

**TESTIMONY
OF
MERVE KAVAKCI
Former Member of Turkish Parliament**

**COMMISSION ON SECURITY AND COOPERATION IN
EUROPE BRIEFING**

**“RELIGIOUS FREEDOM IN TURKEY”
HEADSCARF BAN**

**2200 RAYBURN HOUSE OFFICE BUILDING
CAPITOL HILL
WASHINGTON DC**

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I thank Senator Brownback and the Commission on Security and Cooperation in Europe for this opportunity.

To be able to enter and speak at the American Congress as a woman with a headscarf is not something that I can take for granted. I am a member of a family whose lives have been torn about by the ban on headscarves in Turkey for over 3 decades. My mother was a professor of German literature when she was coerced to choose between her profession and religious conviction in early 1980s. She chose not to take off her headscarf and resigned at a young age. My father, albeit not directly, was also a victim of the ban. As the Dean of the School of Islamic Studies in Ataturk University, he was forced to enforce the ban on his female students at the very college where Islam and its mandate on women to wear scarves were taught. Little I knew that only a few years later I would face a similar challenge and would have to quit my medical school education as a freshman. The school administration was just not able to get passed my 'looks'. My family had to move a foreign land to live, learn and work freely. In 1999, I paid another price for wearing the scarf. This time, as a duly elected Parliamentarian, I walked in to the Turkish Grand National Assembly to take my oath of office to serve my country. My fellow Parliamentarians chanted "get out, get out". The Prime Minister called upon the MPs as he pointed at me and said "Put this woman in her place!" It took then the government only 11 days to revoke my citizenship and to start the prosecution for instigating hatred and discriminating against people, despite the very fact that I had parliamentary immunity. I was never permitted in. My seat remained vacant. Hence my constituents were denied from representation. The result was closure of my political party and a ban on my political activities for five years.¹ My headscarf was perceived to be a threat to the secular state edifice.

My ordeal, however, was not an exception, rather, was typical of the human rights violations that have been carried out by the state against female citizens. Originally what began as merely a provision to regulate the dress code of federal employees in the 1980s has become a means of patent discrimination against religious women². While the state promotes equality for its citizens, it stifles, ostracizes women with headscarves. With a headscarf, a girl cannot get education in a junior high, high school or a university. She cannot work at a state or military office. She cannot enter the university or military grounds. Private realm is no exception to this rule. She even cannot give or get education at a private institution. She is not only precluded from "providing" service but, at times from "receiving" service as well. Medine Bircan was a senior citizen who paid the ultimate price by losing her life in 2002³. Because she wore a headscarf on her ID picture, she was denied healthcare in the emergency room of Istanbul Capa Hospital. That same year, at Ataturk University in Erzurum, mothers who wore headscarves to their children's graduation ceremony were not permitted in unless they wore wigs on top

¹ Interparliamentary Union Decree on Kavakci's Case, 09/27/2002, see Appendix 1

² Law (657) of Civil Servants/Article 5/Provision on the Dress Code of Federal Employees

³ Mazlumder (Organization of Human Rights and Solidarity for Oppressed People) Report, <http://> see Appendix 2

of their headscarves⁴. In 2003, Hatice Hasdemir Sahin, a woman who appeared before the Supreme Court of Appeals in Ankara was denied the opportunity to give her testimony when the judge decreed that a public space could not be assumed with a headscarf⁵. The wife of the Prime Minister, wife of the Speaker of the House, cabinet members, wives of MPs are not permitted in to the Presidential Residence⁶. As a result, thousands of Turkish women are excluded from schools, universities and jobs. Some endured interrogations at the “persuasion rooms” established at their institutions.⁷

The proponents of the headscarf ban voice various justifications for their stance: One of them is that the headscarf is antithetical to the values of the developed world Turkey yearns to be part of, namely democratic values. If that is the case, can we claim that the police officer who strips a little girl’s headscarf off against her free will acts within the boundaries of democracy and human rights? Can a state whose main responsibility is to meet the needs of its citizens and assist them to prosper, justify discrimination simply because its subjects choose to be religious? How can a state legitimize not only the social but also the economic ramifications of its systematic discrimination against its citizens? On one hand, the state promotes social and economic growth for women via education. On the other hand, it spearheads discrimination on women who wear headscarves. **While promoting gender equality within its ideology, it prods inequality amongst women.**

The second justification claim for the ban is that in a secular country public space cannot be assumed by any religious symbols. This simply involves the question of what the public realm is and is not. 70% of the Turkish women do wear headscarves. It is part of our culture, part of our religion and part of our history. We can inquire: On what bases could the “public” be denied from existing in “public”?

One other claim involves the argument that if the wearing of scarf is permitted, then the state would face the threat of perdition due to the proverbial reasons. States could indeed be secular. Could people be coerced to be secular? Is it legitimate to demand from one to leave her convictions at home as she walks out the door? Rather is it humanly possible to do such? Is it legitimate to confine one’s activities to certain areas of the public realm and deny her from others?

One final justification claim for the ban involves the “threat” thus the “fear” the headscarf engenders over women who do not wear them. Can the abridgements of specific ecumenical rights of one group be legitimized in pursuit of protecting another set of ecumenical rights of some other group due to the assumed “potential” threat of the former over the latter?

⁴ Sabah Gazetesi, Sinan Aydin, “Veliler de turban yasagini deldi”, 06/18/2003, see Appendix 3

⁵ Yenisafak Gazetesi, “Basin Ac Oyle Gel”, 11/07/2003, see Appendix 4

⁶ Milliyet Gazetesi, Serpil Cevikcan, “Kosk kamu alani, basortu takilamaz”, 10/22/2003, see Appendix 5

⁷ Demirkol, Gulsen Ozer “Ikna Odalari”, Istanbul, Beyan Yayinlari, 2005

Despite the effect of the ban on headscarves in almost every facet of a Turkish woman's life, the ban does not have legal status⁸. It contravenes the Turkish Constitution as well as the international conventions Turkey is signatory to.⁹ Since the establishment of the Republic woman's clothing has not been regulated via a law. Women had never been mandated to dress in a particular way. On the other hand, it is mandated that every Turkish man wear a hat.¹⁰

The ban on the headscarf is the most ostentatious, yet not the only manifestation of staunch Turkish secularism. The provision that mandates inequality vis a vis the graduates of the Imam Hatip Religious State Schools is another consequence of the secularism in Turkey. The law that bans the teaching of the Holy Book Qur'an to our children under the age of 12 is one other reverberation of the Turkish secularism. The unique construct of secularism espoused by the state is distinct from the secularism adhered in the Western world. While the state adamantly refrains itself from the clout of religion over state affairs, overtime, it shifts towards the "other" extreme, namely, secular fundamentalism. While it fervently rejects the concept of "religious state", it creates a "state" religion. Due to this very fact, the Turkish religious authority, Diyanet is a state institution.

The conceptualization of such unique construe of the Turkish secularism must be overhauled. It must be reexamined through open discourse. We must bring Turkish secularism from where it is at the far right to where it is supposed to be on the continuum. Meanwhile, the recent reforms Turkey has undertaken to meet the Copenhagen criteria give new hope to the women with headscarves. We know that the current government acknowledges the discrimination. The pain caused by the ban hits the homes of the members of the current government. Recently, the Speaker of the Parliament enunciated that he was waiting in patience for the revoke of the ban¹¹. We, the victims are waiting. The Parliament is waiting. The Turkish people are waiting. A recent study depicts that 71% of the people believe that ban must be lifted¹². This accounts to a national consensus. US Congress must urge the Turkish officials to hear the people of Turkey and act upon the "will" of the people to cease the blatant discrimination against Turkish women.

It is the right of every woman to live and work in dignity.

Thank you.

⁸ Higher Education Council Annex/Article 17

⁹ Article #10, #24, # 90 of the Turkish Constitution, UDHR, ICCPR, ICESCR, CEDAW, ECPHR

¹⁰ Hat Law

¹¹ Vatan Gazetesi, Sevimay Devrim,"Bu sozler cok tartisilir", 04/04/2005, see Appendix 6

¹² TUSES (Socio-Economic Political Research Association) study in AKDER's "Evaluation of the Headscarf Ban in the Light of Surveys and Reports of Human Rights Organizations" Istanbul, 2004, see Appendix 7

Appendices

Appendix 1:

InterParliamentary Union Decree Case No#TK66-Merve Safa Kavakci-TURKEY,
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Appendix 2:

Mazlumder (Organization of Human Rights and Solidarity for Oppressed People) Report
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Appendix 3:

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TUSES Study in "Evaluation of the Headscarf Ban in the Light of Surveys and Reports
of Human Rights Organizations" by AKDER, 2004

APPENDIX 1



CASE N° TK/66 - MERVE SAFA KAVAKÇI - TURKEY

*Resolution adopted unanimously by the Council at its 171st session
(Geneva, 27 September 2002)*

The Council of the Inter-Parliamentary Union,

Having before it the case of Ms. Merve Safa Kavakçi of Turkey, which has been the subject of a study and report of the Committee on the Human Rights of Parliamentarians in accordance with the “*Procedure for the examination and treatment, by the Inter-Parliamentary Union, of communications concerning violations of human rights of parliamentarians*”,

Taking note of the report of the Committee on the Human Rights of Parliamentarians (CL/171/12(a)-R.1), which contains a detailed outline of the case,

Considering that Ms. Merve Kavakçi was elected on 18 April 1999 on a Virtue Party ticket as a member of the Turkish Grand National Assembly (TGNA) and was issued the credentials validating her membership in the TGNA; however, during the swearing-in ceremony on 4 May 1999, she was prevented from taking the oath because of her wearing of a headscarf and forced out of the assembly hall; on 13 May 1999, the Government revoked her Turkish citizenship on the grounds that she also possessed US citizenship, which, in violation of Turkish citizenship law, she had accepted without permission from the Government; that decision was upheld on appeal by the Council of State (latest decision on 1 December 2000) although in the meantime Ms. Kavakçi had regained Turkish citizenship through her marriage to a Turk on 28 October 1999; on 20 May 1999, by decision N° 1585, the Supreme Election Council (YSK), seized by the Government, confirmed that Ms. Kavakçi had been duly elected and was a member of the TGNA and ruled that a decision to terminate her mandate for loss of eligibility after election belonged solely to the TGNA,

Considering that, on 14 March 2001, the Speaker of the TGNA submitted a letter to the Assembly notifying it that Ms. Kavakçi's deprivation of Turkish citizenship was "lawful and final", for which reason Ms. Kavakçi "has lost her eligibility under Articles 66 and 76 of the Turkish Constitution and Citizenship Law ... and does not have parliamentary status"; recalling that, on 17 January 2001, the President of the Turkish IPU Group stated that Ms. Kavakçi's "parliamentary status was lifted" subsequent to the revocation of her nationality on the grounds that "Turkish nationality is a precondition for being a parliamentarian",

Considering that, at the hearing held in Havana (April 2001), the Turkish delegation, emphasising the secular character of the Turkish State, stated that Ms. Kavakçi's aim was to show that a woman wearing a religious symbol could enter Parliament and should therefore also be able to enter the Government and be admitted to public office in general,

Noting that the Turkish Parliamentary Dress Code in force at the time requires women to wear a suit and that, in wearing a headscarf, Ms. Kavakçi did not violate that Code; noting also that Article 76 of the Constitution, governing eligibility, neither excludes persons with dual nationality from standing for election nor requires that dual nationality be disclosed; according to Ms. Kavakçi, several members of the Turkish Parliament indeed enjoy dual citizenship, including US citizenship; recalling in this respect that the decision to revoke Ms. Kavakçi's Turkish nationality prompted many Turkish citizens with dual nationality to consult Turkish consulates fearing that they too would be deprived of their nationality; however, they were informed that the decision had been directed against Ms. Kavakçi only because of her "exceptional status",

Considering further that, although duly elected, Ms. Kavakçi was denied all rights as an MP, including salary, accommodation and office; neither her name nor her picture was included in the Album of the Parliament and all information concerning her election was deleted from Parliament's data systems,

*Considering moreover that in June 2001 the Court dissolved the party to which Ms. Kavakçi belonged for "activities against the secularism principle of the Turkish Republic", basing that decision *inter alia* on speeches made by Ms. Kavakçi; it debarred her for five years from political activity; as a consequence of Article 84 of the Constitution in force at the time, she would at that point have forfeited her mandate,*

Noting finally that Ms. Kavakçi is currently living in the United States of America; knowing that charges of "insulting the Republic, the Parliament and the State" have been levelled at her, she fears that she may be arrested and prosecuted should she return to Turkey; she feels that she has been the target of discriminatory measures contrary to the principles enshrined in the Constitution and laws of Turkey and in international human rights standards, in particular the European Convention on Human Rights, to which Turkey is party,

1. *Observes that it is undisputed that Ms. Kavakçi was duly elected a member of the Turkish Parliament and validated as such by the Supreme Election Council, which that body reconfirmed in its decision N° 1585, adopted by it subsequent to the revocation of Ms. Kavakçi's Turkish nationality;*
2. *Affirms, in line with that decision, that in no way can loss of eligibility after the election invalidate an election, and is therefore led to consider that Ms. Kavakçi was arbitrarily prevented from taking her oath and from assuming the parliamentary mandate entrusted to her by her constituents, with the result that they were deprived of their right to be represented by a person of their choice;*
3. *Stresses that the revocation of a parliamentarian's mandate is a serious measure which irrevocably deprives such a member of the possibility of carrying out the mandate*

entrusted to him/her and that it must therefore be taken in full accordance with the law and only on serious grounds;

4. *Notes* that: (i) in Turkish law there is no provision either for automatic loss of membership in the TGNA in the event of loss of eligibility after election or for the President of the TGNA to make a declaration to that end; (ii) according to the Supreme Election Council, which is the competent body, only the TGNA itself can revoke Ms. Kavakçi's parliamentary mandate; (iii) in conformity with Article 84 of the Turkish Constitution, loss of membership of the Turkish Parliament must be decided by an absolute majority of the Assembly; (iv) Ms. Kavakçi had regained her nationality while the Council of State ruled at last instance that she had lost her nationality owing to Council of Minister decision N° 99/12827 of 13 May 1999;
5. *Fails therefore to understand* on what legal basis the President of the Turkish Grand National Assembly declared that Ms. Kavakçi was no longer a member of the Assembly without the latter having taken a decision to that effect; *also fails to understand* on what grounds the Council of State declared, as late as December 2000, that Ms. Kavakçi had lost her Turkish nationality when she had regained it in October 1999, as certified by the competent authorities;
6. *Fears*, in view of the information on file, that Ms. Kavakçi was not only arbitrarily prevented from assuming her mandate and duties as an elected representative of the Turkish people but may also have been deprived of her membership without any valid legal basis and according to a procedure not provided for under Turkish law;
7. *Considers* that the Constitutional Court judgment dissolving Ms. Kavakçi's party can in no way alter its opinion;
8. *Requests* the Secretary General to inform the parliamentary authorities of this resolution, inviting them to provide their comments, in particular with respect to any means of redress which Ms. Kavakçi may be granted;
9. *Requests* the Committee on the Human Rights of Parliamentarians to continue examining this case and report to it at its next session (April 2003).

APPENDIX 2

MAZLUMDER-(ORGANIZATION OF HUMAN RIGHTS AND SOLIDARITY FOR OPPRESSED PEOPLE) REPORT on DEATH of MEDINE BİRCAN

Some news were reflected to the public on the last ten days of the month of June in year 2002 about the fact that some operations with respect to the treatment of the patient named "Medine BİRCAN" was not carried out in the Medical Faculty Hospital of Istanbul University (Çapa) on grounds that her head was covered in the photograph present in her documents. Meanwhile, following the application made by Mustafa BİRCAN, son of the patient Medine BİRCAN, a report was prepared for Medine BİRCAN by the Violation of Rights Committee of our branch

Attorney at Law. Cihat Gökdemir

Attorney at Law: Leyla Demir

Attorney at Law: Mustafa Ercan

A- INTRODUCTION

Some news were reflected to the public on the last ten days of the month of June in year 2002 about the fact that some operations with respect to the treatment of the patient named "Medine BİRCAN" was not carried out in the Medical Faculty Hospital of Istanbul University (Çapa) on grounds that her head was covered in the photograph present in her documents. Meanwhile, following the application made by Mustafa BİRCAN, son of the patient Medine BİRCAN, a report was prepared for Medine BİRCAN by the Violation of Rights Committee of our branch

B-COMPLAINTS NOTIFIED TO US

The claims of the son of the patient Medine BİRCAN notified to our organization were as follows:

"It has been 8-8.5 months since my mother started facing problems related with her health. My siblings and I tried to help my mother during this period. Meanwhile my mother lost her eldest daughter. Our adventure that started in the Obstetrics polyclinics of the Istanbul Medical Faculty to the Oncology department and then to Internal Diseases turned in to psychological problems with the insistence in the Nephrology Department, which was inhumane. There was nothing that could be done in the Oncology and Internal Diseases services for my mother. However, she could have received treatment in the dialysis device in order to prolong her life. When the nephrology report was prepared the doctors of the Internal Diseases said that they would discharge us from the hospital and that we could proceed with our treatment at home.

When we applied for the report they said that the photograph of my mother with her

head covered would not be accepted and that this was circulated to them by a bulletin with the order of the government and they said that they could not do anything although I told them that my mother was in bed, she had a catheter and had difficulty speaking.

Although my mother said that she did not want to have such a photo taken, I had a photograph prepared with hair through montage. Because all my mother's hair had already come out due to the chemotherapy she received. It has been 9 days since we applied for the report and the report is still not ready. However, we are about to lose our mother. My mother has only been sleeping for the past 28 hours. She gives no reactions. We refer those who treat her in this manner to God." 25.06.2002.

C-OUR EFFORTS BY THE MANAGEMENT

A visit was made to the Medical Faculty Hospital of the Istanbul University to evaluate the case following the application of Mustafa BİRCAN and the hidden camera images broadcast in the news bulletin of Channel 7 on 27.06.2002. Although a request was made to conduct an interview with the Chief of Staff of the Hospital, it has not been possible. We left a message to the officers in charge for conveying our request. Meanwhile, we had a discussion with a senior manager in the department of Nephrology. This person informed us about the health condition of the patient, Medine BIRCAN. However, he/she did not want his/her name to be disclosed. This person did not wish to make explanations about the subject of photograph and other matters. As a result of this, we made an application to the Editor in Chief of the Hospital. We requested the following in the application we made to the Medical Faculty Hospital of the Istanbul University on 27.06.2002 with document registry number 22965.

- Whether such a bulletin was sent to the hospital and a copy of this bulletin to be delivered to our organization if it existed,

- Our organization to be informed in three days whether such an order given to the personnel of the hospital existed.

No explanation was made by the administration of the Istanbul University Medical Hospital until the date when the report was written. Some of the officers who did not give statements to us made declarations to the Hurriyet Newspaper dated 01.07.2002.

Nevertheless, the Faculty Dean made a press release on 02.07.2002. The contents of the press release match the contents of the declarations made to the Hurriyet Newspaper. We have deemed it necessary to include these declarations as well with the principle of neutrality, justice and equity.

1- The announcements in the Hurriyet Newspaper dated 01.07.2002 :

a- Prof.Dr. Faruk ERZENGIN; Dean of Istanbul Çapa Medical Faculty;

Prof ERZENGIN stated that BIRCAN was taken to dialysis 5 times despite the claims made and said: "Patients get treatment from us even if they come here with a burka (the clothing worn in Afghanistan). Before this, patients getting treatment with the documents of other persons were detected. The registry documents are being abused and some people try to rob the state. While the treatment of Medine BIRCAN was continuing we asked from her family to provide a photograph that was more clear and better viewed. We want the photographs in the registry documents to be without covered hair because we want the identity to be evident. But, we do not care how the patient comes to the treatment. The treatment has not been interrupted. The patient had severe cancer and she

died because of cancer. We treat many patients with covered head. This event is being abused by certain sections. They would like to wear out our rector Prof.Dr. Kemal ALEMDAROĞLU. There is no mistake in the treatment given and nothing has been skipped. A photograph was requested for the Health Committee where her face was more visible without leaving any place for doubt. We are members of the health sector and are related with treatment. We do not care about something else. I never heard of any patient not treated for this reason or that in these 38 years that I was in the business. We gave health committee reports to 5-6 patients with their head covered last week.

b- Prof.Dr.Kemal Alemdaroğlu Istanbul University Rector;

"60 thousand people get service from the hospital on a daily basis. Two thirds of them cover their heads. Everyone knows why the fundamentalist press is dealing with me. Those with open or covered hair get the same treatment from us. We do not send anyone back from our Hospital. Some of the patients getting treatment in our hospital get well while some other lose their lives. They are abusing the matter."

2- The letter signed by Prof.Dr. Nur SERTER dated 10.05.2002 and with number 20676 from the Personnel Chief Department of Istanbul University.

The 2nd paragraph of the letter of instruction states the following as the grounds of the matter "The personnel and the family members to benefit from health aid shall fill up the attached Health Certificate Request Form to receive help of treatment bearing their photographs taken in conformity with the regulation of clothing and the form should be sent in 2 copies."

D-LEGAL ARRANGEMENTS

I-REGULATION OF PATIENT RIGHTS

(Official Gazette dated 01.08.1998, Saturday, Number 23420 from the Ministry of Health)

Article 1 - This regulation was prepared to arrange the procedures and principles to be applied for the use of "patient rights" and to protect them from violations of their rights and provide them the opportunity to get legal measures if need be and to put forward "patient rights" in a concrete manner as accepted in the Constitution of the Turkish Republic, other regulations and international legal texts in a manner that is conformity with the honor and pride notions, which is a reflection of human right in the field of health sector.

Article 5 - Adherence to the principles below is mandatory in the provision of health services.

a) That the right to live in a healthy manner with physical, mental and social aspects i the most basic human right and should be taken into consideration at each stage of service.

b) That everyone has the right to stay alive, protect and develop material and nonmaterial rights and that no authority or person has the power to take away this right and every patient should be treated, as a human being deserves.

c) The race, language, religion and sect, gender, political belief, philosophical belief, economic and social state of the patients shall not be taken into consideration in the provision of health services. Health services are planned and organized in a manner that can be easily reached by everyone.

d) The integrity of the body of the person cannot be distorted and other personality rights may not be violated without the consent of the person unless medical conditions or the conditions stated in the law deem it necessary.

e) The person may not be kept to medical research without his consent and the permission of the Ministry.

f) The confidential nature of the patient and his/her family life may not be distorted for conditions permitted by the Law and medical obligations.

Article 12 - Nothing can be done or requested that is in a nature to distort the integrity of the body of the patient or that may lead to death or danger for the life of the patient or mental problems or physical resistance.

Article 38 - Measures necessary for the patients to fulfill the religious obligations of the patients shall be taken within the means of the health institutions and organizations.

Article 39 - The patient has the right to benefit from health services in a manner that is in conformity with human rights. It is mandatory that all the personnel working in the health services treat the patients, their companions and visitors politely with a smiling face, pleasant and compassionate manners and in conformity with the relevant regulation and other regulations and Laws in effect.

The patients shall be provided with sufficient information about their physical and mental states and which operation or transaction is to be carried out and for which purpose and if they have to wait then they have to be informed about why they are being kept waiting.

II- Declaration of European Patient Rights (Amsterdam 1994)

1- Human rights and values in health services:

1.1 Everyone either male or female has the right to be respected.

1.2 Everyone has the right to determine his or her own life.

1.3 Everyone has the right to have physical and mental integrity and lead a safe life as a person.

1.4 Everyone's private life should be respected regardless of his or her gender.

1.5 Everyone has the right to have ethical and cultural values, religious and philosophical values and be respected.

1.6 Everyone has the right to have his or health protected by sufficient efforts and to reach the maximum level of health that he or she can attain.

E-OUR EVALUATIONS

1- There is no doubt that the condition that Medine BIRCAN faced was a problem related with basic human rights. Although the obligations in this matter seem to be carried out by the university hospital by putting her on the dialysis machine, the principles of treatment referred to in the regulation were violated by not carrying out the transaction of sending for Medine BIRCAN under the grounds that the photograph in the documents was taken with her head covered in a period where she was living the last days of her life and she needed more compassion and interest.

There is no doubt that the mentality perceiving treatment as the connection of the patient to the dialysis machine violates the 1,5,12,39th articles of the relevant regulation and the first article of the 1994 European declaration.

2. Despite the claims made, we did not come across any process or instruction for the photographs to be given by the patients to be taken without covered head in the course of

the investigation we carried out and the persons in charge did not submit such a document to us.

The letter written by the Head of Personnel Department of the Rector of Istanbul University dated 10.05.2002 and with number 20676 addresses the personnel and their relatives. However, Medine BIRCAN is not a personnel or a relative of a personnel. Besides, even the transaction referred, which targets the personnel is also against law and it should be withdrawn back. Despite the regulation related with the personnel that is against law and human rights, it is a well known legal process that the relatives of the personnel are not subject to the status of officers and that they are not bound with the requirements of this status.

Thus, it is the duty of the government to investigate and find out whether the instruction attributed to the government with the claim that "an instruction was received from above" really exists and if such an instruction exists then it should be withdrawn. If such an instruction does not exist, then an investigation should be carried out against parties using the existence of an instruction for their discretionary implementations. In this respect, the government should show the necessary sensitivity to show that no discrimination shall be made to anyone in the provision of public services to anyone and in no way.

3- We do not find the explanation made by esteemed Dr. Faruk ERZENGIN , Dean of the Istanbul University Medical Faculty that photographs without covered hair was requested to prevent the abuses lived in the health certificates convincing.

Truly, when the two photographs of Medine BIRCAN are compared, it is obvious that the one with head uncovered shall lead to more confusion than the one with covered hair. On the other hand, hair is the organ that can change shape and hair very easily. Therefore, it cannot be evaluated as a definite data in the identification of the person. The appearance of the face and the organs in the face can be obtained besides hair for the identification of the person. The photograph of Medine BIRCAN with covered hair is in a manner that will remove the said drawback. On the other hand, Medine BIRCAN has been receiving treatment for a long time and is known well by those working in the hospital. As a matter of fact, she was a person past 70 years of age and was in deathbed. The fragile state that she was in is not convenient to abuse. Thus, the implementation of the administration cannot be perceived as a measure taken to prevent abuse.

On the other hand, the efforts for the provision of abuse do not give the right to treat citizens as if they were suspects. The declaration of the citizen should be binding for the management. If there is any abuse, the administration should seek the fault in its own system and the implementation of the system and the negativities determined should be overcome as soon as possible. If this is the purpose, the problem can be solved by the open approach of the administration giving priority to the superiority of law can be solved.

4- The excuses given by the administration for carrying out the sending transaction of Medine BIRCAN are not in conformity with law and reality. Then the administration should have carried out the transactions related with the health report of Medine BIRCAN and reporting at once and should have given the opportunity to Medine BIRCAN to live in peace with her family without hurting her values and causing moral depression. This shows that the administration is responsible for the place and time of death of Medine BIRCAN.

5- The authorized persons that we applied in order to get information about the matter were not helpful to the work carried out by Mazlumder, which is a nongovernmental organization known for its objective and neutral efforts and proficiency in its field both domestically and abroad and their lack of desire to answer the questions asked is worrying and worth thinking from the point of view of the existence of democratic practices and their settlement and from the point of view of the development of open society.

6- The behavior and declarations of the administrators are not in conformity with human rights, population and the values of the population and they are in a nature to damage the social texture. The emphasis of "burka" in the event proves this as well. The declaration that really focuses on the subconscious shows that the base of the matter is wrong. The approach of a person who has received medical education and believes in the superiority of law saying "we even put up with this" indicates that this approach is not correct.

7- "Secularity" constituted the basis of the explanations of the administrators. It is obvious that a mentality using the concept of secularity at every opportunity and using for defending every mistake is not healthy. A public servant should not have an attitude indexed to any positive or negative religious belief for purposes of secularity. The superiority of law should also be accepted as the guarantee of basic human rights. It is obvious that concepts lacking this understanding are ideological, subjective and shall not bring happiness to our country and shall cause pain and suffering as in the case of Medine BIRCAN: Truly, had the administration acted in accordance with the requirements of law and occupational ethics, Medine BIRCAN would not have died under the circumstances mentioned.

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Attorney at Law Leyla DEMİR

Attorney at Law Mustafa ERCAN

APPENDIX 3

Veliler de türban yasağını 'deldi'



Erzurum'da 4 yıldır velilere de uygulanan türban yasağı delindi! Mezuniyet törenine iki öğrenci velisi perukla girdi

Erzurum Atatürk Üniversitesi'nde 4 yıldır velilere de uygulanan türban yasağını iki öğrenci yakını peruk takarak deldi. Üniversitede dün yapılan mezuniyet töreninde trban üstüne takılan peruklar ise salonda ilginç görüntülere neden oldu.

Törene katılan öğrenci velileri arasında Fen-Edebiyat Fakültesi İngilizce Bölümü öğrencisi Handan Demirkol'un annesi Ayşe

Demirkol ve yengesi Sabiha Demirkol türban krizini yanlarında götürdükleri peruklarla aştılar.

KURALLARI UYGULUYORUZ

Önceki yıllardan salona türbanlı velilerin alınmadığını bilen veli Ayşe Demirkol, "Ben tören için Kayseri'den geldim. İnancım gereği türban takıyorum. Kızım beni türban konusunda uyarmıştı. O nedenle hazırlıklı geldim. Yanımda peruk getirdim ve türbanımın üstüne peruk taktım. Problem yaşamadan salona girdim. Ama bu tür yerlere istediğimiz şekilde girmemizde ne sakınca var, anlamıyorum" dedi. Atatürk Üniversitesi Rektörü Yaşar Sütbeyaz da şunları söyledi

"Her sene uygulanan bir kuraldır. Devletin bize gönderdiği genelgelerde bu yönde talimatlar var. Biz de talimat gereği türbanlı velilerin alınmayacağını belirttik. 3-4 yıldır bu kararı uyguluyoruz. Her yıl aynı problemin yaşanması bizi de zor durumda bırakıyor. Sonuçta devletin memuruyuz. Kendi başımıza bu uygulamaları yapmıyoruz. Diğer üniversitelerde uygulanıp, uygulanmadığını bilmiyorum. Bu konuda taviz vermemiz mümkün değil."

by
Sinan AYDIN

SABAH GAZETESİ 06-18-2003

APPENDIX 4

Başını aç öyle gel



Yargıtay 4'ncü Ceza Dairesi'nde görülen Belko davası sanıklarından Hatice Şahin başörtülü olduğu için savunmasını yapamadı. Mahkeme, Şahin'in savunma hakkını kullanabilmesi için duruşmaya örtüsünü çıkararak gelmesi gerektiğini belirtti.

Yargıtay 4. Ceza Dairesi'nde dün hukuk tarihine geçecek bir hadise yaşandı. Belko davası sanıklarından Hatice Hasdemir Şahin, başörtülü olduğu için savunmasını yapamadı. Mahkeme heyeti, Şahin'in savunma hakkını kullanabileceğini, fakat savunma hakkını kullanacağı duruşmaya başörtüsünü çıkararak gelmesi gerektiği uyarısında bulunmayı da ihmal etmedi.

Başkanlığı'nı M. Fadıl İnan'ın, üyeliklerini ise Niyazi Erdoğan, İsmet Balseven. A. Nasuhi Kurdoğlu ve Celal Aras'ın yaptığı Yargıtay Dördüncü Ağır Ceza Dairesi, dün duruşmaya savunmasını vermek üzere gelen Şahin'in savunmasını almadı. Şahin'in başörtülü olması nedeniyle dışarıya çıkardığı ve başını açarak gelmesi uyarısında bulunan mahkeme heyeti, hukuk tarihinde bir ilki gerçekleştiren mahkeme heyeti

oldu. Mahkeme heyetinin bu uygulamasına avukatların itiraz etmesi üzerine, Hatice Hasdemir Şahin'in savunmasının alınmadığı tutanaklara geçirildi. Olay mahkeme tutanaklarına şu cümlelerle geçti: "Sanıkların kimlik kontrolü sırasında Hatice Hasdemir Şahin'in başı bağlı, türbanlı olarak duruşma salonuna girdiği, başını açması için dışarıya çıkarıldığı, ancak bilahare yapılan kontrolde hazır bulunmadığı ve duruşma salonuna gelmediği anlaşıldı."

Temyiz davası değil

Davanın temyiz davası olmadığı hatırlatılarak, 62 sanıklı davada Hatice Hasdemir Şahin'in yargılanamayacağına dikkat çekildi. 62 sanıklı davada Şahin, 240'ncı maddeden yargılanıyor. 240'nci madde 657'e tabi devlet memurlarının yargılandığı görevi kötüye kullanma olarak özetlenebilecek bir madde. Büyükşehir Belediyesi'ne bağlı olmasına rağmen Belko bir şirket ve çalışanlarının özlük hakları Devlet Memurları Kanunu'nun 657'inci maddesi tarafından değil, 1475 sayılı SSK yasası tarafından düzenleniyor. Şahin de 657'li değil, 1475'li bir personel.

YENİSAFAK GAZETESİ 11/7/2003



APPENDIX 5

29 Ekim resepsiyonu için farklı davetiyeler gönderen Cumhurbaşkanı Sezer, Anayasa Mahkemesi'nin yerleşik kararlarını hatırlattı

Serpil Çevikcan

29 Ekim Cumhuriyet Bayramı nedeniyle vereceği resepsiyon için TBMM üyelerine farklı davetiyeler göndererek türbana geçit vermeyen Cumhurbaşkanı Ahmet Necdet Sezer'in, "Cumhurbaşkanlığı cumhuriyeti temsil eder, kamu alanıdır. Kamusal alanda da başörtüsü takılamaz" görüşünde olduğu öğrenildi.

Türban konusundaki hassasiyetini Çankaya Köşkü'nde verdiği yemeklerde de gösteren Sezer'in 29 Ekim resepsiyonuna türbanla katılımı önlemek amacıyla aldığı tavra ilişkin tartışmalar sürüyor. Laiklik konusunda bugüne kadar toplumda gerginlik yaratacak açıklamalar yapmaktan kaçınan ve aldığı kararlarla mesajlar veren Sezer'in davetiye tartışmalarıyla ilgili şu görüşte olduğu öğrenildi:

"Cumhurbaşkanlığı, cumhuriyeti temsil eden makamdır. Cumhuriyetin temelinde laiklik ilkesi vardır ve Cumhurbaşkanlığı kamu alanıdır. Anayasa Mahkemesi aldığı kararla, kamusal alanda başörtüsü takılamayacağına hükmetmiştir. Avrupa İnsan Hakları Mahkemesi ve Danıştay kararları da bu yöndedir. Cumhuriyetin temsil edildiği, cumhurbaşkanının ev sahipliğinde resepsiyonun verileceği Cumhurbaşkanlığı makamı da bir kamu alanıdır ve başörtüsü takılmasına izin verilemez."

SÜRPRİZ DEĞİL

Başörtüsünün özel alanda özgürlük kapsamına girdiğini kaydeden Sezer, Anayasa Mahkemesi'nin yerleşik kararlarına göre kamusal alanda aksi bir uygulamaya geçit verilmesinin mümkün olmadığını da söyledi.

Çankaya'ya yakın kaynaklar, Sezer'in "resepsiyon" tavrının sürpriz olmadığını ve "Köşk çatısı altında türban istemediğini" vurguladı. Kaynaklar, Sezer'in TBMM Başkanı Bülent Arınç'ın eşi Münevver Arınç'ın havaalanında kendisini türbanla uğurlamasıyla başlayan tartışma sırasında görüşlerini açıkladığını da hatırlattı.

Sezer'in Münevver Arınç'ın eşiyle birlikte "ev sahibi" görüldüğü Meclis'teki 23 Nisan resepsiyonuna da katılmadığı, AKP'nin iktidar olduğu günden bu yana Çankaya Köşkü'nde yabancı konuklar için verilen yemeklerde de türban hassasiyetinin sürdüğünü anımsattı. Çankaya'daki yemekler için eşleri türbanlı olan Başbakanı Recep Tayyip Erdoğan ve Dışişleri Bakanı Abdullah Gül'e gönderilen davetiyelerin de "eşsiz" olduğuna dikkat çekildi.

APPENDIX 6



Meclis Başkanı Bülent Arınç: İdam kalktı DGM'ler kalktı, zamanı gelince türban yasağı da kalkar. Biz sabırlıyız, bekleriz

4/4/2005

*** Türban sorununu AKP de çözemedi ve halâ belli bir kesimin beklentisi olmaya devam ediyor. Sizin "Uzlaşın, Meclis'te çözülsün" diye bir öneriniz var. Peki bu sadece bir öneri mi, yoksa formülünü de geliştirdiniz mi?**

Yeni TCK'nın bugün (1 Nisan) yürürlüğe girmesi gerekiyordu, değil mi? Ama bazı yanlışlar, eksikler olduğu söylendi. Buna hukukçular dahil bazı kurumlar da "evet" dediler. Ve yasama organı bunu derhal erteledi. Aynı şekilde türban konusunda duyarlılık varsa, Meclis buna da kayıtsız kalmaz.

*** Kayıtsız kalmazsa ne yapar?**

Meclis'i harekete geçirecek olan şey milletvekillerinin kanun teklifleridir, hükümetin kanun tasarılarıdır. Hükümet ya da milletvekilleri arzu ederse kanuni bir düzenlemeyi bize gönderir, biz onu komisyonlarımızdan geçiririz, Genel Kurul'umuza getiririz ve kanunlaştırırız.

*** Ya mevcut kanunlar?**

Şu anda bir fiili durumla başı örtülü kızlarımızın üniversitede eğitim görmesine engel olunuyor. Bu fiili durumu hukuki duruma kıyasladığınız zaman ne Anayasa'da ne kanunlarda böyle bir yasaklama söz konusu değil. Hatta 2547 sayılı YÖK Kanunu'nun halen geçerliliğini koruyan ek 17'inci maddesine göre başörtüsüyle üniversiteye devam etmek suç da değil. Çok enteresan bir şey söylüyorum. Yani ağızlarının açık kalması lazım.

*** Anayasa Mahkemesi'nin 89 ve 91 yılındaki iptal kararları... (Arınç biraz sinirli sözümü keserek devam ediyor)**

Bakın ben bu işi iyi biliyorum. Bu işi iyi bildiğini iddia eden insanlarla da tartışmaya hazırım. Nerede olurlarsa olsunlar... Aşağısı, yukarısı dahil... Bir saat anlatırım. Benim hicranımı açmayın! Anayasa Mahkemesi kararları var deniyor. Anayasa'nın 153'üncü maddesine baktığınız zaman Anayasa Mahkemesi kararlarının bir kanun koyucu gibi, bir kanun yapmak gibi bir eylem olmadığı görülür. Buradan hareketle Anayasa Mahkemesi'nin türbanı yasakladığını iddia edenlere böyle bir yasağı hukuk kuralı haline getemeyeceğini hem ben söylüyorum hem de Anayasa'nın kendisi söylüyor.

*** Ama Mahkeme'nin atıfta bulunduğu madde çok hassas: Anayasa'nın değiştirilemez, değiştirilmesi teklif dahi edilemez laiklikle ilgili 2'inci maddesi gerekçe gösteriliyor. Yasama olarak bunu nasıl aşabilirsiniz?**

Hiç önemli değil. Yorum yaparak bir genel kuralı, bir özel hadiseye uygulama dünyanın

hiçbir yerinde görülmemiştir. Zaten Anayasa Mahkemesi'nin bu iddia edilen kararlarının hiçbirisinin netice ve hüküm kısmında bir bayanın başı örtülü olarak üniversitede eğitim göremeyeceğine dair bir cümle yoktur. Kaldı ki Anayasa Mahkemesi'nin kararları da zaman içinde değişebilir. Geçenlerde Yargıtay Ceza Genel Kurulu'nun bir konu hakkında iki farklı karar almasına "Aa ne kadar güzel oldu" diyenlerin Anayasa Mahkemesi kararlarının değişmezliğini savunmaları çok garip olur doğrusu.

*** Anayasa Mahkemesi'nden bir engelle karşılaşmayacaksa o zaman hükümet düzenleme yapmak için neyi bekliyor?**

Bu konunun biraz evvel örnek verdiğim TCK'nın ertelenmesi kadar kolay olmadığını söylemeliyim. O kolaydı. Bir önerge geldi, çıktı gitti. Ancak, başörtüsü veya türbanla ilgili toplumda bir çatışma var. Bu çatışmanın tarafları belli. Böyle bir çatışma yıllardan beri devam ediyor ve çok keskin-leşmiş. Dolayısıyla yasama, bir yasa yapacaksa toplumdaki bu çatışmanın yumuşamasını bekler. Yani yeni bir beyaz sayfa açılması gerekiyor. Yoksa bu işler çoğunlukla yapılacak idiyse, bugün iktidarın çoğunluğu on defa yeterli olurdu. Hükümet de bu görüşte olmalı ki henüz bir tasarıyla gelmedi. Dolayısıyla bu hakka sahip olanlar zamanı geldiğinde Meclis'te böyle bir yasama yapacaklardır.

*** Peki size göre zamanı ne zaman gelecek?**

Zamanı ben bilmiyorum. Ama zamanının geleceğine inanıyorum. Biz sabırlıyız, biraz daha bekleyeceğiz.

by

Devrim SEVIMAY

VATAN GAZETESİ (Partial interview) 04/04/2005

APPENDIX 7

TUSES: SOCIO-ECONOMIC-POLITICAL-RESEARCH-ASSOCIATION, Survey of “ETHNIC/RELIGIOUS IDENTITIES AND POLITICAL TENDENCIES OF TURKISH POLITICAL PARTY ADHERENTS AND VOTERS 1994-2004”

TUSES, which has been set up as the think-tank organization for Social-democratic People’s Party has carried out 4 surveys on since 1994, for four times. The fifth of these surveys was carried out before the local government elections in 28th March “ETHNIC/RELIGIOUS IDENTITIES AND POLITICAL TENDENCIES OF TURKISH POLITICAL PARTY ADHERENTS AND VOTERS, 1994-2004

It is expressed by many writers that this research, financed by TUSES and conducted under the supervision of Prof. Necat Erder, applied by Veri Arařtırma (Data Research) Ltd., with its periodical nature and serious approach, is a wealth of information for those who are interested in these issues.¹³

The results of this study which was carried out by speaking to 1806 participators face to face in the time period 22.12.2003-07.01.2004, was announced on 01.03.2004 by the Head of TUSES, Burhan řenatalar, and the owner of Veri Arařtırma Ltd., Sezgin Tüzün.

The research of 2004 consists of the following pertaining to Political Party Adherents and Voters: Socio-Demographic characteristics, Ethnic-Religious Identities, Their Views on Turkey’s Problems, Their Views on Sheriat, Their Views on Turkey-EU Relations, Whether or not They See Themselves as Adhering to a Political Party, Their Party Preferences, Their Tendencies in Local Elections, Their Views on Whether Health and Education Services Should be Conducted Through Local Governments, Their Views as to the Closest Ally of Turkey, Countries which they Think Turkey Should Act Together With, Countries Which They Believe Pose a Threat to World Peace, Whether or Not they think USA’s Invasion of Irak, in consort with UK was Correct, Their Views of Turkey’s Position on Sending Troops to Irak, what they understand to be the Cyprus Problem and their solution proposal and Their views on the Headscarf issue.

As it is the last research made carried out on the subject, the study has particular importance. 64% of those who participated believe it to be alright

¹³ İSMET BERKAN, 02/3/2004 dated Radikal Newspaper, “The danger of being left with no opposition one more time”

for a female MP to wear a headscarf in the National Assembly, the percentage of those who accept the wearing of headscarf of judges at Court is 65; those who think the headscarf permissible at university for lecturers are 67%, those who find it for permissible for doctors at hospital are 70% and those who find it permissible for students at university is 71%; 80% find it permissible when visiting the National assembly, 81% for the defendants at courts, 90% for being at State establishments, 90% for being at treatment at hospital, 95% for shopping. (Annex 4)

The table is as shown below:

