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FLASH REPORT

Country:	Turkey
Title:	Dismissal of a female civil servant for wearing a headscarf
Date:	18 March 2019
Expert:	Kadriye Bakirci
<u>Context</u>	
Issue at stake:	The Constitutional Court, on 18 July 2018 decided that the disciplinary penalties against, and dismissal of, a civil servant for wearing a headscarf at a public institution in Ankara was a violation of the freedom of religion and conscience. It also ordered the applicant to be paid a sum of 20 000 Turkish liras (around EUR 3 200) in damages.
Grounds of discrimination:	Gender, Religion or belief
Field of application:	Employment
Source:	National court decision
Applicable law:	Turkish Constitution, Articles 10, 24 and 72.

Content

Case development: The public institution where the applicant was working as a civil servant imposed disciplinary penalties on her for wearing a headscarf. The applicant, who continued to wear a headscarf, was dismissed from the civil service in 2001.

In the action brought by the applicant, the administrative court annulled the decision to dismiss the applicant on the ground that her oral defence had not been taken by the disciplinary board of the institution. The administration then filed an appeal against this decision with the *Conseil d'Etat* which decided in favour of the public institution. In line with the *Conseil d'Etat's* decision, the administrative court dismissed the applicant's action. The applicant's appeal against the dismissal decision as well as a request for rectification of the decision were also rejected.

While the court proceedings were ongoing, the procedural deficiencies indicated in the administrative court's decision were rectified and the applicant was granted an opportunity for a hearing, nevertheless the applicant was then dismissed from office again. The applicant brought another action against this decision which was also dismissed by the administrative court. During the appellate process, this decision was upheld by the *Conseil d'Etat*.

In the meantime, the Act No. 5525 on the '*Amnesty of Certain Disciplinary Penalties Imposed on Civil Servants and the Other Public Officers*', which pardoned disciplinary penalties imposed on civil servants, entered into force during the consideration of the applicant's request for rectification of the *Conseil d'Etat's* decision. The applicant subsequently filed a free-standing application with the public institution claiming the benefit of the Act No.5525 and requested to be re-appointed to her public office. However,

her request was dismissed by the public institution on the ground that "*it was not entitled to directly recruit an officer*".

The subsequent action brought by the applicant against the administration's refusal to reinstate her was dismissed by the *Conseil d'Etat*. After her appeal and request for rectification of the *Conseil d'Etat's* decision had been also dismissed, the applicant lodged an individual application to the Constitutional Court.

In the petition submitted subsequent to her individual application to the Constitutional Court, she indicated that, relying on the Act No 5525, she took office in another public institution which accepted her request .

On 18 July 2018, the Second Section of the Constitutional Court found a violation of the freedom of religion safeguarded by Article 24 of the Constitution.

Decision of the court: For the reasons explained below, the Constitutional Court found a violation of the freedom of religion safeguarded by Article 24 of the Constitution:

The freedom of religion and conscience, enshrined in Article 24 of the Constitution, is fundamental for establishing and maintaining an effective and sound democracy based on the rule of law. Those who are followers of different religions or who have no religion or belief are under the protection of the secular State.

The argument that it is a breach of the principle of secularism to allow public officers on duty to wear a headscarf on religious grounds – without taking into consideration the specific circumstances of their public office – is considered unacceptable by the Constitutional Court. Considering practices such as wearing a headscarf by public officers as a threat to social unity is not in conformity with democracy and the understanding of pluralist secularism. Indeed, such practices reflect social diversity rather than constituting a threat against it.

The applicant was dismissed from public office for wearing a headscarf as required by her religion. This sanction constitutes an interference with the applicant's right to follow her religion. The assessments to be made in the present case will mainly focus on the issue whether the grounds established by the inferior courts for their judgments are in compliance with requisites of a democratic society. Any interference with the freedom of religion on a ground failing to fulfil the criteria set by the Constitutional Court would be a breach of Article 24 of the Constitution.

In the present case, the administration and the inferior courts acted on an assumption that the mere wearing of a headscarf by a public officer disturbed public order. Neither the administrative decision nor the court judgments indicated that the applicant's wearing of a headscarf was offensive, oppressive, or provocative; or aimed to interfere with other beliefs or to compel others to adopt her own belief; or impaired the institutional public service and caused disorder. The public institutions only determined that the applicant had insisted on wearing her headscarf but did not make an assessment as to the problems caused or likely to be caused by her insistence. Therefore, it could not be seen which pressing social need was met, for maintaining public order, by the interference with the applicant's right to follow her religion. In any event, the disciplinary penalty prescribed in the relevant legislation that was in force at that time for wearing a headscarf was in fact the sanction of reprimand.

However, both the public institution and the inferior courts unreasonably regarded the wearing of a headscarf as one of the acts requiring dismissal from public office.

The penalty of dismissal from public office, imposed on the applicant for wearing a headscarf, is the severest disciplinary sanction. It cannot therefore be concluded that the

penalty, which entails very heavy consequences, both pecuniary and non-pecuniary, for the applicant is proportionate.

As a result, it could not be established as a relevant and sufficient ground that the interference met a pressing social need and was proportionate to the legitimate aims of protecting public order. Therefore, the interference is not in compliance with the requirements of a democratic society.

Key points of analysis: The Constitutional Court failed to fully engage with the issue of gender equality and the potential harm of the exclusion of women from public work. As result of the ban in Turkey, women wearing headscarves could not enter university campuses, the work environment or Parliament, and they were not able to participate in public life as they may have wished. If a feminist analysis is to be undertaken, the harm done to these women must be taken into account. As Erica Howard put it "bans are unnecessary and even counterproductive to achieving gender equality". For those women who wear these garments because they freely choose to do so, bans are not necessary to promote their equality. For those women who are pressured into wearing headscarves or veils, bans could well work against promoting their equality, because they could prevent them from getting an education and a job and could lead to their isolation from society" (Erica Howard (2012), "Banning Islamic veils: Is gender equality a valid argument?", International Journal of Discrimination and the Law, Vol.12, Issue 3). Also the Court awarded the applicant a low amount of compensation compared to the pecuniary and non-pecuniary losses she had suffered since 2001.

Internet link source:

https://www.lexpera.com.tr/Appendix/PUBLICATION_TR/RG801Y2018N30497P5_258839534_1.pdf