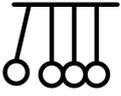


Leyla Şahin v. Turkey Case

LAW

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Abstract

This text examines the case of *Leyla Şahin v. Turkey* within the framework of the headscarf ban, the understanding of secularism, and the legal practices of the period. The restrictions encountered by the applicant due to wearing a headscarf at university are evaluated through the legal regulations in Turkey, the circulars of the Council of Higher Education (YÖK), and the articles of the European Convention on Human Rights. The decision of the European Court of Human Rights to reject the application is explained by taking into account the political and social conditions of the period in which the events occurred. The text explains, together with its reasons, that the fundamental issue in the case arose not so much from the Court's decision, but from the conditions and practices of the period.

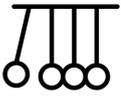
What is the Incident of the Case? (General Summary)

The origin of this case, the correctness of whose final decision remains a matter of debate, dates back 28 years. After completing five years of education at Bursa University Faculty of Medicine, Leyla Şahin transferred to Istanbul University Cerrahpaşa Faculty of Medicine in 1997 and stated that she had worn a headscarf for four years without experiencing any difficulties prior to this transfer. However, following this change, the obstacle she claims to have encountered constitutes the point that led to this case.

According to the regulation issued by Istanbul University in February of the same year, entry to any part of the campus was explicitly prohibited, regardless of whether the student was a foreign national, if religious headscarves, clothing, or beards were worn. The applicant was subjected to this ban and received disciplinary sanctions. Leyla Şahin applied to the European Court of Human Rights (ECHR), arguing that this situation violated the provisions of the European Convention on Human Rights concerning respect for private and family life, freedom of thought, conscience and religion, freedom of expression, and the prohibition of discrimination.

Period Conditions

First of all, let us be clear from the beginning: since everyone's religious or conscientious views may differ, whether the beginning of this case was justified and whether the decision rendered was correct remain matters of debate. Especially considering that the



case took place a long time ago and that many factors have changed during this period, it is difficult to give a definitive answer to these questions.

Article 9 of the European Convention on Human Rights, which the applicant also invoked, states exactly as follows:

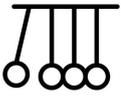
“ARTICLE 9 – Freedom of thought, conscience and religion

- 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.”*

When we look at the first part of the article, especially if we emphasize the term “teaching,” the idea that Leyla Şahin’s freedom was restricted, regardless of which religion is concerned, comes to the forefront. However, in order to relate the case to the conditions of the period, we must also focus on the second part. In this section, it is stated that if a law is put forward, it is possible to restrict this freedom for the purpose of protecting public order. Considering the state order of the country at that time, this article, which the applicant put forward in her favor, turns against her. The main reason for this lies in the principles of “Secularism and Religious Clothing” during that period.

In our country, which ceased to be an Islamic state in 1928, state affairs and religious affairs were separated from one another in accordance with the principles of secularism that progressively developed after the Republic. Subsequently, with the Hat Law and the Clothing Law enacted in succession, religious garments that had previously been made compulsory were not considered appropriate within the objective of Westernization, and the obligation to wear them outside places of worship was abolished; indeed, their use was not viewed favorably.

In addition to these justifications, it has been stated that opponents of the headscarf argued that the use of the headscarf within universities was “...a threat causing internal unrest and undermining the foundation of women’s acquired rights in the republican system; and a symbol of political Islam aimed at establishing a regime based on religious rules...”. It was emphasized that it was contrary to the rights granted to women in the Republic founded by Atatürk. Additionally, within the case file, it was noted that in certain courses in the medical department of Istanbul University, wearing a specific uniform was required, and that the headscarf did not comply with this uniform.



Although I am not certain how accurate these views are, one thing is clear: in a circular published on 20 December 1982, the Council of Higher Education (YÖK) prohibited the wearing of the turban in conference halls, and in 1984, with the approval of this decision, the following statement was put forward: “Wearing the headscarf, beyond being an insignificant and innocent practice, is a process advancing toward becoming a symbol contrary to the fundamental principles of the Republic and to women’s freedoms.” This situation fulfills the conditions of being “prescribed by law” and ensuring the protection of “public order.”

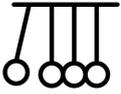
In addition, according to the statement of the Constitutional Court in 1991, “In higher education institutions, covering the hair and neck with a headscarf or chador due to religious belief is contrary to the principles of equality and secularism. Under these conditions, the freedom of dress introduced by the contested rule in higher education institutions ‘does not concern a form of religious clothing or the covering of one’s hair and neck with a headscarf or chador’ ... ‘The rule that gives rise to the freedom (Additional Article 17) is subject to the condition that it does not conflict with the laws in force.’” From these statements, what I understand is that the existence or non-existence of the right to wear a headscarf within educational institutions is not connected to freedom of dress.

The ECHR Decision

In delivering its judgment at the conclusion of the case, the European Court of Human Rights particularly addressed the second paragraph of Article 9 mentioned above and, together with the statement contained in the case file that “The applicant further submitted that the ban in question forced students to choose between education and religion and created a distinction between believers and non-believers. According to the applicant, this situation constituted an unjustified interference with the rights guaranteed under Article 9 of the Convention, in connection with Article 14,” decided by vote to reject the applicant’s initial objection and rule in favor of the Government.

Is this decision “*correct*” ?

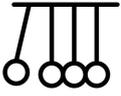
At first glance, this situation appears to constitute an example of discrimination and injustice; and in my opinion, regardless of which religion or belief is concerned, no one’s manner of practicing their faith should be interfered with. However, in this case, considering the decisions and circulars issued by the Council of Higher Education (YÖK) in Turkey in the 1990s, the matter moves away from being in direct opposition to the European Convention on Human Rights. Once it was determined that the justifications provided were not contrary to



the articles invoked by the applicant, there was little the European Court of Human Rights could do at that time in light of the prevailing conditions. Today, the situation is not at such a level, and we are not confronted with these bans in a written form. Whether one believes in Islam, Christianity, or even worships statues, one is free to practice one's belief; fortunately, there is no longer a written provision depriving individuals of this freedom. Indeed, according to news reports from 2010, it is stated that YÖK also made an announcement to Istanbul University indicating that there was no longer any obstacle to students attending classes wearing a headscarf. However, social discrimination sometimes continues covertly and sometimes openly. If someone today were to be subjected to discrimination similar to that faced by Leyla Şahin, I do not believe that the opposing side would have justifications as strong as those presented in this case.

Conclusion

It is not entirely correct to treat the outcome reached in the *Leyla Şahin v. Turkey* case as a rights violation, even if it may appear to be so. Unfortunately, when we encounter such events, we sometimes forget to take into account the conditions of the period in which the situation occurred. While examining this incident, attention should be paid to the legal circumstances in and before the year 1988, when the events began, and to the justifications given in the case on the basis of those circumstances. When viewed in this way, it becomes clear that the issue was not whether the ECHR's decision was wrong; in fact, when considered together with what was presented in that decision, the judgment was most likely the correct one. The real "problem" in this case was the period in which the incident took place, and the conditions, laws, and circulars of that time.



Resources

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