



Women's Rights Organization against Discrimination (AKDER)
AKDER is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations

A STATISTICAL EXAMINATION OF THE CONDITION OF WOMEN IN TURKEY AND THE IMPACT OF THE HEADSCARF BAN ON TURKEY'S GENDER EQUALITY RANKING

November 2008

Prepared by a Board Chaired by Fatma Benli, Attorney

for

Organization for Women's Rights against Discrimination (AKDER)

AKDER
Millet Cadde
N: 21/1 K: 5 D: 7
Aksaray İstanbul
+90 212 529 04 56
+90 212 589 85 85
www.ak-der.org

CONTENTS

ABSTRACT	2
I. INTRODUCTION	3
II. GENERAL PROBLEMS FACED BY WOMEN IN TURKEY	3
1. Education	4
a. <i>Women in the Field of Education</i>	5
b. <i>Effects of the Headscarf Ban on the Rate of Woman’s Education</i>	5
2. Employment.....	6
a. <i>Women in Employment</i>	7
b. <i>The Negative Effect of the Headscarf Ban on Working Women</i>	7
3. Participation in Political Spheres and Decision-making Mechanisms.....	10
a. <i>Women in Political Representation and their Participation in Decision-making Processes</i>	10
b. <i>Political Representation of Women Wearing the Headscarf</i>	11
4. Inadequacy of Women’s Shelters, One Way of Protection from Violence.....	12
a. <i>Violence Directed at Women</i>	12
b. <i>The headscarf ban undermines women’s struggle against social and domestic violence</i>	14
5. Rural Areas.....	16
a. <i>Rural Women’s Problems and the Struggle with Patriarchy</i>	16
b. <i>The Effects of the Headscarf Ban on Rural Women</i>	16
6. Health and Social Security Rights.....	17
a. <i>Women in health and social security</i>	17
b. <i>The Effects of the Headscarf Ban on Rural Women</i>	17
III. EFFECTS OF THE HEADSCARF BAN ON SOCIAL LIFE	18
1. Headscarf ban and social life.....	18
2. The Proportion of Women Affected by the Ban and Difficulties in Assessing Statistical Data.....	21
IV- EVALUATION OF THE HEADSCARF PROHIBITION ACCORDING TO INTERNATIONAL LAW	25
1. The differences in protection offered by the European Court of Human Rights (ECHR) and CEDAW, and the effects of this on the Leyla Şahin Case... ..	27
2. Differences between the ECHR, CEDAW and the ICCPR	28
V. ASSESSMENT OF COMMON JUSTIFICATIONS FOR THE HEADSCARF BAN	30
1. The Allegation that the Headscarf Ban Benefits Women	30
2. The allegation that allowing freedom in choice of clothing will have negative effects on women who do not cover their heads and will bring about regime change	32
3. The Allegation that the Headscarf is a Political Symbol, and that there is a distinction to be made between the Headscarf and the Turban	34
4. The Allegation that the Principle of Secularity Necessitates a Ban of the Headscarf.....	35
VI. CONCLUSION AND EVALUATION	36
VII. BIBLIOGRAPHY	40
VIII. ABBREVIATIONS	45

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ABSTRACT

The United States Supreme Court Justice Louis Brandeis, in a judgment in 1927 stated that "Men feared witches and burnt women." While problems of women's rights, modernization, human rights, and democracy are being discussed throughout the rest of the world in the 21st century, Turkey, for the last ten years, has been preoccupied with whether women with headscarves have the right to enter higher education institutions. The talk is of progress and the contemporary world, but what is actually happening is that women who wear the headscarf are being excluded from society, and while the arguments about the headscarf/*turban* drag on, no serious steps are being taken about women's existing and all-too-real problems.

This research report investigates the negative effect of the headscarf ban on the development of women's rights and sketches a map of general problems for women in Turkey using statistical data. Thus, the problems faced by women in the fields of education, employment, political representation, domestic violence, rural areas, health, social security and social life are outlined using statistical data. Also presented is research about the effect of the headscarf-ban on headscarfed women who make up 62% of the female population in Turkey. The difficulty of collecting statistical data about discriminative treatment of headscarfed women in public, and the ratio of women who are affected by the ban is also discussed. The juridical character of the headscarf ban is evaluated in light of international law norms, especially United Nations (UN) documents. The protections offered by the European Convention on Human Rights (ECHR) are compared with UN treaties, examining the different areas of protection extended by the ECHR and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as an investigation into the effects of the Leyla Şahin decision.

Furthermore the report will deal with the various arguments which are offered to legitimize the ban, and will investigate the validity of these arguments. These arguments include, providing freedom of dress will have the effect of limiting rights and have an adverse affect on women who do not wear the headscarf; lifting the ban would bring regime change to Turkey; all citizens must obey the rules of the state; *turban* (the tightly fitting scarf) is different from the ordinary headscarf; the headscarf should be banned because it is a political symbol; the laicism principle legitimizes different treatment; headscarfed persons must be excluded from the public sphere; and the headscarf is banned by a court decision.

The conclusion and evaluation sections set out our ideas for the solution of women's problems in Turkey. The concrete and specific data in this study is provided by statistics and research reports prepared by the Turkish State General Directorate on the Status of Women (KSGM), and by various non-governmental organizations and universities.

I. INTRODUCTION

In the year of 1985 When Turkey signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Turkey undertook the commitment to eliminate all forms of discrimination against woman and implement measures necessary to the realization of the rights granted in the Convention (including amongst others, the guarantee of basic human rights and fundamental freedoms, equal rights with men in the field of education, employment, health, economic and social benefits, the consideration of the particular problems of rural women, the elimination of discrimination in political and public life, including the right to vote and be elected, equal rights with men before the law, the implementation of measures to suppress all forms of traffic in women and exploitation of prostitution of women, and the responsibility to eliminate discrimination against women in all matters relating to marriage and family relations.)

Many articles of Turkish law have been amended since 2002 in order to establish equality between women and men and ensure the adequate progress of women. In 2004, the constitutional provision “Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice” is included in the Constitution. As stated in the 2007 EU Progress Report, the legal framework to ensure the equality of genders is now in place in Turkey.¹

However specific figures show that the rights which are protected by conventions and law are restricted to paper and have little application in reality. The differences for women in terms of economic participation and opportunity, level of education, health and political power is starkly apparent. **Turkey, which has the 17th biggest economy in the world, ranks 105th out of 115 countries² on the World Gender Map.** Turkey lags behind all EU member states and even some Islamic countries in terms of gender-based inequalities.³

The generally low level of participation of women in education, working and political life shows that Turkey has been unable to adequately protect equality of women and men. The state has not fulfilled its responsibility to take the required measures with respect to political, economic and cultural matters in order to ensure the equal participation of women. The state fails to implement transitional measures to solve general problems, and is ineffective in maintaining genuine equality between women and men. Preventing headscarfed woman from exercising their rights makes the resolution of present problems even more difficult.

II. GENERAL PROBLEMS FACED BY WOMEN IN TURKEY

It is not always possible to access reliable general data about the status of women in Turkey. Present data is both poor and inadequate, as well as failing to cover all issues concerning the condition, roles and rights of women⁴. The General Directorate on the Status of Women

¹ EU Progress Report for Turkey 2007 (woman) www.ucansupurge.org/index.php?option=com_content&task=view&id=4022&Itemid=72.

² ESI (European Stability Initiative): “Sex and Power in Turkey, Feminism Islam and the Maturing of Turkish Democracy,” Berlin Istanbul, 02.06.2007, www.esiweb.org/pdf/esi_document_id_90.pdf

³ Turkey, which ranks the lowest among OECD countries in human development index rates, ranks 84th among 177 countries in human development index. UN Development Program 2007-2008 Human Development Report.

⁴ European Parliament Proposal about the Condition of Woman in Turkey, 13 february 2007, Strasbourg

(KSGM) shows that there are gaps in the production of statistical data.⁵ The data used in 2008 “The Condition of Women in Turkey”⁶ is taken from research carried out between 1994 and 2003, demonstrating the lack of contemporary systematic data about women’s problems. For this reason, international, regional, official and informal reports are used together here to develop useful data.

1. Education

a. *Women in the Field of Education*

There has been an expansion in the field of education all over the world; however the education of women remains problematic in many regions. In spite of efforts to generalize basic education, women still receive less education than men and cannot access information and experience to raise their standard of living and help them to adapt to social and economic changes.

The rate of literacy and numeracy of women in Turkey was 87.93% in 2006-2007, while the rate for men was 99.21%.⁷ The rate of women with a university education is only 3% of the population.⁸ Basic education has been supported since the Ottoman Empire by law and regulations. After the republic was founded, primary education became compulsory. By signing international conventions and agreements, Turkey has promised to increase the rate of literacy to 100% for women.⁹ Despite this, the low rate of literacy of the population and particularly the poor level of education of women is one of the biggest obstacles impeding Turkey’s national development. Research shows that over than 5 million women are unable to read or write, and 640,000 girls cannot attend school.¹⁰ To counter the problems caused by regional inequalities¹¹ campaigns to promote schooling of girls have been mounted. The Ministry of Education and UNICEF started a campaign called “Let’s go to school, Girls” which started initially in the south east of Turkey and then expanded to the whole country.¹² According to UNICEF, this campaign resulted in 177, 000 girls and 87, 000 boys starting education, though this is substantially lower than the targeted number.¹³

[2006/22/4 (INI)]

⁵ General Directorate on the Status of Women, the Condition of Woman in Turkey Report, Ankara January 2008. (<http://www.ksgm.gov.tr/kadindurumu.pdf>) (08.04.2008).

⁶ Prime Ministry General Directorate on the Status of Women, Report 2008, p. 32.

⁷ Prime Ministry General Directorate on the Status of Women, January Report 2008, p.10. Especially in rural areas the population records are not sound, and the real rate may be lower.

⁸ “Half of women face violence on the first day of marriage” Radikal, 08.03.2007. <http://www.radikal.com.tr/haber.php?haberno=215009> For this reason it is expressed that the real number is lower.

⁹ Prime Ministry General Directorate on the Status of Women, January Report 2008.

¹⁰ The manager of EKAM, Prof. Dr. Nurselen Toygar explained that the school attendance rate is 29.94% for faculties and high schools.

¹¹ According to the population census in 2000, the rate of illiteracy for men was 12%, while this rate is 35%, for women in South East Anatolia. There is research showing that nearly half of the female population is illiterate in rural areas of this region. Economic deprivation combined with socio-cultural deprivation has imposed an disproportionate burden on women of these regions. (Application of 60/251, 15 March 2006, plenary assembly decision headed “Human Rights Commission” report of independent reporter Yakın Ertürk’s report about “Violence against Women, its Reasons and Results” Turkey Mission, 05 January 2007).

¹² Projects such as “Let’s go to school, Girls” “Dad, take me to school!” mounted in collaboration with international institutions, private sector, and non-governmental organizations aimed to decrease the rate at which girls leave school. T.C Prime Ministry General Directorate on the Status of Women, January Report 2008.

¹³ Büyüköztürk, Şeref.: “Let’s go to school, Girls” campaign: subjective evaluation study, 2005.

b. Effects of the Headscarf Ban on the Rate of Woman's Education

One of the reasons for the low rate of education for women in Turkey is the requirement that they uncover their heads. In Turkey, the headscarf is banned at all levels of education. According to the Unified Teaching Law of 06.03.1934, a unified education system is compulsory which means that there can be no alternative education systems. The rules concerning the headscarf apply identically in private schools. After the “post-modern coup” of 1998 the headscarf ban was implemented in practice throughout higher education institutions.¹⁴

In Turkey there are currently 19,437,566 students, 1,946,442 of which are university students. The headscarf ban is applied even in the Theology faculty. Women who are forced to leave their education due to the implementation of the headscarf ban are reflected in the education level of Turkey as a negative indicator. The number of students who left school because of the headscarf ban since 1998 is unknown. Universities have removed the pictures of headscarfed students from the yearbooks.¹⁵ Also, since 2002 headscarfed girls have not been allowed to enter university entrance exams, and the number of girls who lost the chance of entering university as a consequence of this is also unknown.

Education enables and empowers women's criticism of patriarchal thinking and customs; however the headscarf/*turban* ban denies women the basic right to equal education and maintains their low level of education. As international human rights organizations have stated, the barring of women who wear the headscarf because of their religious beliefs from state education institutions remains a chronic human rights violation in Turkey.¹⁶

The fact that girls are unable to benefit from education because of the literacy rate, low schooling rate, traditions and customs, and patriarchal society is one of the priorities which must be resolved in order to promote development. But preventing girls from education is also a form of economic discrimination.

Participation of women in economic and social life is one of the most important instruments in maintaining equality between the genders. Guaranteeing the economic and educational rights of woman makes socially equal change possible. Economic independence is an important factor in empowering women, which is only possible with education.

Education enables and increases social mobility, allowing poorer classes to advance to a higher class, thus providing social integration. From this point of view, education has an important social balancing role in demonstrating that anyone with sufficient talent and drive can rise in society. In a country where education does not function properly, social peace and order is gravely prejudiced.

¹⁴ Higher Education Code additional Art. 17 says: “the dress is free provided that such freedom is not contravene current law.” (Higher Education Code additional Art. 17) But this rule does not apply in practice for headscarfed women. Moreover nothing was done when this law was removed from the statute book of the Higher Education Code additional Art. 17 was removed from the 208th page of the book called “The Higher Education and Istanbul University Regulations” published by Istanbul University Press at 1998. Inside the book Additional Art. 18 comes after Additional Art.16. It is unlawful and unjustifiable not to place Art.17 in the statute book despite the fact that it is legally in force, and to fail to take legal proceeding against the people responsible for this.

¹⁵ “Pictures of previous headscarfed students are removed from the yearbook,” Zaman 05.12.2005, <http://www.tumgazeteler.com/?a=1196217>

¹⁶ Summary report of Human Rights Agenda for the next step in Turkey's EU integration period January 2003, and 31 January 2003 Troika-Turkey meetings Human Rights Agenda (Report).

Education must be given greater importance and resources in order to promote the development of society. States are not only responsible for providing adequate education and training to their citizens but also for providing equal opportunities to all citizens in a manner which preserves justice and equality.

2. Employment

a. Women in Employment

Participation of woman in the workforce is an important factor in sustainable development. While the participation rate of males in the workforce is 74.4%,¹⁷ the participation rate of females in the workforce was 24.9% in 2006, with the participation rate of women increasing over previous years¹⁸. The employment rate of women in Europe is 49%.¹⁹ The employment rate of women in Turkey is the lowest of all EU (European Union) and OECD (Organisation for Economic Co-operation and Development) states.

Furthermore, research shows that women tend to be confined to traditional women's jobs, and accept low status, low waged jobs. Of those women who do participate in the work force, 48.5% work in agricultural sector, 37.1% work in the service sector and 14.4% work in the industrial sector. Only 14% of women own their own business, 47% work on piece or day-work, and 39% work without payment as unwaged family workers, for example in the home or on the farm.²⁰ Many of such jobs are part-time or temporary, and include no social security rights. The reasons for this are the low educational level of women, the lack of childcare services, and the lack of proper care for elderly people and disabled relatives who tend to be cared for by women in Turkish society.

Rises in unemployment affect women more dramatically. Women are not preferred in the private sector, and tend to be laid off first. Also woman tend to be employed in low income jobs. The discrimination in entering the workforce market decreases women's participation. Strict work hours, limited opportunities for flexible working, lack of day-care provision for children and the abolition of existing day-care all have their impact. In rural areas 83% of women work in agriculture and 81.9% receive no wage and no social security rights,²¹ working as a family worker.

Claims are made that the reason for low participation of women in employment is the cultural structure of Turkey. But the TESEV (Turkish Economic and Social Studies Foundation) study entitled "Women excluded from high level politics and excluded from the workforce" demonstrated that as in education, the poor participation of woman in employment is not related to the conservative ideas or the traditions of Turkish people. According to the survey, 92.2% of those interviewed think that working women will have a higher self-respect, 87.2% think that even if a woman is rich, working will make her a better citizen. 92.2% think that every woman willing to work should be allowed to work. Only 7.6% of respondents think that women put their reputation and virtue at risk by working.

¹⁷ <http://www.ucansupurge.org/images/stories/ssgss-rapor.pdf>, p: 51.

¹⁸ This rate was% 34, 1 in 1990. Prime Ministry General Directorate on the Status of Women, January 2008.

¹⁹ Prime Ministry General Directorate on the Status of Women, January 2008.

²⁰ Prime Ministry General Directorate on the Status of Women, January 2008.

²¹ Toprak Binnaz/Kalaycioğlu Ersin, "Woman Not Participating in High Positions in Politics and Economy" Turkish Economics and Social Studies Foundation (TESEV), Istanbul 2004.

The majority think that what restricts women from working is housework and childcare. They are afraid that women will not be able to fulfill these responsibilities if they work. In the same research the majority also think that the state should play a role in solving the problems of working women. 95.6% of respondents think that the state should be an actor in providing day-care for babies and children of working mothers. 52.7% of the respondents believe that if the father wants to take care of the baby after birth, the man should be paid during a period of leave.²² Essentially, the state creates the legal framework but does not implement concrete measures to increase the employment rate of women. In order to provide a balance between women's home and working life, special measures are required, however women are not provided with part time working opportunities or flexible working hours.

b. The Negative Effect of the Headscarf Ban on Working Women

One of the reasons for low employment rates for women is the headscarf ban in Turkey. It is compulsory to uncover one's head in all stages of public jobs. Of 2,438,239 civil servants, 811,668 are women.²³ The employment rate of women in public jobs is 33%, which is higher than the rate of women in total employment, which is 26%.²⁴ There is no formal gender discrimination or inequality in salary in the public sector, but none of these women civil servants are allowed to wear a headscarf. After 1999, headscarfed women were not permitted to participate in the civil service general entry examination. Moreover, in some jobs women are expected not to wear the headscarf even outside work hours. For example the Council of State (Administrative Court of Appeal) decided that it was reasonable to punish a civil servant for wearing a headscarf after work hours.²⁵

Between 1998 and 2002 about five thousand civil servants were dismissed from their positions and about ten thousand of them were forced to resign because they wore the headscarf.

However over this period neither the legislation nor the women themselves, who had been working successfully with clear records for years, had changed. All that had changed was the ideas about headscarfed women. The civil servants who were dismissed without any offer of alternative employment included one teacher who had worked for eighteen years and was being considered under a health commission report regarding her cancer treatment, but was then dismissed before the results of the report came through.²⁶

²² Toprak/Kalaycıoğlu, www.bianet.org/bianet/kategori/bianet/32110/siyaset-ust-yonetim-ve-is-yasaminda-kadin.

²³ www.ucansupurge.org/images/stories/ssgss-rapor.pdf, p.51.

²⁴ www.ucansupurge.org/images/stories/ssgss-rapor.pdf, p.51.

²⁵ Aytaç Kılıç, who is a nursery school teacher used to take off her headscarf when she was at work. In the examinations for the grade of manager which took place in 2000 in Ankara, she scored 85 out of 100 and ranked the third in the examination. She was appointed as director to a school in a military area, but could not enter the garrison area while because in her photo on her identity card she was wearing a headscarf. She was also removed from her position upon the complaint by the military (Gölbaşı district National Education Directorate 20.01.2001). The administrative court overruled the decision, but the Council of State stated that the fact that the teacher was headscarfed constituted a negative example for children and overruled the decision. (2nd Section of Council of State, E: 2004/4051, K: 3366/2005, 26.10.2005).

²⁶ Benli, Fatma "There is no Limit in the Illegality of the Headscarf Ban" Istanbul 2005, p. 325

In Turkey the law regulates working rights and prohibits discrimination.²⁷ The majority of the public opposes the headscarf ban in schools and in the public sphere.²⁸ Research shows that 67.9% of the public believe that women employed by the government should be able to wear the headscarf if they wish.²⁹ The ban on the headscarf is strict though, and even applies to surgery nurses who are required to cover their hair for hygienic reasons.³⁰

Doctors, pharmacists, dentists, lawyers and notaries, who are not in public service but work independently or are attached to a professional chamber, are unable to work wearing a headscarf due to the restrictions of their chambers and associations. Headscarfed lawyers are not allowed in court. Lawyers who were punished for the inclusion of headscarfed photographs in leaflets used in bar elections³¹ were later punished by removal of their voting rights.³² The Istanbul Bar Association made the decision not to allow the entrance of headscarfed women into the intern lawyers' centre, and furthermore to forbid the wearing of wigs by interns.³³

Courts consider these restrictions to be legal, and the Council of State has even declared the dress code of law interns to forbid them from wearing the headscarf even in their private lives.³⁴ Similarly, Istanbul Bar Association passed a resolution to impose disciplinary

²⁷ The Constitution states that "Every Turk has the right to participate in public services. In services no other discrimination other than qualification is considered." Article 70 of the Constitution and Article 48 of the State Civil Servants' Law sets out "the general and special requirements for civil servants" are arranged. There is no a passage about officials' dress. The Employment Law requires that "No person may be discriminated against on the grounds of their religious beliefs or ideas." (Article 5) In the regulation on personnel dress in the Official Gazette of 25.10.1982, no 17849 it is stated that "Clothing shall be clean, neat, ironed, unpatterned; shoes and/or boots shall be plain with normal heels, polished; in work areas, heads shall be uncovered at all times, with hair neatly combed or gathered up; nails shall be cut in the normal manner. However, if there is special working clothing for certain occupations, such clothing may be worn subject to the approval of the manager in question. Trousers, sleeveless or very open shirts, blouses or dresses shall not be worn. Skirts which are slit or with a hemline above the knee shall not be worn. Sandal-style shoes shall not be worn." According to 125A/g article "not obeying the regulations about dressing" is subject to disciplinary punishment.

²⁸ According to the research of TESEV 67.9% of respondents believed that "female civil servants should be allowed to wear the headscarf if they wish". 71.1% of respondents believed that "University students should be allowed to wear the headscarf." All research had the common outcome that about 70% of Turkish people oppose the headscarf ban in public sphere and in universities. See BENLİ, Fatma "evaluation of the headscarf ban in light of surveys and reports of human rights organizations." Köprü Magazine, 2003, N. 84, page. 28. To demand 100% support from all members of the public for women to go for shopping or to the hospital or to get training, and thus not suffer discrimination, is a blatant contradiction of human rights discourse. Another research shows that 10% of participants think that women should not wear the headscarf in hospital when undergoing treatment, and 5% think that they should not wear the headscarf when shopping. See *Turkey Social Economic Political Research Foundation*: "Research series on the ethnic and religious identities and political views of political party supporters and electorates."

²⁹ TESEV, [www.tesev.org.tr/etkinlik/Final% 20Rapordin toplum.pdf](http://www.tesev.org.tr/etkinlik/Final%20Rapordin%20toplum.pdf), 2006.

³⁰ Kadriye İlhan had been working as a surgery nurse for eighteen years when she was investigated for wearing the headscarf in Cerrahpasa Medical University, and eventually forced to leave the service.

³¹ Istanbul Barosu Baskanligi, Fatma Benli, T. 11.11.2002, S. 27270 ve T.25.12.2002, S. 31315

³² Disciplinary punishment for turban at the bar, HURRIYET, 26.03.2006, <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=4469502&tarih=2006-05-25>

³³ Istanbul Barosu Staj Egitim Merkezi Yurutme Kurulu, T. 04.02.2008, <http://www.zaman.com.tr/haber.do?haberno=675534>, 10.04.2998.

³⁴ In ruling that "an intern lawyer cannot be allowed to wear the headscarf," the 8th Chamber of the Council of State declared that covering the hair outside the Courtroom, and even during transport to the Bar was "contrary to the principles and revolutions of Atatürk" and "incompatible with the principles of

proceedings on any lawyers wearing the headscarf if they attempt to enter into a courtroom in such dress.³⁵ This decision breaches the labour rights of lawyers who wear the headscarf.

Furthermore, such examples can be multiplied with practices in mainstream media organizations and in private sector educational foundations such as private establishments preparing students for various exams and courses, and kindergartens. Even in sectors for production of commercial goods and services, the employment level of women who wear the headscarf is low. As a result of the broadcasting policies of the main media which promoted the ban and marginalized women with headscarves, especially in recent years, women who wear the headscarf are not preferred as employees by private firms and organizations because the companies are concerned at losing profits by being categorized as fundamentalist or dubious in some way. Research has shown that several private firms force employees who wear the headscarf to uncover their heads or resign.³⁶

Consequently, private firms and companies in the free market economy which do employ personnel who wear the headscarf offer relatively low wages and standards to this group who have few other employment opportunities. Despite the government statements against gender-based wage differentials in labor law, a 25% wage differentiation is generally observable in comparisons of men's and women's remuneration.³⁷ **Despite the equality principle, inequality in wages continues to be an issue, disguised as a result of women's employment in low level jobs as unskilled workers.**

Similarly, women who wear the headscarf are generally employed in jobs outside their educational or qualified fields or in positions below their occupational qualified status. In addition, they are constrained to accept lower wages compared to other women in the same positions. In general, a woman who wears the headscarf is regarded appropriate for low status jobs such as agricultural works and cleaning. Whilst in Sweden the rejection of an application of a woman wearing the headscarf for a teacher position was regarded as discrimination, with the respondent being obliged to provide compensation,³⁸ in Turkey, by contrast, the state and organizations implement wholesale policies to bar women with headscarves from

laic (secular) republic.” Their conclusion was that covering a female lawyer's hair, even in her private life, was inappropriate attitude and behavior for the profession of law. (8th Section of Council of State, D: 02.03.1994, E: 1993/843, K: 1994/686).

³⁵ The Istanbul Bar began to pursue lawyers who wear the headscarf in the run-up to the elections for the chairperson's office to be held on October 2008. In a declaration in the name of the Istanbul Bar which was posted at all courthouses of Istanbul city, the Bar's board claimed that the profession of law was not confined to court rooms alone and declared that wearing any headscarf or other inappropriate dress during any advocacy work whatsoever in the courthouses would be counted as disciplinary infringements. In the declaration, all staff at the Courtroom were warned not to wear the headscarf or other inappropriate dress during any work at the Bar, executive committees, clerks' offices, or in court bailiff and enforcement offices, or at premises under the supervision of public prosecutors, because of the public sphere nature of the duties, and Bar members were asked to report any lawyers violating such rules to the Bar. (“Baro'dan başörtülü avukatlara ‘cadı avı’ Look at xx “ www.haberaktuel.com/Istanbul-Barosu, -basortulu-avukatlarin-pesine-dustu-haberi-138241.html).

³⁶ It is impossible to collect reliable data about the number of violations on this issue because the vast majority of violations are not reported to human rights associations and media, and victims frequently do not report violations. Many charitable trusts and schools do not wish to report such incidents, for fear of official reprisal, and sometimes implore journalists and human rights associations not to report the incidents. (Freedom of Religion Report in Turkey: “Relations between Religions: Seeking peaceful coexistence in a Secular and Democratic System,” Liberal Thought Association, Ankara 2005, p. 22-23).

³⁷ This rate is 15% in Europe.

³⁸ www.do.se/t/Page1145.aspx; www.do.se/t/news1032.aspx.

employment. If a woman achieves a high level education and becomes a lawyer, a doctor or a teacher, she is often then accused of being ‘a political symbol’ due to her headscarf.

The European Parliament has identified gender-based indirect discrimination³⁹ in the working lives of women who wear the headscarf, since the dress discrimination in the service sector affects the women’s labour force participation disproportionately and negatively. The compulsion to uncover their head in their occupational lives bars these women with headscarves from the exercise of their universal labor rights in breach of Article 23(1) Universal Declaration of Human Rights, which states that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

This situation also prevents women who wear the headscarf from becoming economically independent, reducing them to “politician’s spouse or helper” in public life instead of permitting them to taking advantage of their education to contribute to society in their own right.

3. Participation in Political Spheres and Decision-making Mechanisms

a. Women in Political Representation, and their Participation in Decision-making Processes

Women in Turkey gained the right to vote and be elected as early as 1934 at the same time that men were granted the same rights. However, past experience has shown women are unable fully to exercise those rights. Compared to men, the rate of women’s participation in the political spheres and decision-making mechanisms are so low that Turkey ranks 165th out of 187 countries in the representation of women in these areas.⁴⁰

Similarly, according to the results of the July 2007 general election, the ratio of women in Parliament rose 9.1% from 4.4%. Despite all the campaigns in this issue, the ratio has remained well below the world average target of 17.3%.⁴¹ Participation rate in local governments is 0.558% and only 18 of Turkey’s 3, 207 mayors are women.⁴² In addition, women generally do not hold posts on decision making boards or positions in political parties such as group leadership, vice presidency, or membership of boards, including local municipal councils. The sole exception is Turkey’s experience of a female prime minister from 1993 to 1996.⁴³ In the cabinets of successive governments of various parties, the only female minister would be the minister responsible for women and family affairs. Since the foundation of the Republic, only once has a 32 minister cabinet included three female ministers at the same time,⁴⁴ whereas, there have been periods when male ministers held the post of minister for women’s affairs.⁴⁵

³⁹ European Parliamentary Resolution on the Role of Women in Turkish Social, Economic And Political Life, 13 February 2007, Strasbourg (2006/2214(INI))

⁴⁰ “Half of Women are Exposed to Violence in Their First Married Day,” Radikal, 08.03.2007.

⁴¹ World Average According to the data at www.ipu.org on 30 June 2007 is% 17.3.

⁴² “18 Women against 3207 Men,” Radikal, 08.03.2007,
<http://www.radikal.com.tr/haber.php?haberno=215012>

⁴³ Tansu Çiller was Prime Minister from 25 June 1993 to 6 March 1996.

⁴⁴ At the 52nd Turkish Cabinet; Ministers of State İmren Aykut and Ayfer Yılmaz, Tourism Minister Işıl Saygın.

⁴⁵ Former Minister of State for Women and Family Affairs Hasan Gemici, 57th Turkish Cabinet – 5th Ecevit Cabinet (28 May 1999 - 18 November 2002).

It is claimed that the reason why women are not sufficiently represented in politics is cultural, or arises because their interests lie in other directions. However, research makes it clear that there is no serious opposition to women's political participation. Women in Turkey are interested enough in an active political life to join a political party. In addition, 39-43% of such women say that they would accept a parliamentary deputy candidacy. 75% of the Turkish public consider it important to place women sufficiently high on the electoral lists. For 64.4% of Turks, "inequality of opportunities" is the most important reason for low representation of women in politics.⁴⁶

NGOs are demanding a constitutional and legislative gender quota in political party and election laws enforcing a minimum of percentage of women within all political party decision making bodies. So far this proposition has not been taken seriously or taken up by political parties. Ironically, the political parties which generally fail to reach consensus on any subject, take a strikingly similar position in refusing to take the necessary steps to ensure women's women's inclusion in decision-making mechanisms. Consequently, Turkey has only one female governor, 14 district head officials and very few managers in public institutions. The lack of involvement by women in policy making, even in gender-related issues, prevents women from offering solutions to their own problems. Consequently, decision mechanisms operating without women are generally unaware of women's issues and fail to provide effective policies to raise women's status in society.

b. Political Representation of Women wearing the headscarf

Women wearing the headscarf face strict restrictions in political life. Aside from the rights to vote and to be elected as a *muhtar* (the elected head of a village or of a neighborhood within a town or city), a woman who wears the headscarf cannot participate in political life. She cannot become a member of parliament, a governor, a mayor, a head official of a district or a member in local governments.

There is no legal impediment to women who wear the headscarf from taking up such positions, but every politician is aware that the most concrete reason for the closure of the Virtue Party by the Constitutional Court on 22.06.2001 was the fact that the party had permitted a woman who wears the headscarf, Merve Kavakçı, to be elected to parliament. She was elected, but because she wore the headscarf, her parliamentary oath and entry into the chamber were prevented. Given that the Constitutional Court has closed 24 political parties since the 1960 *coup d'état*, the Kavakçı experience is a clear menace to political parties. They dare not offer significant positions in party structures to women who wear the headscarf.

Wearing the headscarf should not be a barrier for representation.⁴⁷ Denmark has declared that a parliamentary members who wore the headscarf would be permissible⁴⁸ and Spain already has one such member.⁴⁹ But in Turkey, even in the year 2008, a statement by a parliamentary deputy on the representation rights of women who wear the headscarf resulted in him being

⁴⁶ Toprak Binnaz/Kalaycioğlu Ersin: "Women Who Cannot Join In Politics Top Management and Work Life" TESEV Publication, Istanbul 2004, p.54 (Based on face to face interviews with a sample data; 1557 women and 993 men fairly representative of the Turkish population).

⁴⁷ "My Electorate Voted for Me in Full Knowledge of My Dress Codes," *Vakit*, 03.12.2006

⁴⁸ Approval of headscarf in Danish Assembly Committee, 09 April 2008, ZAMAN; www.zaman.com.tr/haber.do?haberno=675293

⁴⁹ Salima Abdeslam, 06.11.2006, <http://www.tumgazeteler.com/haberleri/salima-abdeslam/>

tried at the Constitutional Court, with a risk that he might be banned from political activity for five years.⁵⁰

Positive discrimination with gender quotas is proposed as a solution to put an end to the exclusion of women from decision-making. However, it must be remembered that if, for example, a 33% quota was set, the number of women who could benefit from such a provision would only be 38% of total, since women who wear the headscarf cannot take up any significant position in politics, or act other than casting their vote. In general, young urban women who have the potential to be involved in decision-making mechanisms but wear the headscarf, are barred from politics or are left uneducated. The result is that with power left in the hands of men, it is men who have stronger voices in the determination of women's issues.

4. Inadequacy of Women's Shelters, One Way of Protection from Violence

a. Violence Directed at Women

Violence directed at women is still one of the most important problematic fields in Turkey, as in the rest of the world. According to the crime statistics of the General Security Directorate (Turkey's main police authority) for 2005/2006, 333,227 crimes involving violence against women were committed, 113,724 women were victims of violent crimes, and 1,985 women died in these cases.⁵¹ State and non-governmental organizations are working on this issue, and education is given prime importance. However raising the level of education does not necessarily reduce violence, and may simply render it less apparent. **A study carried out by undergraduates⁵² revealed that one in three students said that they would commit a so-called "honour crime," and that a substantial proportion of undergraduates find it**

⁵⁰ Egemen Bağış (member of parliament) replied to a journalist's question on headscarf ban as: "Deputies of MHP (Nationalist Action Party) were uncovering their head while entering into the Parliament. **Who gains when people are forced to live dual lives? I think this duality is much more dishonorable for humanity. It is much more absurd to force a deputy to change her clothes at the gate of Parliament; to uncover her head inside the door and cover it outside the door. But in Turkey we force people to behave absurdly.**" After the following question of the journalist, "So you support representation by a headscarfed deputy at the Grand National Assembly?" he continued his reply "Who serves in Assembly? Deputies. Whose deputies? The deputies of this nation. If that's the case, the deputies should represent this nation. There should be diversity. This is my opinion. If you ask how my party deals with the issue, we have not discussed it, yet." (Indictment for Closure of JDP, 'Egemen Bağış', p. 98)

⁵¹ Official data obtained about crimes of violence inflicted on Turkish women in 2005 and 2006 in accordance with written applications:

* Murder: in 6846 events, 301 women under 18, 523 women victims over 19.

* Wounding: in 87,626 incidents, 3,002 under 18, 11,572 women victims over 19.

* Injury: in 118,176 incidents, 2682 under 18, 33.390 women victims over 19.

* Threat: in 38.897 incidents, 589 under 18, 12.597 women victims over 19.

* Ill-treatment of family members: in 26.965 incidents, 1378 under 18, 22,305 women victims over, 19.

* Assault: in 2506 incidents, 1045 under 18, 1002 women victims over 19.

* Suicide: in 3266 incidents, 124 under 18, 446 women victims over 19, Attempted suicide: in 30.621 events, 2325 under 18, 6448 women victims over 19.

"Türk Kadını 3 Dakikada Bir Şiddete Uğruyor, Yılda 113 Bin 724 Kadın Şiddet Mağduru Oldu" ('Women in Turkey Encounter Violence Once in Three Minutes, 113,724 Women are Victim to Violence in a Year'), www.kanalturk.com.tr/21411/kad%C4%B1na-%C5%9Fiddet-art%C4%B1yor.html, 09 July 2007.

⁵² Metropoll Research Company. The research was carried out interviewing with 4949 students in 30 universities.

⁵³ Research made in 2007 shows that as women's earnings increase, the likelihood of their encountering violence also increases.⁵⁴

But “honour killings” were not included in this study on the grounds that penalties were increased when the Turkish Criminal Code was changed in 2004 to impose life sentences for so-called honour crimes⁵⁵, and that an increase in sensitivity to the problem in society at large had lessened the problem. But it also contributed to concealing the problem. Attempts to determine the actual number of “honour killings” occurring in Turkey fall far short of demonstrating the true extent of such murders.⁵⁶ A Commission on “honour killings” was established in the Grand National Assembly on 11 October 2005,⁵⁷ after a Prime Ministry Circular⁵⁸ with the purpose of preventing “honour killings” was published. The General Directorate on the Status of Women (KSGM) undertakes coordination of policy with respect to violence against women and honour killings. However, but this attempt at action which deserves to be followed through, has gone no further than a three-monthly meeting of provincial governors and receiving reports from non-governmental organizations which are referred to the KSGM. The current situation does not contribute to the uncovering of sound and clear information, and the qualitative as well as quantitative evaluation of the issue.

In fact, studies demonstrate that 90% of crimes committed within the family are directed at women, and 9% of women consider violence something as normal which does not warrant complaint.⁵⁹ The inadequacy of state protection against violence results in a low level of reporting of violence. The implementation of the Law for the Protection of the Family, intended to prevent violence within the family is under strain. According to Ministry of Justice data, the yearly distribution of cases brought to court under the Law for the Protection

⁵³ According to results of the survey made with 450 women by Bursa Municipality Women's Status Unit, 41% of women face violence from their partner. It was determined that 33% of violence victims finished school after primary school, 23% were university educated, 16% high school educated. See “Eğitimli Kadınlar da Şiddete Maruz Kalıyor” (‘Educated Women are Subjected to Violence, too’), Zaman, 23 January 2006, <http://www.tumgazeteler.com/?a=1296015>

In some universities the percentage of people who approved of beating a partner rose to% 37.9. See “Üniversiteli Eşe Dayak Taraftarı” (Supporting Beating the Undergraduate Partner), <http://www.hurriyet.com.tr/yasam/5330897.asp?m=1>, 28 September 2006.

⁵⁴ Arat, Yeşim/ Altınay, Ayşegül: “Türkiye’de Kadına Yönelik Şiddet Raporu 2007” (‘Report of Violence against Women in Turkey 2007’).

⁵⁵ However the Court of Appeal's Criminal Court, upon the criticism of one of its own members, commented that the article was being used ‘based on the decision of family council alone’. The difficulty of proving guilt as regards motive and family council's decision in honour killings has led to the proposal of this article's interpretation as non-functional. ‘Despite laws, custom is forbidding life’ Fatma Benli, 15.09.2008 Star Newspaper, <http://www.stargazete.com/acikgorus /yasalara- ragmen-tore- yasatmiyor-127960.htm>

⁵⁶ According to the ‘2007 Turkey Human Rights Report’ of the Human Rights Presidency of the Prime Minister's Office, “While the number of victims of honour killings was 159 in 2003, this number rose to 233 in 2006, and was 231 in 2007. The number of people who died due to honour killings in last 5 years exceeded 1100. These include 167 murders in Istanbul, 144 in Ankara, 121 in Izmir, 69 in Diyarbakir, 58 in Bursa and 46 in Antalya.” See “Töre cinayetlerine her yıl 200 kurban veriliyor” (‘200 victims are lost to honour killings every year’) Sabah 03 July 2008, <http://www.sabah.com.tr/haber,7B134D860E8A4639B29948EECD4F41F4.html>.

⁵⁷ The report of the Assembly Research Commission Established to Study the Reasons of Honour Killings and Violence against Women and Children, and to Determine Necessary Precautions (No 10/148, 182, 187, 284, 285)

⁵⁸ Official Gazette, N:2006/12, 04 July 2006

⁵⁹ “Kadınların Yarısı Evliliğin İlk Günü Şiddet Görüyor” (‘Half Women Face Violence on First Day of Marriage’), Radikal, 08 March 2007, <http://www.radikal.com.tr/haber.php?haberno=215009>

of the Family, Statute No 4320, was 4114 in 2002, 6147 in 2003, 8276 in 2004, and 8966 in 2005.⁶⁰ Changes in implementation were carried out in 2006, with when a Regulation for the Implementation of the Law for the Protection of the Family was enacted.⁶¹

The safeguard is to remove the partner who is inflicting violence from the house for six months. After that period, the state is unable to provide a safe place for the victim of violence. Changes in the Municipalities Law were implemented in 2004 so that's municipalities with a population of more than 50, 000 were obliged to open a Women's Shelter. Government officials declared in a 2005 session of CEDAW that they aim to open 300 Women's Shelters according under the new legislation. However, three years later in 2008 there are still only 38 women's shelters in Turkey,⁶² since no sanctions were put in place against municipalities which failed to establish shelters to protect women. This number is low compared with other countries such as the USA which has nearly 2000 women's shelters.⁶³

The inadequate provision of women's shelters hinders the effective struggle against domestic violence. And the lack of coherent policy and system between government bodies make it difficult for women to ask for help from official institutions. Health centers to which victims of violence can go do not give reports of injuries and were further victims to the forensic medicine institute. Police stations which are another first port of call inform women how to apply to a court the legal action instead of initiating legal action themselves. Most women have never had any dealings with the courts, do not know where they are, and share the public's general fear of such places, and the result is that women rarely open proceedings and the violence is never recorded. Women's rights centers of bar associations allocate free lawyers for women, but this service is insufficiently publicized.

b. The headscarf ban undermines women's struggle against social and domestic violence

By holding women back in society, the headscarf ban is undermining their struggle. It is also limiting education, limiting economic independence and it impairing the struggle against domestic violence.

Forbidding women to exercise their basic rights or barring their entrance to public places unless they take off their headscarves is clearly a form of violence. According to CEDAW, **"gender based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately."**⁶⁴ Then again "being denied access to existing rights" is a form of violence against women. In addition, we must accept discrimination on the grounds of clothes worn on the basis of religious conviction as violence.

Women sometimes took their headscarf off just because they were "persuaded" by an employee or because they were threatened or injured physically. Sometimes they were insulted by staff or thrown out of a place and threatened with prosecution. Being turned off university campuses is a very common experience. YÖK (the Higher Education Council in

⁶⁰ The Sixth Periodic Report of Turkey Prepared to Present United Nations CEDAW Committee, KSGM Text Outline, Ankara 2007.

⁶¹ Official Gazette, N:26803, 01 March 2008.

⁶² General Directorate on the Status of Women, The Condition of Woman in Turkey Report, Ankara January 2008. p.37-38.

⁶³ This number rises to 3000 with Legal Counseling Centers." (Zaman, 08 March 2006).

⁶⁴ Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), General Recommendation No. 19, Article 6, para. 6.

Turkey, the central state body which regulates the whole of university education, including private universities, and has a reputation for applying restrictive and repressive policies) has published circulars to ensure that veiled women are not admitted into university staff's residential quarters.⁶⁵ Women have been ejected from exam rooms because university staff did not approve of their wigs⁶⁶ and when a woman went to take her driving test, she was told "showing your hair will not damage your virtue and honour"⁶⁷ and frogmarched to the door by police.

Headscarfed women receive treatment very much like that received by black people in an apartheid society, unable to enter white people's churches, restaurants bus stations and barred from higher education a situation which can cause real psychological trauma.⁶⁸

Physical attack harms physical integrity, but an emotional and psychological attack damages emotional and psychological integrity. As psychiatrists might put it, the attack on the headscarf ban is an attack on personal identity for women who view the headscarf as part of their identity. The anger and frustration that headscarfed women feel at the cutting short of their future plans, the feelings of internal conflict, the strong feelings of having their path blocked when they refuse to take their headscarf off, and the feelings of guilt if they do take it off all amount to a highly destructive experience.⁶⁹

Because wearing a headscarf is a woman's conscious act and her own decision, the psychological damage is heightened even more. **If the "uncovered head" which is being imposed in the interests of modernity were merely a matter of clothing, if the condition for entering education was to dress in green from head to foot, every woman who wanted to continue their education might have put up with such a rule even if it were against their individual preference.** But the fact that the headscarf is worn for religious reasons makes the dilemma much sharper for women. *The headscarf ban puts women in the position of submission to government authority, the school or the employer, choosing between wearing the headscarf or exercising her rights.*

Removing a woman's right to choose her own clothes under such circumstances is a profound external interference. Forcing a woman to either uncover her head or give up her rights is psychological violence, in the same way that forcing a woman to cover her head is psychological violence.

This is a current and ongoing violation because the ban remains in place and subjects women to constant negative feelings and thoughts. When women who choose to wear the headscarf

⁶⁵ Regulation of Higher Education Council (YOK), N:B.30.O.Hkm.06.01.001-3699/20644, 15.09. 2000.

⁶⁶"Laikçi Zorba Terör Estirdi," ("Secularist tyrant terrorised.") Vakit, 02.06.2008.

⁶⁷"İşgüzar Okul Müdürü Örtülü Hanımı Ehliyet Sınavına Sokmadı," ("Meddlesome schoolmaster did not allow headscarfed woman to qualifying examination") Vakit, 20.02.2007.

⁶⁸ E.g; Serkan Aydın won first place in graduating from university and invited his parents to the graduation ceremony to share that moment, but his mother was not allowed to attend to the ceremony as she was wearing a headscarf. ("Oğlunu Tebrige Başörtüsü Engeli, Yeni Şafak, 07.06.2008), <http://yenisafak.com.tr/Gundem/?t=08.06.2008&c=1&i=121925> on the other example; A woman wearing a headscarf who had brought her handicapped child to the university exam was not permitted to escort her child to the class. "Safiye'nin annesinden rejimi korumak," 18.06.2008, Zaman, <http://www.zaman.com.tr/yazar.do?yazino=703683> Many more examples could be given about women obstructed by civil servants in front of their children when their children most need their support of their mothers and hoped to give them pride

⁶⁹ Ulusoy, Mustafa; The Headscarf Ban as Violence applied to Existential Identity

for their own important reasons are confronted with coercive interference from the state, and not wanting to take the headscarf off are forced to do so, they suffer severe internal conflict at having to act contrary to their own choices and determinations.

The research entitled “Covered Reality of Turkey” has determined that women who had to take their headscarf off were indeed badly affected. The research found that 70.8% of women who removed their headscarf believe it damaged their personalities, and 63.2% felt insulted.⁷⁰ *Consequently many women chose to stay away from education rather than take off their headscarf. But this in turn left those women feeling empty because they were not permitted to fulfill their potential.*

5. Rural Areas

a. Rural Women’s Problems and the Struggle with Patriarchy

The feminization of poverty is a worldwide problem. The poverty rate of women in Turkey is higher than men, as in most developing countries. Men in Turkey own 92% of all property and 84% of the country’s gross national product.⁷¹ Customs, patriarchal families, stereotyped sex roles, materialism, economic dependence, early marriage, and poverty are some of the problems faced by rural women, who lack both education and employment opportunities. Being reduced to dependency, forced to work illegally or on the black market, and unable to take advantage of their educational rights, the strategies of rural women in coping with poverty are not valued, and the rural women themselves are stereotyped. Women in rural areas suffer indirect discrimination because they are deprived of economic material resources.

The struggle of rural women to resist all kinds of pressure, such as forced or arranged marriages, early marriage, pressure about what to wear and pressure not to work can only be avoided through the personal empowerment of such women.

The only way of combating traditional and cultural practices that create discrimination is by empowering women. Resisting and eliminating traditional and stereotypical visions of women are only possible through empowerment. The only way to reduce the discrimination faced by women in areas of Turkey where the education level is low and honour crime widespread is to educate women and helping them to participate in employment. However, the necessary financial support to deal with these issues of discrimination has not been forthcoming.

b. The Effects of the Headscarf Ban on Rural Women

The overwhelming majority of rural women cover their heads. When women who wish to break out of narrow traditional confines and take up a position for themselves in society encounter the headscarf barrier they are usually forced back into their homes. The struggle against patriarchy and stereotypically established roles of women and men in society depends on eliminating the obstacles for the education of women. The headscarf ban aggravates these obstacles on the way to women’s economic independence, and further impoverishes them.

⁷⁰ “Research into the Covered Reality of Turkey,” Field research on headscarf ban, Hazar Eğitim, Kültür ve Dayanışma Derneği, Istanbul 2007 (www.hazargrubu.org/panel/BasortuluGercek1-2007.pdf), <http://www.hazargrubu.org/panel/BasortuluGercek1-2007.pdf> Made by the help of ANAR (Ankara Social Researches Center) with the direction of Hazar Education Culture and Solidarity Association at 2007. At 9 cities meetings were held with a total of 1112 headscarfed women.

⁷¹ Amnesty International report, June 2004, ‘Turkey: Women in Combating against Domestic Violence’/ p. 10 (AI Index 44/018/2004).

6. Health and Social Security Rights

a. Women in health and social security:

Only 24.1% of salaried women workers have health insurance. Married women can benefit from their husband's social security. Single women can benefit from their father's social security up to the age of 18 assuming they do not continue their education, or up to the age of 25 if they do go on to higher education. Women left outside the above provision have no access to social security support, and this creates considerable difficulties for them.

In Turkey, not all women have government-sponsored health insurance. Women's health services are inadequate and unequal in the extent of provision and its effectiveness. While only 80.2% of urban women receive pre-natal care, this figure falls to 53.2% of women in rural areas. One out of every six births takes place without medical help. According to the "Research into National Maternal Mortality" in 2005, the mortality rate of mothers is 28.5 women out of 100,000 births. According to research, four out of five deaths are preventable.⁷² Women in rural areas also have issues with accessing health services. It is not only patriarchal attitudes which prevent women from benefiting from health services, poverty, lack of social health insurance, and the ability to access and use existing health services are also effective barriers.

The lack of employment for women also restricts their ability to take advantage of their social security rights. Especially in agricultural areas, women are working without pay and without social security benefits. 66% of working women are doing so without any record in the Social Security administration; 58.1% of these women give their labour as unpaid family workers. 16.1% of women working as wage workers, 95.7% of women who are working on a daily wage, 34.8% of female employers, and 90.3% of self-employed women, are working on a completely unregistered basis, uncovered by any social security whatsoever. In 2006, 23.2% of male and 76.8% of female workers in agriculture were working on an unregistered basis as unsalaried family labourers.⁷³

b. The Effects of the Headscarf Ban on Health and Social Security Rights:

Woman who choose to wear the headscarf become dependent on their fathers and husbands for social security and health care because they are simply unable to access education and cannot work for reasonable wages. The result of this is that women tend to marry very young. Young girls, who now choose not to attend high school since they realize that a university education will not be within their reach after they graduate, find that any career chances they have are severely curtailed. The lower the family's income and educational level, the more likely they are to force their daughters into extremely early marriage. Pregnancy at young ages can be harmful for both the mother and baby's health. The most effective way of preventing early marriage is to ensure that all young women are afforded access to education opportunities.⁷⁴

⁷² General Directorate on the Status of Women, The Condition of Woman in Turkey Report, Ankara January 2008.

⁷³ General Directorate on the Status of Women, The Condition of Woman in Turkey Report, Ankara January 2008.

⁷⁴ Amnesty International report, June 2004, 'Turkey: Women combating against domestic violence' / p. 10 (AI Index 44/018/2004).

III. EFFECTS OF THE HEADSCARF BAN ON SOCIAL LIFE

1. Headscarf ban and social life:

A democratic state governed by the rule of law must treat its citizens equally. Citizens who are fulfilling their obligations through taxes, military service, and by observing laws, should be able to benefit equally from the rights and opportunities provided by the state. Following a certain religion or practicing a certain belief must not be a basis for depriving citizens of their rights.

In the context of Turkey's modernization process, however, the dominant view is that young, modern, educated and independent women should not cover their hair with a headscarf. When a class of women who were deemed fit for low status jobs in agriculture, as housewives and housemaids began to demand an education and a greater role in society, the accepted norms for what constituted these women's proper social status were shaken. Thus, women who wanted to attend universities after the 1960s were regarded not as citizens practicing their right to an education, but rather as a source of problems challenging the imposed perception of modernity. The increase in numbers of women wearing the headscarf in universities was perceived as a threat and a danger.

The post-modern coup of Turkey in 1997 had a tremendous effect on women: the headscarf, a religious, social and cultural artifact, was prohibited in universities and public institutions following the coup. As a result of this ban, more than 100,000 students and 10,000 civil servants were forced to resign or leave school. Women who were forced to make a choice between their lives and their beliefs were also stripped of their other rights. Headscarfed women entering areas designated as "government property" were blocked at every opportunity. Students who were registered to school before, and had been attending for years without any problems were forced to leave their studies.

After the introduction of the requirement in 2002 that students entering the university entrance exam must enter with their heads uncovered, women were unable to even attempt a university education. Headscarfed women are unable to enter universities' open spaces or closed areas (including libraries⁷⁵ or social facilities⁷⁶). Also, journalists,⁷⁷ students' mothers who wear the scarf,⁷⁸ as well as researchers are barred from entering.

The ban does not discriminate between the elderly, the youth, Turks, foreigners, students, or visitors. Samira Moosa, assistant director of the Sociology College of Sultan Qaboos University in the Sultanate of Oman, was invited to speak in a panel at the First International Children and Communication Congress at Istanbul University on 16 October 2003. Since headscarfed women are not admitted to any part of the university campus, on arrival she was not even permitted to set foot on the premises. University officials' excuse for their behavior was "*We thought she was a man.*"⁷⁹ So while a man holding the same opinions and invited

⁷⁵ "Başörtülü Vatandaşa Kütüphane de Kapalı," ("Library is closed for headscarfed civilians) Vakit, 12.04.2002.

⁷⁶ İstanbul Üniversitesi Arnavutköy Sosyal Tesisleri (Istanbul University, Arnavutköy Social Facilities).

⁷⁷ "Başörtülü Gazeteciler Kadir Has Üniversitesine Alınmadı", "Headscarfed journalists were not allowed into Kadir Has University." Zaman, 03.03.2005, <http://www.tumgazeteler.com/?a=699746>

⁷⁸ "Basortulu Sehit Annesini Üniversiteye Sokmadılar", YENİ SAFAK, 14.06.2005, <http://www.tumgazeteler.com/?a=839639>

⁷⁹ "Bir iletişim skandalı" (A communication Scandal), Milliyet, 16.10.2003, <http://www.milliyet.com.tr/2003/10/16/guncel/gun01.html>

from abroad to share his knowledge in a panel discussion would have been honoured, a woman wearing a headscarf was not even allowed through the door.

The ban, which especially manifests itself in universities and public institutions, affects solely women. A woman who wears the headscarf is isolated from society because of her religious practices and lifestyle, whereas a man who has the same philosophy as she can pursue his education and business life without any issues. **This ban is a grave discrimination and impacts solely on women.** Men and women's equality in political, economic, social, cultural, personal, and other human needs should not be infringed simply because of their choice of clothing. The ban is hindering women's ability to achieve higher socio-economic status through education. **Women who wear the headscarf are either obliged to uncover their heads in some areas and cover in others (living through a constant switching of personality and identity) or to resign themselves to life as a housewife.**

The negative attitude towards headscarfed women also damages their employment life. Women who wear the headscarf are not allowed to work in public institutions. From 2000 onwards, women hoping to enter state employment have been obliged to enter state examinations "with uncovered heads." Thus woman who wear the headscarf are unable even to apply for work in public institutions. Professionals who do not practice in the public sphere but have to be registered to professional organizations include doctors, pharmacists, dentists, lawyers, notaries, and in each of these cases the professional Chambers and Unions have issued circulars outlawing the headscarf.

The headscarf outlaw attempts to clarify the complicated concept of the "public sphere," a non-legislative distinction which can be used arbitrarily. Thus women wearing the headscarf who go to court as defendants can be faced with judge's warnings to take off their scarves.⁸⁰ At the Malatya National Training Centre, at the time of the celebration ceremony of "Teachers' Day" a tannoy announcement was made to eject headscarfed woman from the room in which the ceremony was being held.⁸¹

One can see many individual examples of discrimination against the headscarf in social life. 71-year-old Medine Bircan, an ill woman on her deathbed, was told to change the photograph on her health card so that she was not wearing a headscarf, before hospital staff would resume treatment.⁸² Likewise another ill woman referred from another city was not treated.⁸³ On 17th February 2007 Neşe Gündoğar was expelled from her driving examination for wearing a headscarf,⁸⁴ student Tevhide Kütük was required to come down from the stage during an award ceremony, even though the ceremony was taking place out of school.⁸⁵ Abdullah Yadigar, a teacher who was second in a national teaching exam, was not permitted promotion

⁸⁰ "Başını aç öyle gel" (Come without headscarf). (2003, November 07). Yeni Şafak_ "Kamusal Alan Mahkemelere Sıçradı," ("Public space grabbed by courts" 2003 November, 07) Nethaber. <http://www.radikal.com.tr/haber.php?haberno=94594>

⁸¹ "Türbanlı izleyiciler dışarı çıksın" anonsu" ("Get the turbaned spectators out"), Milliyet, 25.11.2006, www.milliyet.com.tr/2006/11/25/guncel/gun03.html.

⁸² "71 yaşındaki hastaya başını aç işkencesi" "*Headscarf cruelty to 71 year old female patient*" Yeni Şafak, 21.06.2002, <http://yenisafak.com.tr/arsiv/2002/HAZIRAN/21/g2.html>

⁸³ "Örtülüye tedavi yasak," ("*No treatment for headscarfed women,*" Yeni Şafak, 22.06.2004, <http://yenisafak.com.tr/arsiv/2004/haziran/22/g02.html>

⁸⁴ "İşgüzar Okul Müdürü Örtülü Hanımı Ehliyet Sınavına Sokmadı" "*Administrator blocked headscarfed women from driving licence examination*", Vakit, 20.02.2007

⁸⁵ Başörtülü Öğrenci, Kürsüden İndirildi, "*Headscarfed student bring down from stage*" Yeni Şafak, 24.11.2007. www.haberler.com/basortulu-ogrenci-kursuden-indirildi-haberi/

to work overseas because his wife wore the headscarf.⁸⁶ Emine Erdoğan, the Prime Minister's wife, was not allowed to enter the GATA (Military Hospital) on 23rd November 2007.⁸⁷ Şeyma Türkan, a student, was refused registration to her school, because of her wig.⁸⁸ When Emine Ergin, a housewife, went to pay her taxes, she was not allowed to enter Kadıköy Municipality Building because of her black chador even though her face was open.⁸⁹ Doctor Perihan Dinç had been invited to a symposium on "Diabetes and the Eye" organized by the Turkish Ophthalmology Association in Cerrahpaşa Medical Faculty's auditorium in Istanbul, but when she arrived, she was ousted by security guards on the dean's orders.⁹⁰

This sort of treatment is highly common and widespread. Recently, the top graduate of a school invited her mother to her prize ceremony but her mother was not allowed up to the stage because of her headscarf.⁹¹ In the University Entrance Examination (ÖSS), a headscarfed mother who came to give her children moral support, was not allowed to enter the school and had to wait on the sidewalk.⁹² One of the most recent manifestations of the policy of keeping this group of women down has been to revoke the licences of women table-tennis players.⁹³

The general enforcement of the ban has had the effect of encouraging hate speech. Even private associations have begun not to accept headscarfed women. In a school fieldtrip, a private factory did not allow a headscarfed mother to enter, even though she had come to support her disabled children.⁹⁴ Ahmet Aydın was not allowed to enter a hotel to take up the room he had booked and paid because his wife was wearing the headscarf, and officials of the hotel in question have sent notices to agencies stating that they will not allow headscarfed women to enter the hotel. Administrators of the hotel openly admitted that it was company

⁸⁶ "Danıştay: Eşi türbanlı öğretmen yurt dışında çalışamaz" ("Council of State: A teacher whose wife is headscarfed may not work overseas.") CNN TURK, 23.02.2006.

<http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=3978404&tarih=2006-02-23>

⁸⁷ "Emine Hanım GATA'da Uygur'u Ziyaret Edemedi," ("First lady Emine Erdoğan unable to visit Uygur in GATA") Hürriyet, 23.11.2007,

<http://www.hurriyet.com.tr/gundem/7746915.asp?m=1>

⁸⁸ "Peruklu olduğu gerekçesiyle üniversiteye alınmadı" ("She was not allowed into the University because she was wearing a wig") Yeni Asya, 06.09.2006, <http://www.tumgazeteler.com/?a=1680946>

Gaziantep 2nd Administrative Court "It is regarded as lawful because of the necessity to obey dress rules at Universities which aim to provide a modern education system in accordance with Atatürk principles and revolutions, and in accordance with the secular principle of the Consitution and the binding effect of decisions of Court of Constitution." (07.12.2007, 2006/2756E, 2007/1171 K).

⁸⁹ Presidency of Kadıköy Municipality 08.08.2006, S.705834.

⁹⁰ "Başörtülü doktora dekan densizliği," "Dean's tactlessness to headscarfed doctor." Yeni Şafak, 03.05.2008, <http://yenisafak.com.tr/gundem/?t=04.05.2008&c=1&i=114893>,

⁹¹ "Oğlunu Tebriğe Başörtüsü Engeli," <http://yenisafak.com.tr/Gundem/?t=08.06.2008&c=1&i=121925> Genel uygulamada anneler, mezuniyet törenlerine ve hatta sınavda destek için geldikleri okulları bahçelerine alınmamaktadır. "Başörtülü Anneye Büyük Ayıp," <http://www.zaman.com.tr/haber.do?haberno=699391>. "The headscarfed families of the students still could not pass through the University door," Zaman, 18.06.2008, <http://www.zaman.com.tr/haber.do?haberno=703725>.

⁹² "A shock for the mother who wore a headscarf and hoped to encourage her son at the University Entrance Examination" "ÖSS'ye Girecek Çocuklarını Yalnız Bırakmak İstemeyen Başörtülü Annelere Başörtüsü Şoku," <http://forum.shiftdelete.net/index.php/topic,39683.0.html>, 15.06.2008.

⁹³ http://www.aktifhaber.com/news_detail.php?id=164134, 09.04.2008.

⁹⁴ ("Hatice Ünsal said that I felt like a leper when I was not allowed to enter the factory.") A headscarfed mother was not allowed by factory staff to enter with her autistic son ("İlaç Fabrikası, Okul Gezisinde Başörtülü Veliyi İçeri Almadı"), www.zaman.com.tr/haber.do?haberno=660496. In Sweden a bus driver had to resign when he refused to let a woman board his bus because of her burka, whereas in Turkey there would be no sanctions for such an event).

policy not to offer service to headscarfed women.⁹⁵ All manner of officials and administrators are encouraged to take such initiatives by the positions taken by the judiciary and by commentaries in the media.

This discrimination is extending in every area of society and in every social class of women, reflecting the attitudes of such administrators.

Erdoğan Teziç, former president of YÖK states that women wearing the headscarf can also be challenged as they walk down the street;⁹⁶

“A judge who does not wear a headscarf in court cannot go to the shopping centre wearing a headscarf. She cannot say that this is my belief, my freedom. A teacher cannot wear the headscarf in the school grounds, or in the shopping centre. Imagine you are a woman wearing a headscarf. If a police officer says they are having difficulty identifying you because of your headscarf, you must take it off. Even if you are within the confines of your home, you have to do this. Your home becomes part of the public sphere, and will only become your personal space after the police officer has thanked you and left.”

2. The Proportion of Women Affected by the Ban and Difficulties in Assessing Statistical Data

No research is being done in Turkey to assess how the regulations against the headscarf are affecting women at all levels of society. At its 32nd session, CEDAW, the Committee on the Elimination of All Forms of Discrimination against Women, expressed its concern regarding the effects of the headscarf ban on girls and women in schools and universities, and requested that the government should observe and evaluate the effects of the ban, and produce data on the number of female students and women who were dismissed from schools and universities.⁹⁷ Turkey did not take any action in response to this international obligation. NGOs have applied to the government to carry out a statistical study⁹⁸ but this request was ignored without explanation. In general, government policy is to ignore the existence of the problem which affects so many women. But to ignore the ban does not eliminate its negative effects.

The proportion of women who wear the headscarf in Turkey is very high. According to reports by TESEV⁹⁹ and others,¹⁰⁰ between 62% and 69.4% of Turkish women are wearing

⁹⁵ “He was not allowed to enter the Hotel because of his headscarfed wife and he passed the night at the police station,” Zaman, 03.06.2008, www.zaman.com.tr/haber.do?haberno=697155.

⁹⁶ Batur, Nur: “Erdogan Tezic:” “To not wear it in court and wear it shopping is unacceptable”, HURRIYET, 10.02.2006, <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=3914337&tarih=2006-02-10>

⁹⁷ Committee on the Elimination of Discrimination against Women (CEDAW) Thirty-second Session 10-28 January 2005 Para. 34. CEDAW/C/2005/I/CRP.3/Add.8/rev.1 Advance Unedited Version.

⁹⁸ AKDER report ‘Suggestions related to 6th Turkey Country Report Outline that will be presented to CEDAW’ dated 30 April 2007. Suggestions related to other problems of women in the report of AKDER were considered, but AKDER’s suggestions as to how discrimination against women wearing the headscarf could be assessed factually were disregarded.

⁹⁹ Çarkoğlu/Toprak, “TESEV Değişen Türkiye’de Din Toplum ve Siyaset” (TESEV Religion Society and Politics in Changing Turkey), Istanbul 2006, p. 8, www.tesev.org.tr/etkinlik/final%20rapordin_toplum.pdf The study had an error factor of 2%, and included face to face interviews with 1492 people over 18 years of age from cities and villages all around Turkey. Frequency research was carried out in 23

the headscarf. A research report by Milliyet [Nationhood] in 2003 revealed that 14 million women, about two thirds of the 22 million women above the age of 17, cover their heads when outside the home.¹⁰¹

The fact that the headscarf is an extremely common form of dress for women in Turkey indicates that an extremely high number of women, especially in metropolitan areas, have been negatively affected by the discrimination.

In fact, in a research study into the experiences of women who wear the headscarf, entitled “The Covered Truth of Turkey,” 93.9% stated that their life would be different if it were not for the ban.¹⁰²

The huge number of population affected by the headscarf ban and the extremely long duration of the ban, makes it very difficult to estimate the exact number of women who were dismissed from universities and who never had a chance to receive higher education. The only concrete data is that it is impossible for these women to benefit from education, employment and the right to participate in politics.

The number of female students in higher education institutions in Turkey is 812,302.¹⁰³ Thousands of women who wear the headscarf were receiving education until 1998 when the ban was started. These students began their education wearing the headscarf and received their picture identity cards with their scarf on. However when the ban began to be implemented strictly, they were not allowed to enter universities, prompting the university authorities to bring proceedings against them for non-attendance. It is unfortunately not known how many of these female students decided to remove their scarves and continue their education, or, indeed, how many did not. The number of applications made to the human rights organization MAZLUMDER (Organisation of Human Rights and Solidarity for Oppressed People) in 1998 alone was 26,669.¹⁰⁴

Similarly 677,000 students benefited from an amnesty on university enrolment between 29.06.2000 and 15.03.2005;¹⁰⁵ that is those who had been required to leave university for various reasons were allowed to return. Of these, 270,000 were confirmed to be women who had been obliged to leave education because of the headscarf ban. According to the statement of a political party, the number of students who were dismissed from schools is 80,000.¹⁰⁶ But

cities, and the addresses were received from Turkish Statistics Institute.

¹⁰⁰ Milliyet, “Gündelik yaşamda din, laiklik ve türban – 1” *“Religion, Secularism and the Headscarf in Daily Life-I”*, <http://www.milliyet.com.tr/2007/12/03/guncel/agun.html>

¹⁰¹ “Türkiye’nin üç sorunu, “değerlendirmeler” (Turkey’s Three Problems ‘Evaluations’), Milliyet / KONDA Research Center, 31.05.2003

¹⁰² While 67.6% of the respondents think that the headscarf ban changed their lives, and that they would have had a better education if there had been no ban, 63.8% felt they would have had a different social life, 45.1% felt they would have had more comfortable financial circumstances, and 44.6% stated that they would have had more self-confidence. See: *“Covered Reality of Turkey”* HAZAR, Istanbul 2007.

¹⁰³ <http://www.ksgm.gov.tr/tcg/17.pdf>.

¹⁰⁴ 1052 female civil-servants dismissed from their jobs, 7126 female civil-servants subject to disciplinary proceedings, 8238 female students not admitted to school and then treated as if they were absent, 1573 students who had various punishments. These numbers relate only to personal applications made to MAZLUMDER Istanbul Branch in 2000. MAZLUMDER, Report on Human Rights Violations, 1998.

¹⁰⁵ The Law on the Addition of Temporary Articles to Higher Education Law, Acceptance Date: 15 March 2005, No:5316.

¹⁰⁶ AGAR, Mehmet: “Will it be so bad if we win the headscarf?” DYP Baskani, ZAMAN, 01.10.2004.

the Higher Education Council had reported students who wear the headscarf as dismissed for non-attendance. 90% of students who were dismissed for non-attendance reported that they were not even allowed to walk into the university because they were wearing a headscarf, and that this was the reason why they were dismissed.¹⁰⁷

In 2002, the headscarf was prohibited in the University Entrance Exam (ÖSS). After this date, **the number of students who wear the headscarf who might have taken the entrance exam and entered university education if there had not been a ban, is not known. For this reason, no statistical data can be developed.**

The same is true for women who are government employees or even, in some cases, private sector employees. No data exists showing how many women could have been employed if there had been no ban. The headscarf is prohibited for employees in all government institutions, yet there is only one directive about this issue. After 1998 investigations began to be opened against government employees wearing the headscarf, and disciplinary proceedings for disobedience were initiated against many of them. Faced with this, government employees were forced to take their scarves off, resign or be dismissed from employment, losing at a stroke their career, income, social and health insurance and pension rights. At the time when proceedings were being actively initiated against employees wearing the headscarf between 23.04.1999 and 14.02.2005, 20,543 governmental employees received disciplinary punishment.¹⁰⁸ It is not known how many of such punishments were related to the headscarf. Nevertheless, the headscarf ban continued after the amnesty, and those women could not return to their employment.

After 2000, the condition of entering an examination room with “uncovered hair” began to be imposed for the Civil Service Appointments Examination (KPSS). After that date, women who wear the headscarf were no longer able to demonstrate their abilities, as they could not even sit the exams for employment in public institutions. *For this reason, it will never be known how many women who wear the headscarf might have been employed if there had been no ban.*

The same ban has also applied to women who work professionally in the private sector, as lawyers, for example. The Istanbul Bar Association has 23,164 lawyers and 2,264 intern lawyer members and has issued a regulation which requires lawyers to inform on other lawyers wearing the headscarf if they attempt to enter to court buildings. Lawyers are already not permitted to enter courts during trials.¹⁰⁹ It is very unfortunate that many women who were trained as lawyers are not able to fulfill their proficiency requirements because of the headscarf, and similar restrictions apply to other private sector workers.

The survey entitled ‘The Covered Reality of Turkey’ shows that the ban on the headscarf has a negative impact on the working life of women who wear the headscarf. 20.8% of women

¹⁰⁷ BULAC, Ali: “AIHM ve Basortusu”, Umran Dergisi, Mayıs 2005, s.33.

¹⁰⁸ 9361 warnings, 5682 complaints, 3123 salary deductions, 1551 frozen academic record, 639 dismissal civil service, and 187 civil servants had punishments because of various offences. Moreover, it is reported that those who were dismissed when they were at the intern stage were not recorded, and that more than 100 officers were dismissed once the ban started. The disciplinary penalties given were erased by Amnesty no.5525. www.milliyet.com.tr/2005/03/01/son/sonsiy06.html, 01 March 2005. Amnesty of file for 20 thousand civil-servants, Law about Pardon of Some of Disciplinary Penalties of Civil-servants and Public Employees, Acceptance Date: 22 June 2006, No:5525, RG 04 July 2006, N:26218.

¹⁰⁹ www.haberaktuel.com/Istanbul-Barosu,-basortulu-avukatlarin-pesine-dustu-haberi-138241.html

participating in the survey claimed that they were not employed due to their headscarf. 17.8% of respondents stated they were forced to work in posts where they would have no contact with the public. 17.1% of respondents said that they had to work in a job unrelated to their own profession.¹¹⁰

The long duration of the ban, which has now been in place for a decade, has meant that female students do not even bother to enroll in high schools as they already know that they will not be able to go to university. Qualified women have to take their scarves off at the work place and put it back on afterwards, or in some cases they would prefer not to work at all rather than work for a very low salary. **These difficulties have pushed women who wear the headscarf out of employment and social positions; for this reason it is extremely difficult to arrive at an accurate estimate of the number of victims.**

The women of Turkey are not educated in a way which enables them to assert their rights. The ban was imposed by universities and governmental executive institutions, and any complaints regarding the ban have to be submitted precisely to those institutions which devised and impose the headscarf ban. Consequently, there is doubt about the impartiality of any agency which might evaluate complaints from women affected by the ban. In Turkey judges whose wives wear the headscarf have been subject to investigations,¹¹¹ and judges who gave judgments in favour of headscarfed litigants have been transferred as a punitive measure.¹¹² Even prosecutors were subject to investigation¹¹³ if they accepted plaint petitions submitted against university rectorates, which barred headscarfed students from the university. In such an environment hundreds of lawsuits were rejected and women subject to discrimination feel desperate and insecure when they consider applying to the courts for justice.

Legal actions filed and rejected concerning discrimination related to the headscarf demonstrate conclusively that women wearing the headscarf have no chance of winning when they appeal to courts in Turkey. Courts find it reasonable to dismiss a student from education even if they are wearing a wig instead of showing their own hair.¹¹⁴ The restrictive attitudes of the higher judicial authorities against the headscarf have meant that many women will not apply to courts when they face discrimination. In a field research report, 76.2% of women who had been victimized for wearing the headscarf said that they had not applied to the courts. When they were asked why they did not apply, 62.8% said the reason was because they could not trust the judicial authorities and 14.9% said it was because they knew they

¹¹⁰ Survey entitled ‘The Covered Reality of Turkey- Turkiyenin örtülü gerçeği’, Hazar, Istanbul, 2007

¹¹¹ The Chief Inspector of the Justice Ministry, 03 October 2000, numbered 152 and 03 October 2000 numbered 149, Two letters of the Chief Inspector demanding a defence from two separate judges.

¹¹² ‘Adalette Türban Suprizi- Headscarf surprise in the Justice’, Radikal, 12 December 1998, 09 June 2000, ‘The exile of Judge due to headscarf decision- Hakime ortu surgunu’, AKIT, 20 November 1999, ‘Judges who approve of the headscarf will be dismissed - Türban vizesi veren hakimlerin isine son’, The center of news in NTV Channel, 12.12.1998. “Türban Vizesi Veren Hakimlerin İşlerine Son”, NTV HABER MERKEZİ, <http://arsiv.ntvmsnbc.com>

¹¹³ General Directorate of Penal Affairs of the Ministry of Justice, Subject: Ex-public prosecutor of Yozgat, at present still relieved of duty, Resat Petek, numbered 2.89.7.225.1998 Explanation: After receiving complaint letters coming from the office of Chief of general staff, Union of Bars of Turkey, and Higher Education Council, an investigation was started, Consideration of the Ministry of Justice and letter of General Directorate of Punishments requesting a defence, were to delivered to Higher Board of Judges and Public Prosecutors.

¹¹⁴ The Administrative Court of Gaziantep, E: 2006/2756 and K 2007/ 1171, 07 December 2007.

would not get any solution.¹¹⁵ This obviously presents additional difficulties in developing statistical data.

There is not a single institution in Turkey to which women who wear the headscarf can apply and expect to recover their rights when they are subject to discrimination. The ban has been in place for so long that the energy to attempt to use official channels has lessened, and one of the consequences of this is that information about the real dimensions of this violation are suppressed.

IV- EVALUATION OF THE HEADSCARF PROHIBITION ACCORDING TO INTERNATIONAL LAW

On April 2004 at the 4th conference of the Parliamentary Union of the Organisation of Islamic Conference Member States (PUOICM), the then UN Secretary General Kofi Annan expressed the view that no institution or individual should insult or humiliate a religious symbol; human rights, freedom of speech and freedom of thought, conscience and religion are undeniable rights.

One of the most important parameters of freedom of conscience and religion is that a person should be able to fulfill the requirements of his or her religion. Article 18 (1) of the Universal Declaration of Human Rights includes the following provision:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Article 2 (1) of the UN International Covenant on Civil and Political Rights (ICCPR) states:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Under the covenant, states are required to respect all religious, political or other opinions of individuals or groups and to protect their rights.

Turkey, as a party to the ICCPR, acknowledges freedom of religion and opinion as a right and allows no restriction, even in time of emergency. During emergency situations, measures cannot be taken which exceed the limits indicated in Article 18.¹¹⁶

The 1981 Declaration of the General Assembly states in Article 1(1) that freedom of religion may be exercised “either individually or in community with others and in public or private”.

Furthermore, Article 22 of the Human Rights Committee General Comment states:

“The freedom to manifest religion or belief may be exercised “either individually or in community with others and in public or private”. The freedom to manifest religion or belief in

¹¹⁵ The survey titled ‘The Covered Reality of Turkey- Turkiyenin ortulu gercegi’, Hazar, Istanbul, 2007.

¹¹⁶ Freedom of Religion Report in Turkey,” Liberal Thought Association, 2005 p.126.

worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. *The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life...* “¹¹⁷

In this interpretation dated 20 July 1993, wearing special religious hats or scarves is considered as part of religious life which shall be protected.¹¹⁸

The same expression was emphasized in the Vienna Declaration of 25.06.1993:

“Freedom of expression of religion and belief shall include not only practicing particular rituals but shall also **include the freedom to practice religious traditions, fasting regularly on certain days, applying special diets (such as vegetarian diets), wearing special dress or hats or headscarves,** participating in certain rituals regarding different stages of life.”

Freedom of religion includes implementing religious activities but prohibits human rights from being abused because of religious activities. Applications restricting individuals from accessing education, medical care, or employment are contrary to Article 18 (2) of the ICCPR which states that:

“No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

The headscarf, as an expression of religion and conscience, should be respected as respect for fundamental human rights and freedom requires. According to texts regulating freedom of religion and conscience, this freedom not only protects the right to hold beliefs and conscious opinions, but also the freedom to fulfill, express and exhibit the requirements of one's beliefs in the course of individual and social life.

States are responsible for actively safeguarding the exercise of this freedom. **The right to demonstrate beliefs is protected by all national and international human rights documents along with the right to hold such beliefs.** Turkey claims to respect freedom of belief; however citizens' ability to manifest their religious beliefs are severely circumscribed. As a secular country Turkey should be expected to treat all women equally irrespective of whether they are wearing a headscarf or not. In the annual report of 2007 Amnesty International asserts that the government is responsible for protecting women's choices, rather than restricting them, and that the proper role of a government is to provide a secure environment in which women can make their own choices without fear of coercion or violence.¹¹⁹ If this is true, then Turkey has been violating its international responsibilities.

1. The differences in protection offered by the European Court of Human Rights (ECHR) and CEDAW, and the effects of this on the Leyla Şahin Case

¹¹⁷ General Interpretation N.22: Religion, Conscience and Expression (Articl.18):.30.07.1993. CCPR/C/21/Rev.1/Add.4, General Comment N:22 para 4.

¹¹⁸ UN Human Rights Council, <http://www.hrw.org/backgrounder/eca/turkey/2004>, 2004, p 33

¹¹⁹ Amnesty International, <http://thereport.amnesty.org>, 2007: 8.

It is claimed that students who wear the headscarf should not receive university education and that national and international authorities cannot change their policies as a consequence of the unfavorable decision given by the ECtHR. The ECtHR did refuse the application of Leyla Şahin, and the fact of this decision is a barrier for students who wear the headscarf in getting a university education.

First of all, the decision in the Leyla Şahin case is considered among the most controversial decisions by the ECtHR, mainly as the grounds for the decision were not existing realities but possible dangers which might emerge in the future. The court ignored current realities and overlooked a concrete violation of rights in the interests of concern about issues which might arise at an undefined future date.

The judgement given by the ECtHR on 19 December 1999 in the Şerif case included the following:

“The Court recognised that it was possible that tension was created in situations where a religious or any other community became divided. However, it considered that this was one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances was not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerated each other.”

In the Leyla Şahin case on 10 November 2005, Judge Tulkens who gave the sole dissenting opinion stated:

“Only indisputable facts and reasons whose legitimacy is beyond doubt – not mere worries or fears – are capable of satisfying that requirement and justifying interference with a right guaranteed by the Convention. Moreover, where there has been interference with a fundamental right, the Court’s case-law clearly establishes that mere affirmations do not suffice: they must be supported by concrete examples.¹²⁰ Such examples do not appear to have been forthcoming in the present case.”¹²¹

The ECtHR justified its rejection by finding that an administration has the right to decide on such a sensitive matter as the headscarf in fulfilling its responsibilities under the convention, that the Court’s jurisdiction in such matters is subsidiary and that “its role is not to impose uniform solutions”.¹²² The Court explicitly avoided making a decision which might constitute an example amongst candidate countries, and specifically mentioned the lack of a European consensus in this sphere. *However as Judge Tulkens expressed in her dissenting opinion, the practice within Europe with regard to university students wearing the headscarf is consistent, with the exception of Turkey.*¹²³ France has the strictest approach on this issue, in that there is a prohibition regarding religious symbols applied in state primary and secondary education institutions, but not in private schools or in universities.¹²⁴ Moreover there are private primary and secondary schools where students who wear the headscarf can receive an education, and there is no prohibition regarding the headscarf in universities.

¹²⁰ *Smith and Grady v. the United Kingdom*, judgement of 27 September 1999 § 89.

¹²¹ *Sahin v. Turkey*, Tulkens, para 5.

¹²² *Sahin v. Turkey*, Tulkens, para 2.

¹²³ *Sahin v. Turkey*, Tulkens, para 3.

¹²⁴ Arslan Zühtü, *Freedom of Religion in Europe Human Rights Protocol*. Ankara: Liberte Publication, 2005 p.73.

The Leyla Şahin decision can under no circumstances be used to argue that students who wear the headscarf must be prevented from receiving education, but it has never been made clear how such a decision is compatible with women's rights or the freedom of a woman to choose her own dress.

The Şahin decision *does not state that the prohibition of the headscarf is required in universities, only that it was a lawful parliamentary decision in Turkey*. The decision did not rule on whether wearing a headscarf is acceptable or not under the ECHR. Indeed the court has no such authority. No international conventions, including the ECHR, can be used to regulate what a person can or cannot wear,¹²⁵ and there are no measures prohibiting the headscarf in any European country.

If the court decides that a violation of a human right is contrary to the ECHR, participant countries have an obligation to eliminate this violation. *If the court does not make such a decision then member states are not required to take any action under the convention*. The member state's duty is to draw a circle of freedom that is as large as or larger than that drawn by the judgments of the court. If the court finds a certain limitation of a freedom appropriate, other member states are not bound to impose the same restriction. Again, to draw a broader line of freedom is possible with the free will of a country. The ECtHR made a decision in favour of the UK government, regarding Sikhs (whose religion requires them to wear a turban), that a legal requirement to use a helmet when they use a motorbike is not a violation of freedom of religion but a reasonable obligatory precaution in the interests of health.¹²⁶ In spite of this, the United Kingdom changed the law in favour of freedom of religion and exempted Sikhs from the obligation to wear a helmet. Thus the ECtHR's decision upholding the UK government's position did not prevent that government, at a later date, changing its policy about the wearing of helmets for Sikhs. Therefore, the ECtHR's decision in the Şahin case cannot be adduced as a legal requirement to maintain the headscarf ban.

2. Differences between the ECHR, CEDAW and the ICCPR

The fundamental aim of CEDAW is to eliminate ingrained gender prejudices and all traditional or other discriminative policies in order to established equality between men and women. The convention requires that every provisional or special measure in order to change social and cultural modes of behaviour trends is guaranteed within this convention, and is a binding document in the prevention of discrimination against women.

CEDAW differs from the ECHR in that it is a convention specifically for women, rather than being a convention that promotes the equality of men and women. All forms of discrimination are prohibited by this convention. The convention holds member states responsible for ensuring that women are able fully to benefit from economic, social, cultural, personal, political and other rights. The fundamental principle is that discrimination is unacceptable. CEDAW, based on principles of equality and nondiscrimination, defines discrimination against women, and requires countries to eliminate, by all means, any kind of discrimination against women without delay.

Discrimination is any measure which prevents or restricts women's ability to benefit from fundamental human rights, irrespective of their social position. Turkey is also obliged by this treaty to take precautions to prevent any type of open or hidden discrimination. Eliminating

¹²⁵ Pakdil Necdet; Law and Democracy Magazine, Ankara 2005, Law and Democracy Association, Year 1 Nu:10, p.44.

¹²⁶ X v. United Kingdom, N: 7992/77, 12.07.1978, DR 14, June 1979, p.234-235.

discrimination in legal texts alone is insufficient; the rights provided in writing must be transferred into implementation in real life.

Policies in Turkey restrict the education and employment rights of women who wear the headscarf for religious reasons and prevent them from being able to make their own choices. Prohibiting women from wearing the clothing of their choice has restricted their right to education, freedom of conscience, thought and religion, and their right to their personal lifestyle, so that the government has, in effect, been using its own authority to promote discrimination.¹²⁷ Treating women who wear the headscarf in a different manner, as the Turkish state has done, is a denial of all the fundamental civil rights principles, of freedom of religion and expression, of the right to education and employment, equality, tolerance and the rule of law.¹²⁸

Discriminative attitudes and policies directed against women who wear the headscarf contravene numerous UN conventions and resolutions. Turkey is also a party to the ICCPR, and is required to regulate its domestic legislation and policies in compliance with the United Nations Human Rights Council (UNHRC).¹²⁹

The ICCPR and ECHR define freedom of religion and opinion as absolute rights, thus they are non-derogable even under states of emergency.¹³⁰ **The UNHRC's explanatory views concerning Article 18, which concerns freedom of religion, emphasize that this right consists of a broad range of activities including the right to manifest one's religion or beliefs, including the right to wear special dress.**¹³¹

Since the UNHRC considers the freedom to express religion as including the right to wear special forms of dress, including the headscarf, it defines any policies that restrict this freedom as unlawful.¹³²

The UNHRC has already produced a decision regarding a female student who was dismissed from university because she refused to take her headscarf off. The decision states: *"The Committee considers that the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion. Furthermore, it considers that to prevent a person from wearing religious clothing in public or private may constitute a violation of Article 18 (2) which prohibits any coercion that would impair the individual's freedom to have or adopt a religion."*¹³³

As the above examples make clear, the Şahin decision has not released the government from its responsibility under CEDAW and the ICCPR to prevent discrimination against women who wear the headscarf.

¹²⁷ İHİK, <http://www.hrw.org/background/eca/turkey/2004>, 2004:6.

¹²⁸ Yayla, Atilla: www.hurfikirler.com/hurfikir.php?name=Kose_Yazilari&op=viewarticle&artid=47, 16.11.2005.

¹²⁹ Ekinci Abdullah: "Researches on Human Rights," 2005.

¹³⁰ "Report on Freedom of Religion in Turkey": "Relations between Religions: Seeking peaceful coexistence in a Secular and Democratic System," Liberal Thought Association, Ankara 2005, p 126.

¹³¹ UN Human Rights Council, "Article 18: The Freedom of thought, religion and belief," General Conclusion, 22, 30.06.1993.

¹³² Öktem, Akif Emre: "The Freedom of Religion in International Law," Liberte Publication, Ankara 2002, p. 6.

¹³³ UN, İHK, AUTHOR v Uzbekistan, Communication No. 931/2000, U.N. Doc. CCPR/C/82/D/931/2000 URL, www.unhcr.ch/tbs/doc.nsf/0/622eb4103da2c6a0c1256f9b004fd445?Opendocument, 18.01.2005, rg .5).

V. ASSESSMENT OF COMMON JUSTIFICATIONS FOR THE HEADSCARF BAN

Those who implement and defend the headscarf ban attempt to justify the measure in a variety of ways. Some claim that the headscarf is a reflection of a chauvinistic, male-dominated world; that women wear the headscarf only because of outside pressure; that granting the freedom to wear the headscarf would necessarily bring pressure to bear on women who do not cover their heads; that the headscarf is a political symbol; that women who wear the headscarf should obey the law and not attempt to disturb the existing system; or that the headscarf is a conservative reactionary response to secularism.¹³⁴

The main flaw in such reasoning is that it is based on the idea that there is a homogeneous category in society that includes “women who wear the headscarf.” Women who wear the headscarf are far from being homogenous; they have different lifestyles, passions, and self-perceptions. Even if women with headscarves agree on the same virtues of Islam, they come from diverse social classes, races, and ethnic backgrounds. They are not a homogeneous bloc and do not experience the wearing of the headscarf in the same way.¹³⁵

Research on women with headscarves has shown that these women have a variety of opinions on various different issues. According to “The Covered Reality of Turkey,” 3.2% of respondents thought that women with headscarves must be homemakers, 6% accept polygamy, and 3.9% of them believe that honor-killings are acceptable. On the other hand, 98.6% of respondents said that women have the right to choose their marital spouse, 85.6% said that women should work to be economically independent, and 87.5% believe that men and women have equal rights and responsibilities in the family. This research also shows that women wearing the headscarf are comfortable near women who do not cover their heads. While 12.4% of respondents responded that they only feel comfortable around women who wear the headscarf, 85.6% noted that their choice of clothing is not a factor in choosing their friends.

1. The Allegation that the Headscarf Ban Benefits Women

Those who support the ban on the headscarf argue that wearing the headscarf has nothing to do with freedom and that it makes those who wear it second-class citizens. They also claim that the headscarf limits a woman’s public life, and imposes on them a world-view which would actually deprive them of their freedoms. Thus, their argument is that the headscarf ban actually benefits women.

The classic orientalist view is that the headscarf is a symbol of the oppression of women.”¹³⁶ This approach declares that “the headscarf is intrinsically oppressive and that even though it is not imposed by the laws of the state, women are forced to wear the scarf as a consequence of indoctrination by their families and the cultures they were brought up in. These women do not have the intellectual capacity to question their own customs.”¹³⁷

¹³⁴ Özipek, Berat: “Within the Axial of Human Rights and Violation, A Sample Headscarf Ban Problem,” Uncovering Problem: Headscarf, The Headscarf Ban Problem in Turkey with Basic Dimensions,” AKDER Publication, Istanbul 2008.

¹³⁵ Bullock, Katherine: “Rethinking Muslim Women and the Veil: challenging historical and modern stereotypes, Karakalem Publishing, (Trans: Şeviker, Muhammet), Istanbul 2005, p. 113.

¹³⁶ Bullock, *ibid*, p. 110.

¹³⁷ Bullock, *ibid*, p. 152.

In fact, according to Fatima Mernissi “[the headscarf] can be interpreted as a symbol revealing a collective fantasy of the Muslim community; to make women disappear, to eliminate them from communal life, to relegate them to an easily controllable terrain, the home, to prevent them from moving about, and to highlight their illegal position on male territory by means of a mask.”¹³⁸

According to this analysis, there is actual pressure to cover up, and therefore an official pressure to uncover is justified. The main problem with this approach is that it confuses freedom with emancipation. In other words, it takes a particular limited concept of freedom, defined by a government or an individual, and sets it in the place of the legal sense of freedom, as a civil or political right. The meaning of freedom may be different for everyone; for some freedom is freedom in the sphere of production, for others it may be a freedom from compulsion, and for others it may be the freedom to live according to the ideas of a particular religion, ideology, or philosophy. It is possible to construe freedom in many different ways, but laws must be based on eradicating compulsions, and not on a particular government’s conception of emancipation. For some, wearing (or not wearing) a headscarf may seem wrong, bad, or harmful. While this viewpoint is entirely defensible, prohibition is not. People who think that the headscarf is good or bad must limit themselves to expressing their opinions and persuading (by philosophical and political means) the opposite viewpoint. In short, the problem is a confusion of different philosophical understandings of freedom, and the understanding of freedom in human rights literature. Different political and philosophical ideas about what “real freedom” is does not prevent the acceptance that individuals can exercise their rights, without having to obtain approval from others of all their free choices, so long as the rights of other individuals are not violated.¹³⁹

An individual would not wear a headscarf if she viewed that headscarf as a restriction upon herself. The headscarf may be a form of obedience, but it is obedience to religious commands not obedience to men. Also, circulation of the benefits of covering is not the same as compulsion.¹⁴⁰ No one can decide for another individual what is ‘good’ or ‘bad,’ especially with regards to religious matters.

The headscarf would be imposed under duress if it were insisted upon by a political system. As for Turkey, there is a perceptible pressure on women to uncover their heads. Wearing a headscarf brings many disadvantages, especially in Turkey. Women who wear headscarves are not only isolated from education and working life but are also belittled in society, thus it can hardly be said that there is social pressure to wear the headscarf the way things currently stand in Turkey. In Turkey, as in many Muslim countries, headcovering symbolizes backwardness and lower class status, meanwhile the mainstream media constantly promotes the ‘modern and contemporary’ look. Consequently a woman’s decision to cover is indeed a difficult one. A woman will be confronted with grave discrimination and prejudice as soon as she covers her head, as well as a degree of isolation from the mainstream of society. In

¹³⁸ Mernissi, Fatima, “Virginity and Patriarchy”, in *Women and Islam*, (Ed.: Alhibri, Aziza), Oxford, UK: Pergamon Press, 1982, p. 189.

¹³⁹ Özipek, Berat, *ibid.* : “İnsan Hakları Ve İhlaller Ekseninde Bir Örnek Başörtüsü Yasağı Sorunu”, “Örtülemeyen Sorun: Başörtüsü, Temel Boyutlarıyla Türkiye’de Başörtüsü Yasağı Sorunu”, İstanbul 2008, (“*A sample of the headscarf problem within the framework of human rights breaches. ‘Uncovering the problem: the fundamental dimensions of the headscarf problem.’*” İstanbul 2008.)

¹⁴⁰ Bullock, *ibid.* p. 153.

summary, what pressure there is exists in the opposite direction; that is, duress not to wear the headscarf.

The main issue in Turkey is the ban against the headscarf for university students and public officers/workers. Even though it may be claimed that there would be some social pressure imposed by the families of uneducated women who are unable to express themselves, this would not apply to independent-minded university students and civil servants. It would be considered insulting to these women who have excelled to the level of a university education, or have met the strict requirements necessary to become a civil servant to claim that they have been “brainwashed” or “cannot stand up to cultural pressure.”

In a study conducted by TESEV, the following question was asked: “What would you do if your social circle took off their scarves?” 87.7% of respondents answered “I would still keep my scarf on” and 3.6% of respondents said “I would take my scarf off.”¹⁴¹ This suggests that even if the hypothetical influence were removed, most women would still keep their scarves on. In reality, restricting the economic independence of women who wear the headscarf actually increases their susceptibility to social and familial pressure.

If rural women are covering their heads due to external pressure, depriving them of an education and alienating them from society at large will only increase that pressure. **If it were true that social pressures and patriarchal structures apply pressure on women to cover and “be more traditional,” the headscarf ban greatly increases such pressure. To continue this ban is to tell women who wear the headscarf: “Do not go school and get an education, do not work, just stay at home”.** Clearly, women who are cut off from higher education, who cannot work, and who are deprived of economic independence are likely to lack the strength to resist external pressures. Following the headscarf ban in Turkey, women were looked down upon as weak beings that do not possess the ability to choose how to dress themselves; beings who were told whether or not they could uncover their hair. Women are now being told to uncover their heads if they want to work or go to school, on the basis of an assumption that women with headscarves have no personal freedom (as defined arbitrarily by outside agents). The ban is being imposed by privileged elites who believe that they have the right to speak in the place of headscarfed women, and in doing so trample the dignity of all women underfoot. Ultimately women decide to cover their heads of their own accord. They do not need anybody to dictate truth and freedoms on their behalf.

2. The allegation that allowing freedom in choice of clothing will have negative effects on women who do not cover their heads and will bring about regime change

In the absence of any concrete and current grounds for justifying the headscarf ban in Turkey, commentary tends to raise hypothetical scenarios. A common claim is that if the headscarf is allowed on university campuses, the basic character of the republic will be irrevocably damaged and Turkey will transform into Iran. However, Turkey may be close to Iran but it does not necessarily mean that Turkey will experience the same issues.

¹⁴¹ “Değişen Türkiye’de Din, Toplum ve Siyaset,” [Religion, Society and Politics in a Changing Turkey] TESEV, Çarkoğlu/Toprak, 2006:64, www.tesev.org.tr/etkinlik/Final%20Rapordin_toplum.pdf, Interviews were carried out with 1492 people over the age of 18 representing a cross-section of Turkey’s urban and rural population, 2006.

Statements such as “the state’s ban of the headscarf is justifiable in order to prevent the introduction of a regime that forces all women to cover their heads, and to ensure that there is no infringement on the rights of women who do not cover their heads” **exploits people’s fears**. Existing rights are eroded on the basis of threats and warnings about the future. **Unsubstantiated and hypothetical allegations made against the headscarf do not alter the reality that today the rights of women with headscarves are being violated.**

TESEV’s research paper entitled “Religion, Society and Politics in Changing Turkey” concluded that danger of any introduction of Islamic Law, or Shari’a, does not exist in Turkey. TESEV also notes that this fear is only held by a small subset of people who are trying to legitimate the ban.¹⁴² TESEV’s work makes it clear that there is no chance, and little desire for Islamic Law in Turkey. Religion-based projects and political parties are often not well received in Turkey and the interference of religion into matters of the state or vice versa is not welcomed. Thus the ban cannot be justified by reference to future possible dangers.

It must not be forgotten that students with headscarves were able attended universities for a considerable period of time prior to the introduction of the ban in 1998. There were no occurrences of “fundamentalist activities” at universities that might have suggested that Turkey was transforming into Iran, or becoming “Malaysianized.”

During the ban’s February 28 process [the period following the military actions beginning on 28 February 1997 to turn the religious-flavoured party then in power out of government, a period which was marked in particular by measures taken against women who wear the headscarf], it was claimed without any concrete evidence that headscarfed students in education undermined the system and interfered with education, and infringed the “basic principles of the Turkish Republic.”

When wearing the headscarf was tolerated at universities, there were never any negative episodes associated with clothing. After the headscarf ban began, choice of clothing has always been on the agenda and has been a constant source of problems. In numerous surveys more than 70% of people respond that the ban should be revoked.¹⁴³ The historical facts invalidate the argument that the presence of students with headscarves within the educational system has had any negative impact on students who do not wear the headscarf. To suggest

¹⁴² The majority of the community is religious, and religiousness has increased according to research carried out seven years ago. Of course, being religious implies substantial tolerance towards people who chose different lifestyles. Moreover, respondents generally supported the republican reforms, believing that the changes had advanced society. (See “Religion, Society, and Politics in a Changing Turkey,” TESEV).

¹⁴³ According to research by TESEV, 67.9% of respondents believed that “Female civil servants should be allowed to cover their heads if they wish.” 71.1% believe that “Female university students should be allowed to cover their heads if they wish.” A number of surveys conducted throughout Turkey have shown that more than 70% of the public are opposed to the ban on university students and civil servants wearing the headscarf. (Benli, Fatma, “Evaluation of the Headscarf Ban in the Light of Surveys and Reports of Human Rights Organizations.” *Köprü* [Bridge] magazine, p. 84, 2003) To demand 100% public approval before headscarfed women are relieved from discrimination and permitted to go shopping, go to the hospital, and receive an education runs counter to official statements about protection of human rights. Another survey stated that 10% of respondents believed women should not be admitted into hospital for treatment while wearing the headscarf, and 5% believed that women should not be permitted to go shopping while wearing the headscarf. (Turkish Social Economic and Political Studies Foundation [TÜSES], “Research Series on the Ethnic/Religious Identities and Political Orientation of Political Party Supporters and Electors in Turkey”).

that university students or public officers might influence each other's clothing in any undue manner is unthinkable.

3. The Allegation that the Headscarf is a Political Symbol, and that there is a distinction to be made between the Headscarf and the Turban

There are allegations that there is a difference between the headscarf and the *turban*, and that the *turban* should be banned because it has become a political symbol. In reality, insisting on differentiating 'turban' from 'headscarf' actually only sets a distinction between the describer and the woman described, and places the person making the distinction on one side of an argument. It is important to note here that women who actually wear the headscarf do not generally distinguish between the headscarf and the *turban*. The main users of the word "turban" are the mainstream media and supporters of the ban, who associate the word "headscarf" with a woman who may be villager, uneducated, or elderly, and the word *turban* with a woman who is young, educated, and urban. The concierge's wife is a 'woman wearing a headscarf,' but if she is the president's wife she is labeled as a 'woman wearing the *turban*.' An elderly grandmother and housewife is a 'woman wearing a headscarf,' but her grandchild who wants to achieve a higher level of education is stigmatized as a 'woman wearing a *turban*.' **Women who do not fit the imagined role of a lower class woman described by proponents of the ban are labeled as 'women wearing the *turban*.' There is an identifiable push to stigmatize these women so that they are viewed as aliens rather than integrated members of society.¹⁴⁴ Since the ban applies to all women wearing the headscarf, regardless of age, class, or anything else, it shows that in reality, there is no difference between the headscarf and the *turban*.**

It cannot be claimed that millions of women wearing the headscarf do so for 'political aims,' nor can it be claimed that all of these women possess the same thoughts and viewpoints. In the survey entitled 'The Covered Reality of Turkey,' out of 1,112 headscarfed women who participated, 97.7% stated that they wear the headscarf to comply with religious doctrine. These results strongly challenge allegations that the headscarf is a political symbol and therefore deserves to be banned. Nevertheless, from a human rights perspective, women should be entitled to wear a headscarf for any reason they choose - including political ones - and the law should respect their personal preferences.

Surveys show that for the great majority of Muslim women wearing the headscarf, the headscarf is a personal preference as a manifestation of their sincere beliefs, worn to comply with religious doctrine. The allegation that 'the headscarf has become a political symbol and should be banned' is contrary to the realities revealed by the survey.¹⁴⁵

In the survey entitled "Society, Religion and Politics in a Changing Turkey," women were asked "Why do you wear the headscarf?" The following answers were recorded:

- I wear the headscarf because it is an obligation in Islam, 71.5%

¹⁴⁴ According to this analysis, a woman who buys things from the street market is labeled as wearing a headscarf, while a woman who shops in a luxury shopping centers is labeled as wearing the *turban*. One prominent actress complained "They come to theaters in order to raise the profile of their *turban* in society." The main problem with the headscarf issue began when women wearing the headscarf were no longer confined to villages and they or their husbands found urban employment and achieved higher status in society. People who support the ban frequently mention to the media that "The headscarf and the *turban* are different. For example my servant wears a headscarf." Such examples are far from coincidence and are representative of the views of many proponents of the ban.

¹⁴⁵ Carkoglu/Toprak 2006.

- Because it indicates that I adhere to a certain political view, 0.4%
- Because my husband/fiancé wants me to wear it, 0.9%
- My family (apart from my husband, father, mother, brother or sisters) wants me to wear it, 0.2%
- I wear it to move comfortably in society, not for my family, 1.2%
- Everybody in my social circle wears it, I cannot be the only one who does not wear it, 7.6%
- I think that wearing the headscarf is a condition for being a virtuous woman, 3.4%
- I did not wear it when I was young, after getting older I started to wear it 7% (in 1999)
- Wearing the headscarf is part of my identity. If I did not wear it, I would feel naked in public 3.9%

For most women who wear the headscarf, the scarf is not a religious symbol. They wear the headscarf to fulfill a religious obligation, not to indicate their religion or their religiosity. Muslim women wear the headscarf because they believe that God commands them to do so, not because they see it as a symbol of their piety, their political views, or their ideology. **Similarly, a person who fulfills another obligation of religion —by praying five times daily, for example—does not do so in order to show that they are a Muslim, or to distinguish herself from those who do not carry out such observances.** People who do not carry out some religious observances may well view practices carried out by others as a symbol, but the fact remains that the person carrying out the religious obligations does so not symbolically or gesturally but because they are required by their religion.

Moreover, if wearing a headscarf was a symbol, it would suggest that *not wearing the headscarf* is also symbolic of a particular lifestyle, and that all women who go bareheaded are engaged in a lifelong demonstration on behalf of that lifestyle.

Groundless assertions that the *turban* is a political symbol must not be permitted to become grounds for discrimination, or for banning the headscarf.

4. The Allegation that the Principle of Secularity Necessitates a Ban of the Headscarf

It has been asserted that the secular character of the Turkish Republic makes it necessary that women in the public sphere must go with their heads uncovered. But in a fully developed and truly secular nation, the state should protect women who wear the headscarf and those who do not equally. *In a state governed by the rule of law, people have the right to freely choose whether or not to partake in religious duties.* Under contemporary structures, the state is not required to protect religion. However, states must protect freedom of religion and belief, and must prevent situations in which individuals who choose to comply with religious duties are deprived of their rights. A secular state's responsibility is to ensure that all individuals can enjoy their rights freely, with equal treatment for who believe in a particular religion and those who do not, and for those who fulfill their religious duties and those who do not.

Human rights literature describes subscribing to a particular religion, belief, or school of thought, and arranging one's life accordingly as the 'right to be different.' Every society contains inevitable ethnic, cultural, and religious differences. Differences distinguish one individual from another; equality requires respect towards those that are different.

In a society where everybody is free to choose their clothing, the unique exception of a ban on covering the head and neck creates discrimination against those considered to be different. It

is not rare in Turkey to have individuals with different religious views and different dress preferences within a single family in the same household, and people with different religious views manage to live together in all areas of society. In fact, the public sphere only gains meaning insofar as it offers a space in which people can live and express themselves as they are, without expunging every trace of diversity.

The principle of secularism requires that states treat all religions, beliefs, philosophies, and ideologies equally without supporting any one of them over the others.¹⁴⁶ Secular states have to be impartial and treat all their citizens equally. Impartiality means that the state should not discriminate positively or negatively, on the basis of religion.

The principle of secularism is described in the explanatory justification of Article 2 of the Turkish Constitution as follows:

“The principle of secularity does not require individuals to be irreligious, but rather it means that anyone can adopt any religion, belief, or sect, can perform their acts of worship freely, and no one can be treated differently from other citizens due to their religion or beliefs...”

In a secular state, the consequences for someone who chooses to wear the headscarf or to go bareheaded must be the same. The Turkish Constitutional Court’s interpretation of secularism does not take the place of the explanatory justification of the Constitution itself.

All international human rights treaties agree that women are born as equal and free individuals with regards to rights. Turkey is a democratic republic governed by the rule of law and based on human rights, and therefore the State should indeed treat all women equally without discriminating between those women who do or do not wear the headscarf.

The United Nation’s Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, dated 25 December 1981, specifically orders these matters. According to Article 2 of this declaration, “no one shall be subject to discrimination by any state...on the grounds of religion or other belief”, which is described as meaning “any distinction, exclusion, restriction or preference based on religion or belief”.¹⁴⁷

The freedom to choose one form of clothing over another is an aspect of freedom of thought, conscience, and religion. The covering of the head and neck is a manifestation of the practice of religion within the context of freedom of religion and belief. *The existence of the freedom of religion and conscience requires that people can freely practice their religion, and that practicing should not expose them to any discriminatory treatment.*

VI. CONCLUSION AND EVALUATION

The United States Supreme Court Justice Louis Brandeis, in a judgment in 1927 stated that “Men feared witches and burnt women.” While problems of women’s rights, modernization, human rights, and democracy are being discussed throughout the rest of the world in the 21st century, Turkey, for the last ten years, has been preoccupied with whether women with headscarves have the right to enter higher education institutions. The talk is of progress and

¹⁴⁶ Arslan Zühtü, 2005 p. 87.

¹⁴⁷ UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, dated 25 December 1981, Article 2(2).

the contemporary world, but what is actually happening is that women who wear the headscarf are being excluded from society, and while the arguments about the headscarf/*turban* drag on, no serious steps are being taken about women's existing and all-too-real problems.

International indexes of gender equality place Turkey well down the field, and show that women in Turkey face considerable hardships in all areas of life (education, work, family life, health etc). Research in these areas shows that Turkey provides for equality on paper in the form of legislation, but such laws are not reflected in practice. The prejudices and discriminatory treatment revealed by Turkey's low ranking on gender equality are also perpetuating violence against women. **Discrimination against women who wear the headscarf aggravates this situation in Turkey.** Placing obstacles before women based on their clothing prevents them from becoming financially stronger and disables them in solving their other problems.

As many as 62% of women wear the headscarf in Turkey, and there is no question that their systematic exclusion from social life and discrimination is contributing to Turkey's low ranking in gender equality. Women who refuse to uncover their heads are excluded from higher positions, resulting in their lower participation in the labor force, with few alternatives beyond day labour in agriculture.

Discrimination against women wearing the headscarf decreases their ability to become a part of society, hinders their personal development, prevents them from advancing their cultural knowledge, restricts them from obtaining financial independence, and puts a major obstacle in the way of their empowerment and advancement. **The ban not only excluded women from higher education, but also ended their professional and political lives, creating a grave inequality with respect to access to services, resources, and opportunities.** The ban and its significant life impacts on women wearing the headscarf made them feel as if they were being sidelined by the state.

However, it is the state's responsibility to ensure that women, fully and equally benefit from all human rights and essential freedoms, and it is the state's responsibility to take all necessary and effective measures to prevent the violation of these rights and freedoms. Turkey is also bound by the Beijing Declaration which requires signatory governments to ensure the empowerment and advancement of women, promote equality of the genders, and include social gender perspectives into policies and programs. The Beijing Declaration also requires that governments form Platforms for Action. One of the main objectives of these platforms was determined to be the empowerment of women, and the ending of all discrimination against women.

A government that excludes alternative voices cannot be called a democracy. **In no other country has a headscarf ban been implemented as widely and rigidly as that currently imposed in Turkey. With the exception of Tunisia, no other country requires women to uncover their heads on state property and even in the grounds of state property.** In France, with its rigid implementation of secularism, the ban was implemented only in state primary and secondary schools. In some provinces of Germany, women wearing the headscarf were banned from teaching in state schools.¹⁴⁸ On the other hand, there were court decisions

¹⁴⁸ The Federal Constitutional Court in Karlsruhe City allowed German citizen Ferešta Ludin, of Afghan origin, to work at a school wearing the headscarf on the grounds of the lack of any regulation that bans the headscarf in Baden-Watember Canton, Baden-Warttemberg, 11 November 2003. Look at [Mustafa Özcan](#),

such as that which found that firing a nurse from a Church Hospital for wearing the headscarf was an act of discrimination.¹⁴⁹ Not employing a hairdresser because she wore a headscarf was accepted as a legal ground for compensation.¹⁵⁰ A headmaster in Switzerland was fined and punished with expulsion from his post because he did not hire a woman simply because she wore the headscarf.¹⁵¹ In the United Kingdom, women wearing the headscarf are allowed to become police officers, and appropriate uniforms were designed to accommodate this. Scandinavian countries have no ban on wearing the headscarf, and public and private institutions provide headscarves with institutional logos to those workers who cover their heads. Debate in Holland and Spain relates to the use of the ‘veil’ to cover the face.¹⁵² Military authorities in Denmark stated, “Our soldiers who would wish to wear a headscarf can do so.” Some administrations do take issue with the use of the ‘burka,’ but even here there are practices that permit veiling the face. A driver in Switzerland who refused to allow a woman with a burka to board a bus was subsequently fired.¹⁵³ A woman wearing a headscarf in Belgium was elected to the General Assembly.¹⁵⁴ A woman in Spain was elected as a Member of Parliament.¹⁵⁵ It was confirmed that women wearing the headscarf could be members of the General Assembly of Denmark, and that they could give speeches in meetings of the Assembly.¹⁵⁶ There is a female lawyer wearing a headscarf in Holland.¹⁵⁷ It has been confirmed in the United Kingdom that a female lawyer wearing a veil covering the face could work.¹⁵⁸ A 15-year-old girl wearing the headscarf was elected to play in the Danish National Football team.¹⁵⁹ **It would be impossible to even imagine such things happening in**

Avrupa'da Tesettür Tartışmaları, <http://www.biriz.biz/tesettur/tes9.htm>

¹⁴⁹ “Approval from the German Court for headscarved nurse.” ZAMAN, 20 June 2008, <http://www.zaman.com.tr/haber.do?haberno=704403>, while students are obstructed from going to university wearing the headscarf in Turkey, in Germany the Köln Industrial Relations Court decided that a nurse could work with the headscarf. The court stated that although the headscarf was a sign of Islam, it was no obstacle for working in an ecclesiastical hospital. Zaman, 20 June 2008.

¹⁵⁰ “Fined in England for discrimination against the headscarved”, STAR, 17 June 2008, in England a hairdresser was condemned to pay compensation of 400 sterling (1000 New Turkish Liras) to a Muslim girl who they did not want to employ because of the headscarf. The court which gave damages for emotional injury, did not recognize the defense of Sarah Desrosiers, the hairdresser. Her defense was that workers in a hairdressers which gives modern haircuts, should encourage the clients with their hair styles. STAR, 17 June 2008, <http://eski.stargazete.com/index.asp?haberID=164481>

¹⁵¹ http://www.do.se/t/Page___1457.aspx.

http://www.do.se/t/Page___1145.aspx.

http://www.do.se/t/news___1032.aspx.

http://www.do.se/t/Page___1145.aspx.

¹⁵² [Http://yeniiasya.com.tr/2008/02/25/haber/butun.htm](http://yeniiasya.com.tr/2008/02/25/haber/butun.htm).

¹⁵³ http://www.haber7.com/haber.php?haber_id=236785.

¹⁵⁴ (My voters elected me while knowing my appearance), Vakit, 03. December 2006.

¹⁵⁵ Salima Abdeslam, 06 November 2006, <http://www.tumgazeteler.com/haberleri/salima-abdeslam/>

¹⁵⁶ ‘Permission for headscarf in meetings of General Assembly of Denmark’, Zaman.09.04.2008

<http://www.zaman.com.tr/haber.do?haberno=675293>

¹⁵⁷ ‘Holland allows women wearing headscarf to work as lawyers’, Zaman, 28 August 2002, <http://arsiv.zaman.com.tr/2002/08/28/haberler/h7.htm>

¹⁵⁸ Muslim women should be allowed to wear the veil in British courts, senior judges said. Muslim women should be permitted to wear the full facial covering, known as the *niqab*, provided that it does not interfere with the administration of justice, the Judicial Studies Board’s Equal Treatment Advisory Committee said. “Veil is allowed for Muslim lawyers,” Hurriyet, 10 November 2006, <http://www.hurriyet.com.tr/dunya/5412446.asp?m=1>

¹⁵⁹ 15 year- old girl in National Team of Denmark, 03 June 2008, www.gazetehayat.com/haber/Danimarka-da-15-yasindaki-basortulu-kiz-milli-takimda/53122.

Zeynep, the first player in the Denmark National Football Team to wear the headscarf said “I was expecting not to be chosen due to my headscarf. Actually, this decision is important for me because it

Turkey, where women who wear the headscarf have to rule out such lofty goals from their lives. However in Turkey there is no social reason to require headscarfed women's abandonment from work and education. Much research which has been carried out shows that there exists no problem at present in society between women who cover their head and those who do not.

The problem in Turkey is that the state's official ideologies and 'modernisation' projects intrude into society and into the lives of individuals. Public comment justifying the unequal treatment towards women introduces a party political flavour to the issue.¹⁶⁰

At times the headscarf debate has come close to asking whether the fundamental liberties actually apply to women who wear the headscarf, as if we have been transported back to the medieval period, discussing whether women have souls or not. The most hotly argued topic in Turkey over the past ten years has concerned itself with whether, in the 21st century, an individual can enter a building or not. In this way, the perpetuation of the ban is continuously feeding debate and provoking tension.

Over the past decade, the Turkish state has spent much time and energy trying to ensure that women in the public sphere have a modern, bareheaded, appearance. If the authorities had spent one tenth of that energy and time bringing solutions to the long list of women's real problems, the status of women in Turkey would be much better today—problems such as that only one quarter of women are employed and have poor access to health insurance or a pension, that more than five million women are illiterate, that although one in three Turkish women have been exposed to violence there are only 38 shelters for women, in a country with 81 provinces and a population of 72 million.

Since there will always be women who prefer to wear the headscarf in Turkey, the ban must be lifted now, without further waste of time and energy, and further cost in personal misery.

The ban not only significantly impacts on the lives of women wearing the headscarf but also impedes the overall development of Turkey.

Ensuring the enjoyment of human rights for all women and the establishment of genuine equality between men and women in Turkey will be promoted by ending discrimination against women wearing (or not wearing) the headscarf, not by depriving women of their rights through this ban. Women's rights must be advanced and protected. In order to ensure the implementation of these rights in real life, discrimination based on clothing must be eliminated. In the 21st century, we are campaigning to provide women with the legal, political, and social rights and freedoms to which they are entitled. The elimination of the oppressive bans on women's clothing, and the introduction of effective policies for solving the real problems they face will be major steps to achieving this goal.

showed me that they treat me not according to my belief or appearance but according to my playing abilities. I love football very much, but my headscarf is a part of my identity and is a religious obligation.”

¹⁶⁰ Liberal Thought Association, Ankara 2005, p.25.

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VIII- ABBREVIATIONS

ECHR	: European Convention on Human Rights
ECtHR	: European Court of Human Rights
ESI	: European Stability Initiative
CEDAW	: Convention on the Elimination of All Forms of Discrimination against Women
HAZAR	: Hazar Education Culture and Solidarity Association
HRW	: Human Rights Watch
ICCPR	: International Convention on Civil and Political Rights
KSGM	: General Directorate on the Status of Women
N	: Number
OECD	: Organisation for Economic Co-operation and Development
ÖSS	: University Entrance Exam in Turkey
UN	: United Nations
UNICEF	: United Nations Children’s Fund
UHHRC	: United Nations Human Rights Committee
TESEV	: Turkish Economics and Social Studies Foundation
TÜSES	: Turkish Social Economic and Political Studies Foundation
YÖK	: Turkish Higher Education Council