choose between religion and education and discriminated between believers and non-believers. That, in her view, constituted an unjustified interference with her rights guaranteed by Article 14 of the Convention, taken together with Article 9.

Lastly, she complained of a violation of Articles 8 and 10 of the Convention.

117. The Court finds that no separate question arises under the other provisions relied on by the applicant, as the relevant circumstances are the same as those it examined in relation to Article 9, in respect of which the Court has found no violation.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 9 of the Convention;

3. *Holds* that no separate question arises under Articles 8 and 10, Article 14 taken together with Article 9 of the Convention, and Article 2 of Protocol No. 1.

Done in French and English, the French text being authentic, and notified in writing on 29 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA,
President