

# THERE IS NO LIMIT IN THE ILLEGALITY OF THE HEADSCARF BAN

(I)  
"1998 - 2004"

**2004-ISTANBUL**

Fatma Benli  
(Signature)Attorney At law)

The headscarf ban, which has been practicing by progressive stages since the year 1998 in Turkey, has been continued its existence in all areas of the life as enlarging the scope of, day by day. The ban is not based on any provision in the Constitution or law article, just supported with only interpretations. However, the administrative practices concerned with headscarf have resulted with not the interruption of student's education, the disqualification of officials from holding offices, even expelling suspected persons from the court. In spite of the fact that even six years old girls can choose their clothes by selves, women in Turkey are undermined in a position that they could not give the decision of covering their hair or uncovering by their selves. As every human being can decide their hair' s length, shape or colour, the necessity of deciding whether they will cover or uncover their hair by their selves is not overrated. When the women cover their heads.

Not letting the university students into their schools, the dismissal of officials who has been covering their heads have become usual state after all in Turkey. **BECAUSE OF THE FACT THAT THIS ARBITRARY PRACTISE HAS NO LEGAL BASIS, IT HAS ALSO NO LIMIT.** By this reason, ban has been practicing in forward dimensions as sometimes forcing the mental rules. **For example, some students with scarf were stacked in the hall, an official wearing a wig was dismissed from her job, an 71 years old cancer portent was asked to give picture without scarf.**

**The study, which we represent in attachment, consists of compilation of extreme practices relating to not doing any limitation on illogicality and illegality towards the ladies who wear headscarf.** The ban concerning with headscarf' s legality has not been discussed or routine existing violations of rights in Turkey have not been stated. In spite of this, thirty extreme events, which let person say "this could not have been done", are presented with their documents, the cases filed about this and the shortly briefs of the events without making any comment to your information. With this study, we intend to show that the practice can go even to which frontiers when any illegality has been allowed in any way and clothing ban has been damaging really the principle of Lawful State among the individual grievances.

We, as Woman Rights Association Against Discrimination (AKDER), think that it is necessary to inform every people who are interested in human rights about violation of women rights resulting in serious consequences for ten thousands of women and families in Turkey. The headscarf ban's actualizations in dimensions, which cannot be explained not only illegally but also illogically, oblige us to do this study. We as women, represent to you thirty events, in the Turkish and English case briefs related to that there is no limit in the illegality of the headscarf ban with the demand of not limiting the rights of people due to their clothes. 15/05/2004

Organization for Women's Rights Against Discrimination  
(AKDER)  
Executive Board  
Dr. Havva Kaplan

## CONTENTS

- 1\*** Students wearing headscarves being locked inside the lecture room when they refused to leave the lecture room after the lecture being cancelled.
- 2\*** Driving License photos not being accepted if a headscarf is worn in the photo, and dismissing a learner from a private course for wearing a headscarf.
- 3\*** The removal of appendix 17th article of Higher Education Laws, which contains freedom of clothing, from "The Higher Education Board and Istanbul University Rules and Regulations" .
- 4\*** The requirement of a picture without a headscarf in the case of Medine Bircan - a 71 years old cancer patient.
- 5\*** The refusal of asthmatic patients to attend a seminar about asthma.
- 6\*** Excluding the suspect with headscarf from the hearing room on grounds of her attire, without being able to use the defense right.
- 7\*** According to 11 January 2001-dated decision of Higher Education Council, prohibition of being in campuses for female students with a hat or wig which can be perceived as an ideological aim and for male student having beard which can be perceived as an ideological aim.
- 8\*** The write of Higher Education Board in which it is written that going to the university with wearing headscarf is a disciplinary offense that requires being removed from Higher Education Institute and the requisition by HEI people living lodging to obey the same ban.
- 9\*** The dismissal of a teacher, who had been employed for 12 years, because she violated the formal dress code by wearing a wig.
- 10\*** Not to accept Omani lecturer, who was invited to rule the panel by the Istanbul University, to the campus because of her head has been covered.
- 11\*** Not letting a blind president of an association into their association building, which is within the borders of the university, by the reason of wearing headscarf.
- 12\*** A lecturer from the University of Istanbul was dismissed from his job due to the fact that he brought his mother-wearing scarf to university campus on the same day.
- 13\*** Forcing a 51 years old women to give a photo without headscarf or " a photo in which the headscarf was tied under the chin and the hair's bottom could be seen on condition that the person is older", to take a card to use social facilities.
- 14\*** Application of the head must be uncovered at Imam Orator High School (a professional high school), to put handcuff on high school students who don't cover their head, make them to get on the police car, take them far away district from their school, to uncover a student by police force
- 15\*** Making an inquiry about a lawyer by the reason of that due to an Official Institution of the State' s invitation, she attended to a meeting done for a draft bill related to women as being with headscarf and giving her penalty as suspending from job for three months by the reason of that she has been in the bar room with head scarf.

**16\*** A male lawyer was asked to defend himself by the reason of that he has been violated the professional rule related to be uncovered head.

**17\*** The suspension of a university student due to a newspaper report which stated that she had attended an international conference and there she had declared that she could not attend school because of her headscarf.

**18\*** Removing the name of a student from the list of students who has right to take exam before the exam date without knowing whether she would come from exam wearing headscarf or not.

**19\*** The appointment of a civil servant to another city as a punishment as a result of the way that his wife dressed.

**20\*** An appointment, as a punishment, of a civil servant just because of her wife`s preference of wearing headscarf and their life style and the legal approval of this punishment by decision of Council of State (Council of State, 5th Department 1999/ 4112 basis, 1999/ 4325 Decision)

**21\*** Judges who made decision in favor of applicants with headscarves were sent to different places, by the reason of that "her wives' wearing clothes which are not modern" starting inquiry about the judges whose wives wear headscarves.

**22\*** The awards, about the cases with different subjects suited by the plaintiffs who cover their heads, are all same word to word and are sent to a lawyer who is not related to the case as printed writing to plaintiff' s counsel.

**23\*** Administrative Court's approval of dismissal punishment of a civil servant because Administrative Court's explanation that " She is not sincere about regulations of clothing because she wears a wig."

**24\*** The Attorney General of Republic, thought of that was a crime not to enter the universities students in campus opened a public suit, because of General Staff complaint had a investigation and sent a city as a simple prosecutor.

**25\*** Punishing a 6<sup>th</sup> year Medical student by removal from school for one semester because he has beard.

**26\*** Expelling a civil servant, who has been a teacher for 19 years, because she wears headscarf and without taking into consideration the health reports that show the teacher suffers from cancer.

**27\*** Some civil servant with headscarves were sued in criminal court, and asked 3 years prison sentence. Although some judges didn't give any sentence, they were alleged several times by Hospital Administration.

**28\*** The request for taking education at private course with headscarf and asking for head-uncovered photographs from the students who take the course.

**29\*** The decision, which was made in conformity with necessary procedures, that approves a civil servant to become staff was revoked on the grounds that the civil servant wears headscarf.

**30\*** Punishing a civil servant firstly by dismissal from the civil service post on the grounds that she would wear headscarf and secondly by expelling from the public service.

**1 \* SUBJECT** : Students wearing headscarves being locked inside the lecture room when they refused to leave the lecture room after the lecture being cancelled.

#### **THE EVENT**

- ❖ Reyhan Gök is a fourth year student at the Medical Faculty of Istanbul University.
- ❖ The subject wears the headscarf that covers her head. Up to her fourth year she took her education freely facing no problem. It was never mentioned that she was violating the regulations.
- ❖ In the years 1998-1999 the wearing of a headscarf started to become a problem in the university. The newly appointed rector published a circular, which ordered the students with headscarves not to be accepted to the lectures. **(Annex 4)** The mentioned student continued going to the university in order not to fail due to attendance. She was sometimes accepted to the lectures and exams, and sometimes was taken out forcefully or was recorded as "absentee", even though she was present.
- ❖ On the 26th of May 1998, she went to the Cihat Abaoğlu lecture room where she was registered to be. She sat with her friend in the classroom.
- ❖ The lecturer cancelled the lesson with the reason that there were students wearing headscarves. (There is no legislation requiring this, only the Rector's orders). The lecturer asked Reyhan Gök to come out of the lecture room to which she responded by saying she would wait for the next lesson in the lecture room and stayed. The lecturer asked the security to lock the door leaving the students inside.
- ❖ The security officials switched off the fuse, cutting off the light and locked the door saying "stay here till the night and learn your lesson."
- ❖ As a result Reyhan Gök was confined in a dark lecture room, with three other girls who also wore headscarves
- ❖ The notary public from the school recorded this which led to the door being opened and the students being let out. In the minutes taken by the notary public it was recorded that "plain-clothes" policemen and security officials were at the door and after the students being taken out from the lecture room, the doors were locked again on the lecturer's order.' **(Annex 1)**
- ❖ Reyhan Gök pressed charges against the lecturer who gave the instruction for the door to be locked. **(Annex 2)**
- ❖ The 4th Fatih Court of First Instance ruled that the students were indeed locked in the lecture room. However, as there was not enough evidence that this was carried out by the accused, the case was rejected. **(Annex 3)**
- ❖ Therefore, despite the notary public's confirmation, no action was taken.

**CONCLUSION** : The students received no compensation for being locked in a dark lecture room, despite the fact that for four years they paid for and received education without being warned of the consequences of wearing a headscarf.

**2\* SUBJECT** : Driving License photos not being accepted if a headscarf is worn in the photo, and dismissing a learner from a private course for wearing a headscarf.

#### **EVENT**

- ❖ The subject enrolled to a private course for drivers in order to get a driving license. The course was owned by a private company control of the Directorate of Education of Province.
- ❖ The subject completed the course successfully. She had all the necessary conditions to pass which included successfully completing oral and written exams relating to traffic, engine, and health. The driving license is ratified by the Directorate of Education of Province.
- ❖ The subject paid the fees of enrollment and handed-her photos, which showed her usual appearance, to be attached to the driving license.
- ❖ The subject wore a headscarf covered just her hair. Her face is uncovered and she could be clearly identified. In all her documents that were issued by the official institutions her head is also covered.
- ❖ The province Directorate of Education who was required sign and approve the documents refused to do so unless she submitted a photograph in which her head was not covered. **(Annex 2)**
- ❖ She stated that her photograph had to be accepted because she wore headscarf all the time and she would wear it when driving, as well as the fact that there was no legal regulation required her giving such a photograph.
- ❖ On the same day the committee held a meeting chaired by the head of the Directorship of Education and reached the decision that the learners also would adhere to the dressing code as it applies to state officials and they would not cover their heads inside of the building or around the education field **(Annex 3 and 4)**. There is no legal base for this regulation which denies the education for those who wear headscarf.
- ❖ Consequently, the enrollment of the subject was cancelled with the direction of orders sent because being headscarfed after her money paid back. **(Annex 1)**
- ❖ As a result of this prohibition, if the subject was to acquire a driving license by giving a photograph in which she didn't wear her headscarf, this would mean that she can be stopped from wearing her headscarf even when she is driving her private car. Otherwise, a traffic warden might not be able to correctly identify her as the woman in the photograph and he would be forced to ask her to take off her headscarf. So it wasn't possible for her to go on the course and take her license.

#### **EXPLANATION**

- ❖ In the legal regulation there is no arrangement about the dressing code and the photos being given for the driving license. There isn't any general legal article dealing with women's clothing. As well as this, the other National Education Directorship did not object to such photographs being used on driving licenses.
- ❖ This was based on the Dressing Code of the staff working for state institutions which requires that only officials could not have their heads covered in their workplace. However, this only applies to civil servants and within the workplace.

**CONCLUSION** : As a result of wearing a headscarf, a person can be disallowed from obtaining a driving license.

**3\* SUBJECT** : The removal of appendix 17th article of Higher Education Laws, which contains freedom of clothing, from "The Higher Education Board and Istanbul University Rules and Regulations" .

#### **PHYSICAL EVENT**

- ❖ "The Higher Education Board and Istanbul University Rules and Regulations" was published in 1997 by the Istanbul University Press Centre.
- ❖ The publication has 2 volumes and contains all laws, regulations and instructions of 1033 pages. It contains no explanations or commentary, only articles.
- ❖ Higher Education regulation number 2547 starts on page 220. The official publication, the book contains Appendix 17<sup>th</sup> Article contains this jurisdiction.
- ❖ Regulation number 2547 states that "The Higher Education dress code has no limitations except those stated by other laws."
- ❖ When Kemal Alemdaroğlu was selected as the rector of Istanbul University in 1998, page 279 was removed from "The Higher Education Board and Istanbul University Rules and Regulations" and the publication was reprinted in its new form. The new edition contains appendix 16th article on page 279 and at the top of the page 280 there is an appendix 18<sup>th</sup> article and other articles follow. New edition does not contain appendix 17<sup>th</sup> article.
- ❖ Appendix 17<sup>th</sup> article is still in operation. If appendix 17<sup>th</sup> article was repealed, this would have had to be stated, with the date and number, in a formal publication but this did not happen.
- ❖ It indicates that even appendix 17<sup>th</sup> article, which is still in operation and is found in all law books provides freedom for clothes, was removed from the "The Higher Education Board and Istanbul University Rules and Regulations".
- ❖ No legal action was taken against this situation.

**CONCLUSION** : The regulation allowing individuals to dress freely was removed from "The Higher Education Board and Istanbul University Rules and Regulations", despite its existence in all other related higher education rules and regulations.

**4\* SUBJECT** : The requirement of a picture without a headscarf in the case of Medine Bircan - a 71 years old cancer patient.

### EXPLANATIONS

- ❖ At 10/05/2002 the Directorate of Personnel Department of Istanbul University started to obligate university personnel's relatives who receive a health insurance paper to give photographs with uncovered head (without headscarves) (**Annex 7**). (There is a Dressing Regulation for civil servants, but there is no rule related with the attires of their relatives, including their wives and mothers). In spite of this, the university firstly did not give the health insurance paper to Behiye Dursun aged 52, who is a professor's wife, because she did not give her photograph in which her head was covered and (**Annex 8**) has hindered her utilization of medical care during this time. She proclaimed that there is no legal regulation for civil servants' revivals and her right to live, which is her most basic right. (**Annex 9**)
- ❖ Similar practice has been actualized also in the University hospital. Medine Bircan, who has been treated for uterus and urinary bladder cancer, was 71 years old. And she had chronic renal failure and needed dialysis machine at regular intervals. However, Istanbul University did not accept the photograph on the health insurance paper of retirement fund because her head was covered with a headscarf. (**Annex 1**) Medine Bircan was asked for a photograph in which her head was uncovered (without a headscarf) in order to complete the health commission report and other official processes.
- ❖ **Her son said that "Medine Bircan's head was bald as a result of chemotherapy and she could neither speak, nor walk. She even finds it difficult to speak. She had never taken off her scarf for years. Also, she has no possibility to go to a photographer to take new pictures without headscarf, because she has been treated residentially."** And officials replied "In that case, find a wig and ask a photographer to come here". This event was reflected into the newspapers as "The Torture to 71 years old patient to uncover her head" (**Annex 1**).
- ❖ Medine Bircan's son has been compelled to go to the photographer with her mother's picture with a headscarf, which had not been accepted, to digitally enhance the photograph and add hair. **Medine Bircan died on the day when she received the health insurance paper with the picture without a headscarf.** Newspapers declared that this circumstance towards Medine Bircan, who was a daughter of a war veteran, faced a violation of human rights, and is a "crime against humanity". (**Annex 2**)
- ❖ The event mentioned was published in the newspapers with the topic of **"Warning, it's a Murder"**. Various human rights organizations have claimed that Medine Bircan's treatment has been hindered because of not having photograph without a headscarf and **warned the legal authorities about the matter**. Other authorities declared that *" Every citizen has a right to take equal health service while their taxes are collected equally, not giving equal sanitary service cannot be possible, even if the war criminals have right to take equal medical treatment."* President of Health-Workers Union also declared "The headscarf ban, which already prevents the education and employment, has now turned into a factor impeding the reception of health service in public hospitals." (**Annex 3**).
- ❖ The Deputy Speaker of the Parliament declared, *"This practice is a crime against humanity"*. The deputy said that "There is no possibility to regard headscarf as separate from Turkish nationality and the universities, which discriminate against the head covered students, cannot be a seat of learning and that there is no excuse for forgetting the Hippocratic oath and leaving the patient to die in front of the hospital's door ". In the articles such as (**Annex 4**) "The regulation of the

University of Istanbul causing a person's death was sued. " (**Annex 5**), "Parliament made allegation for this murder" (**Annex 6**), it is affirmed that "the subject is a clear murder".

- ❖ After Medine Bircan's death and this event's publication in the newspapers, the University of Istanbul abolished the ban obligating the members' mothers and wives to provide a photograph where their head is uncovered to receive health insurance paper in the 5<sup>th</sup> of July 2002. The person concerned, Behide Dursun, received her health insurance paper, however, her lawsuit was ended with the "no ground to give a decision" statement. (**Annex 10**)

**CONCLUSION** : Two patients were refused health care on the basis that the photograph they provided for their health insurance document showed them wearing a headscarf. A practice which led to the death of one of the patients.

**5\* SUBJECT** : The refusal of asthmatic patients to attend a seminar about asthma.

### **EXPLANATIONS**

- ❖ On the 7th of May 2002, a seminar was held in the auditorium of the University of Istanbul, Cerrahpasa Medical Faculty to inform asthmatic patients of their illness (The seminar was held in relation to "World Asthma Day").
- ❖ There were many patients and their relatives coming from different parts of Istanbul to Istanbul University to receive information about their illnesses. Amongst them there were female patients with headscarves who were not let inside because of their attires.
- ❖ Gül Çevik, an asthmatic patient, came from Avcılar, which is a district that is a one hour drive to Cerrahpasa Medical Faculty that she traveled by a commercial taxi. She claimed that she was not allowed to enter the building despite having an invitation card and asked the reason of this practice. She was answered that it was "rector's orders", and she was not given any written explanation.
- ❖ The lecturer, Prof. Dr. Bilun Gemicioğlu, from the Directorate of Chest Diseases Department in Cerrahpasa Medical Faculty made an explanation to newspapers that "this meeting was arranged for the patients and although I tried to persuade the university officials I did not succeed. I wasn't aware that there would be an obligatory dress code for the patients otherwise the seminar would not have been held at the university. The situation was regrettable."
- ❖ In 09.05.2002, the newspapers printed the story with the headline "**Even if you are ill, you can not enter the university while you are covered**" (Annex 1).

**CONCLUSION** : Despite there being no legal obligation or previous notice, patients were disallowed from entering a hospital seminar informing them of their disease, purely on the basis of their clothing.

**6\* SUBJECT** : Excluding the suspect with headscarf from the hearing room on grounds of her attire, without being able to use the defense right.

### PHYSICAL FACT

- ❖ The Chief of Supreme Court of Appeal 4. Criminal Department told the suspect with headscarf in a case on the date November 2003, that she could not be present at the hearing room with headscarf in a case on the date November 2003. Suspect Hatice Hasdemir has declared that she is a suspect. **She has condemned to depart from the hearing room without using her defense right by upon the judge' s answering as "it does no matter.** Previously also, when the people belonging to Aczimendi sect have been tried by the reason of their clothes, they were not led in the court as being with gowns and turbaned, their beards have been cut forcibly and ones who have insisted on their attitude were tried; whereas there is not any arrangement or regulation relating to attire in the court hearings. **(Annex 1)**
- ❖ A newspaper, which announced the news titling **"Uncover your head and than come"**, stated the event as being a practice could be mentioned in law history. Not being taken Hatice Hasdemir' s defense has gone on records of hearing personally with the statements that "at the time checking the suspects' identity cards, Hatice Hasdemir' s head has been covered, has entered the hearing room as being with headscarf, has been excluded as to uncover her head, however she has not been present at the control made afterwards and has not come to the hearing room have been understood". **(Annex 2)**
- ❖ Head of the Supreme Court admitted that judge' s excluding suspect from the court hearing is right and declared that "Court rooms come before public area". Eraslan Özkaya made an explanation that "Yes, defense right has sanctity, but this must be done in a figure relevant to laws. Any infirmity starting in the court rooms can not be possible to prevent in other areas. **(Annex 4)** As setting forth the suspect being a lawyer, it has not been taken into consideration that she has been present at trial as suspect.
- ❖ The Supreme Court' s "With headscarf you can not be even suspect" practice has caused argumentations in public opinion. Lawyers has told; defense right is holy, judge has to take suspect' s testimony, judge can not violate suspect' s this right as reasoning suspect' s clothe. Some jurists declare that judicator tribunals are public areas; people who cover their heads cannot enter.
- ❖ This situation reflected to newspapers with the headline, as "People who wear headscarf also can not go to the street". It is declared that public area will reflect also to the street and if a woman with headscarf shows her head out of her home' s balcony, she would be also banned". **(Annex 3)** In a news titled that **"Do not make Turkey as South Africa"** "President of the Republic did not let people with headscarves in 29 October formal ceremony in Cankaya Villa (presidential palace), yesterday in Ankara related department' s head of the Supreme Court excluded one of the suspects from the room because of her head has been covered, **tomorrow if we hear that head doctor of an hospital has not let an individual with headscarf into the hospital, we must not be surprised, by the way a mayor can prohibit people who uncover their heads getting in city buses and henceforth this goes on such this way.** If discrimination against the people who cover their heads has put into under the guise of law, what will be our difference from the racist government that once upon a time prevailing in South Africa and taking power from the Constitution and laws, this is not related with neither secularism, nor modernism; this' name is politics. **(Annex 5)**
- ❖ Parliament Constitution Commission Head Prof. Dr. Burhan Kuzu implied that "There is not a concept as public area in law", all citizens who cover their heads can enter into public bodies during the time it does not exist in laws and unless it

is not written in laws, citizens have attire freedom; you can not make laws for the citizen in the street." Besides " in the courts only people who demonstrate can be let out; if the person who is head of the institution decides for a place whether it is public area or not, than also a park keeper can also take decision as not leading a person with headscarf in park and these examples do not end." As a matter of fact he told that **"if the only witness of an event is a person who cover her head, what will you do, does witness person have to take off her headscarf, is the liberty of a person, who is witness, limited or if a decision for arrest is taken about a woman who cover her head, at the time she comes to the prison, will it be said that here is public area, uncover your head and than enter or if she does not uncover, will she be sent to her home"** (Annex 6).

### EXPLANATIONS

- ❖ **Defence right is one of the basic rights of can not be renounced nature. Suspect is the most important subject of judging.** Without suspect, judging can not be. Judge can not complete trial without taking suspect' s testimony. Session can not come to an end without calling upon defense to speak. If last word is not asked the suspect, the session like this is accepted as absent.
- ❖ **Defense right is not a right related to person' s opinion, crime, attire, behaviors, education, job and naturally being lawyer or not. Because of the fact that this is a right derived from being human, it cannot be taken from suspect in no way, by no reason.** With the explanation of Socrates, "what water means to fish, freedom is proportional, in the same value to defense" Award without defense remains as only a claim. By this reason even war criminals have the rights to be judged and defense their selves.
- ❖ There is not authority of Judge at the point to maintain the order of hearing. This authorization can be only in the situations disordering the hearing such as shouting or doing physical behaviors. It cannot be accepted that a suspect, who is present at hearing room, violates the order of the hearing by only attire. Besides that judge can lead persons who riot and disorder the public order, prevent the judging done out for only that session. Suspect cannot be compelled to obey the determined attire rules in order to enter the session (hearing).
- ❖ **Public area is not a juridical concept. This can be a limitation reason because it is a definition of politics philosophy. Already public area is common area for everyone. EVERY PLACE EXCEPT THE PRIVATE POSSESSION IS PUBLIC AREA.** There is no legally possibility to make an argumentation relating to that the ladies who cover their heads enter in to public area or do not. **The reality of streets, roads, even pavement are public area makes like a generalizing impossible. If the opposite idea is accepted, it makes compulsory for women with headscarves not to go out even from their homes.**

**CONCLUSION** : If you are a lady with headscarf, you might not find even the right to defense yourself before a judgment authority, that can be able to give penalty punish decision about you.

**7\* SUBJECT** : According to 11 January 2001-dated decision of Higher Education Council, prohibition of being in campuses for female students with a hat or wig which can be perceived as an ideological aim and for male student having beard which can be perceived as an ideological aim.

### **PHYSICAL EVENT**

- ❖ As a result of prohibition by Higher Education Council, students wearing headscarf are not allowed to be in the university or its facilities. As a reason for the ban, which does not base on laws, they show wearing headscarf by students. Due to that, more than 1000 students passing university entrance exam and having right of education in the university had to leave university.
- ❖ Some students wearing headscarf all their lives and having no other choice to graduate from university, preferred to continue their education with wearing hat/wig. Naturally, hats/wigs are different in color and shape.
- ❖ An announcement was put on the door of Marmara University Dentistry Faculty and Communication Faculty on 12 April, 2002. According to this announcement, female students wearing hat/wig and male students having roundbeard were not allowed to go into university. This event was published on newspapers as "absurdity of ideological wig by Higher Education Council" (**Annex 2**).
- ❖ Students were not informed about writ but was just put on the doors of faculties. Announcement is as follows: According to writ dated on 11 January, 2001, female students must not wear headscarf, hat or wig which can be perceived as an ideological aim and male student must not have beard which can be perceived as an ideological aim in any places in campus. Security guards treat students according to writ on which it is written only "management" instead of signature and stamp. (**Annex 1**)

### **EXPLANATIONS**

- ❖ Because it is not clear what "ideological" means for hat, wig beard, all students wearing hat, wig and having roundbeard were not allowed to go into university. As a result of it, education right of students was violated. There is no explanation what "ideological" means about wig and hat. It is not possible to determine the standart of wearing wig and to determine what ideological wig means. One of the decision made by U.S.A. Supreme Court contains the following statement: "Even devil can not know the real intention of human being" but Higher Education Council think that when a student wears headscarf, wig, hat or has beard, it means he or she shows his/her intention. According to this though, students were not allowed to go into university. It is impossible to explain the reason for this violation.
- ❖ Marmara University Dentistry and Communication Faculties announced that students wearing wig /hat and having beard must not be allowed to go into university. This announcement was also on the newspapers. On the other hand, This university does not have enough grant from the state, because of that, onset of education time has been postponed for 2 months. Instead of dealing with education, Higher Education Council has concentrated on punishment of students wearing wig/hat and having beard. It has shown the priority of HEC (Higher Education Council).

**CONCLUSION** : Hat, beard and even wig can be defined as ideological things, and it can be a reason for students not to be allowed to go into university, even though they passed the university entrance exm, renewed their enrollment, paid tuition fee and have right for education.

**8\* SUBJECT** : The write of Higher Education Board in which it is written that going to the university with wearing headscarf is a disciplinary offense that requires being removed from Higher Education Institute and the requisition by HEI people living lodging to obey the same ban.

#### EVENT

- ❖ According to number 3699\20644 decision of Presidency of Higher Education Board in 15 September 2000, a writ was sent to the presidencies of universities. The content of write is as follows (**Annex 1**)
- ❖ "A letter has been sent about disciplinary punishment that should be given to the students who get right to enter Higher Education Institutions by passing university entrance exam." This letter contains the following:
  - It is accepted that coming to the university with wearing headscarf is an action breaking peace in the university according to Council of State, Administrative Court, European Human Rights Commission; it is an action requiring rejection of offender.
- ❖ 10\b article of student's Disciplinary Regulations (10\b article is about punishment of removal) regulations and following actions: "breaking the work regulations and peace in Higher Education Institutions with ideological and political aims; joining actions like boycott, invasion obstruction, slowing of the work of staff; provoking this kind of actions"
  - Citizens of a constitutional state have certain rights and freedom based on "the constitute". At the same time, it should not be forgotten there are same constitutional laws to be obeyed for providing peace and happiness in the society (if it is accepted that there is a violation of a right, there should not be a suspicion about the necessity of limitation of the right by an obvious law jurisdiction and it just expresses approval of decision about process. By that they mean" the punishment to students can not be cancelled by court so we should punish students wearing headscarves and after that these students wont be able to be in any Higher Education Institutions" write continues as follows:
    - As it was seen, the letter clearly expresses which article of Disciplinary Regulations will be used against students violating of regulation about clothes.
    - I strongly request that mentioned article; issue should be followed strictly; all measures should be taken warned about the issue and people insisting on altitude against regulations should be treated legally.
    - As it was seen in the writ, the letter clearly expresses which article of Disciplinary Regulations will be used against students violating of regulation about clothes.
    - I strongly request that people violating regulations should be treated according to mentioned article; issue should be followed strictly; all measures should be taken accordingly; people living in lodging of campus should be warned about the issue and people insisting on attitude against regulations should be treated legally.
- ❖ As it was seen in the writ, the letter clearly expresses which article of Disciplinary Regulations will be used against students wearing headscarves and insisting on staying at the university. It was not cared whether students wearing headscarves have ideological or political aims or whether they break the rules, peace and work regulations. When headscarf ban started, most of the students were on the 6<sup>th</sup> or 4<sup>th</sup> class; they have never broken the rules, regulations or peace at the university by means of ideological or political aims and they have been getting on with other students. While the situation is as mentioned, it was not explained why wearing headscarf suddenly became an offense for students to be expelled from the Higher Education Institutions.

- ❖ Although there is no regulation against it and no change in student Disciplinary Regulations, it was declared that students wearing headscarves should be expelled from university according to Higher Education Board`s decision based on the reasoning that because courts made approving decision, punishment won`t be cancelled. It was not cared whether or not students really violated the disciplinary article mentioned, while disciplinary punishment completely eradicating the right of student to take graduate education was given to students.
- ❖ Actually, for violation of 10/b article there should be some actions / activities causing failure of education service, such as: "boycott, invasion, obstruction, slowing of staff`s work". But this fact was not taken into consideration. It was not taken into consideration that how just covering hair by student means breaking the peace, work regulations with ideological and political aims in Higher Education Institutions, and means joining boycott, invasion, obstruction, slowing of staff work, and means provoking protest for this aim. It was ruled out that there is no opportunity to remove basic rights via comment and comparison because laws base on the principle that if there is no law about on issue, there can not be offence and punishment.
- ❖ The processes and rules are the same for people living in a lodging of university. It means that if they wear headscarf, they will be removed from the lodging. According to the writ, if mother, partner, daughter and even guests of the civil servant working in Higher Education Institute and living in lodging by paying rent wear headscarf, they should be warned; and if they do not take their headscarves off, they will be removed from lodging. So, the headscarf ban is not for only students but also for families living in lodging.

**CONCLUSION** : It may be said that it is a disciplinary offense requiring removal from Higher Education Institutions to enter university with headscarf on you even without breaking of rules and interfering of education. At the same time, it was accepted that no one can live in lodging or no one can visit his/her relatives in lodging if they wear headscarf.

**9\* SUBJECT** : The dismissal of a teacher, who had been employed for 12 years, because she violated the formal dress code by wearing a wig.

### **EVENTS THAT HAVE HAPPENED**

- ❖ The subject is a teacher who taught Kur'an and related lessons in a state secondary school with a religious curriculum (an Imam Hatip school). When she was first accepted for the job in 1990 she wore a headscarf and she continued to do so for the next nine years without experiencing any disciplinary action.
- ❖ The subject was then given a disciplinary "warning" in 1999 because of her headscarf. As a result of her warning, the subject stopped wearing a headscarf and started wearing a wig which meant that she could comply with the "The Dress Code relating to Civil Servants and Employees of Government Organizations" that states that employees must not cover their head.
- ❖ The subject was appointed to a primary school in 2001. The directorate of school requested a defense from her stating that "I realized that you have been coming to lessons wearing wig and coat. You should write your defense to the following page, sign it and hand in to the school directorate within 7 days". **(Annex 1)**
- ❖ The subject replied that she had conformed to all the Rules and Regulations, worked with her head uncovered and that there was no article in the Rules and Regulations determining how her hair should look so long as it was uncovered. **(Annex 1)**.
- ❖ The inquiry about wearing a wig was concluded and it was proposed that she be dismissed from her work. The applicant's inquiry dossier was sent to the Higher Discipline Board.
- ❖ The Higher Discipline Board asked the subject for a written defense stating that "your presence with a headscarf in workplace violates the dress code and therefore by achieving your own ideological objectives you are disturbing your work environment" **(Annex 2)**.
- ❖ The subject's defense claimed that she did not wear headscarf in her workplace and so did not cause any problems there. **(Annex 3)**.
- ❖ Five of the subject's colleagues gave witness statements stating that "she works with her head uncovered and at no time has she ever disturbed peace and order in the school" **(Annex 4)**
- ❖ The Higher Discipline Board ignored both the subject's defense and the witness statements and made her redundant with the claim that "her presence with a headscarf in workplace violates the dress code and therefore by achieving her own ideological objectives she disturbs the work environment" **(Annex 5)**
- ❖ As a result of this, the subject is now unable to work a teacher in any institution, because any civil servant who is made redundant due to disciplinary action cannot work again in any government institution, and even private schools as these are under the regulations of the Ministry of Education.

### **EXPLANATIONS**

- ❖ There is no regulation about wig. Although there are regulations about styles from tip to toe, the wig and coat are out of regulations.
- ❖ The subject was asked for a defense to allegation "her presence with a headscarf in workplace violates the dress code and therefore by achieving her own ideological objectives she disturbs the work environment". However they ignored the fact that the subject did not actually wear a headscarf and was therefore not violating any regulation. In this case, the subject's apparent intention of wearing a wig was sentenced (her wearing a wig to cover her real hair).

**CONCLUSION** : Wearing a wig in the workplace as a replacement for a headscarf was seen as an offence that disturbed the work environment and punishable in the severest way.

**10\* SUBJECT** : Not to accept Omani lecturer, who was invited to rule the panel by the Istanbul University, to the campus because of her head has been covered.

#### **EVENT**

- ❖ On the date of 16<sup>th</sup> October 2003 it was arranged the first International Child and Communication Conference in the Communication Faculty of Istanbul University. **In order to direct one of panels**, Assistant Doctor Samira Moosa from Society Science Collage of Sultan Qaboos University was invited **personally by the authorities of Istanbul University**.
- ❖ When the doctor came to the door of university, she was stopped by the custodian, who does not know language, on the door because of her headscarf. It was said to her that she had to take her headscarf off by gestures. Dr. Samira Moosa didn't take it off saying she used it whole her life. Doctor waited in front of the door for minutes, and had to turn back since authority came to solve the problem.
- ❖ About the subject, Dean of IU Communication Faculty Prof. Dr. Suat Sezgin informed that " **We understand if she was female or male later**. There is a certain decision that the rectorship took about headscarf. According to this decision, it's forbidden to enter here with headscarf. At that point we told it kindly. **We asked her if she could enter by taking it off and she answered "I have never taken it off"** and left the university. If there is a rule, we have to stick this principle.
- ❖ The lecturer from Istanbul University Communication Faculty Nilüfer Öcel, who corresponded the delegate " **We thought that she was male**. We don't discriminate about woman's participation, but, we never think, imagine that would be a problem, and inviter would come as being with turban. We couldn't accept her till we got the approval like "yes, she can enter" from an authority. And also we have dinner and cocktail in the evening. **They aren't in the place around university. I invited her**. She made a statement that " You are a whole part of an organization or not. If I did not enter to the conference, I will use my right to not to participate in also other activities." and didn't join us."
- ❖ It was put forward by the authorities that **if Doctor Samira were a male** with her the same ideas. **She wouldn't be exposed to this discrimination**.
- ❖ **Not to be allowed a doctor, who was called from abroad to moderate a panel by the university, to enter to the university because of her garment has been reflected on the newspapers as "A communication scandal" (Annex 1)**

**CONCLUSION** : A doctor' s **being a woman with headscarf** can be a reason for not to be accepted to school, whereas she was invited from abroad and would be honored because of her knowledge

**11\* SUBJECT** : Not letting a blind president of an association into their association building, which is within the borders of the university, by the reason of wearing headscarf.

#### **PHYSICAL FACT**

- ❖ Hatice Akcil is the president of Blind People's Association of Sakarya branch. The association has been showed activity in a building belongs to the University of Sakarya. **The blind president of association started to be not allowed to enter into the association building since April 2004, because of her headscarf.** She had to talk with association members in the university campus through fences and gave instructions about the works will be done. Newspapers published this circumstance as "she can not enter into the association, which she is president of" (**Annex 1**).
- ❖ President said "Common people can enter the building whereas I am banned to enter, my only guilt is covering my head, they tell me take of your headscarf and then enter".
- ❖ Rector of university, who gave this practice' s order, claimed that *"there is nothing to do, university is a public area, Regulation about Dressing must be needed to be obeyed."*

#### **EXPLANATIONS**

- ❖ There is not a general law or a regulation award about dressing for citizens. While there cannot be any rule forcing women to wear scarf will be contrary to the requirements of democratic society order, a regulation about uncovering head can not be done legally. As women can decide their hair' s colours and lengths, they can also decide where they will cover or uncover their head.
- ❖ **Public places are all places out of private property.** It can not be reason for legally restrictions of human rights. If we accept that women with headscarf are banned to be in public places, they have to take of their scarf **everywhere except their home** where they do not have to wear headscarf indeed. We can say that even mosques are public places, therefore, can we say that women must take of their headscarf in also mosques. That is why, we cannot use "public places" term for the headscarf ban which is illogical and injustice.

**CONCLUSION** : Even if you are a blind person, president of an organization, you cannot enter your offices in your organization and you may have to talk with your personel through fences.

**12\* SUBJECT** : A lecturer from the University of Istanbul was dismissed from his job due to the fact that he brought his mother-wearing scarf to university campus on the same day.

### EXPLANATIONS

- ❖ **Özcan Kılıç, who has worked in Germany and The USA as a visiting lecturer, is an associated Professor for 17 years in The University of Istanbul.** He has been working as an associate professor in Istanbul University. In the 3rd of July 2002 date, while he was entering into the school, his sister and his mother, who wear headscarf, were also in his car.
- ❖ **Özcan Kılıç was dismissed from the university within three hours in the same day** by the reason of his this act, which is not taken place in any legislation or in the disciplinary regulation, even working hours did not end. That expressions are took place in the official fine information paper, sent from Istanbul University Presidency of Personnel Department, **(Annex 1)** ' *Associated professor Özcan Kılıç, lecturer in the School of Business Administration, Marketing Discipline Department, came to the university campus with two women with headscarf in his car on the back seat at 02.00 pm in the 3<sup>rd</sup> of July 2002. Due to his action, he was alleged, and was suspended from his job since the 4<sup>th</sup> oh July 2002 during his allegation.*
- ❖ His suspension from his job is a precaution for objectivity of his allegation for a while. A suspended civil servant cannot enter his workplace and can not get one third of his salary.
- ❖ **Özcan Kılıç was sentenced to a disciplinary penalty as severing salary due to the fact that he came to university campus with his mother with scarf.** This situation, which was documented with inquiry document signed by Proxy Rector, reflected to newspapers with the topic that "He took his mother with headscarf into car, lost his job at the university". **(Annex 2)**
- ❖ As it can be seen from newspapers, the lecturer has a lot of published articles about his profession, he does not have any ideological leanings, he is not a member of political party. His main objective is to improve his career. To follow new developments and contact with others in his profession, he prepared a personal web site on Internet. As seen at there although his mother and sister wear headscarf, his wife does not wear headscarf. Whereas a lecturer is needed in the university, he was suspended from the university. And then, he resigned from the university where his mother and sister were seen as guilty, and he started to work in a private university in Istanbul.

**CONCLUSION** : Even if you are a respected lecturer for 17 years in the university, you can be suspended from your job, if you tend to come to university with your mother or one your relative as with headscarf to the university campus, at the risk of the students can not have classes because lecturer is needed in university.

**13\* SUBJECT** : Forcing a 51 years old women to give a photo without headscarf or “ a photo in which the headscarf was tied under the chin and the hair’s bottom could be seen on condition that the person is older”, to take a card to use social facilities.

#### **THE CASE**

- ❖ Public security services have some facilities for polices, their families and their parents. In order to use these facilities, you must have a special card with you.
- ❖ Behide Dursun is a 52 years old housewife. His father worked in the Public Security Services for 31 years. She has right to use facilities because of his father’s job. Her siblings are used to benefit from these advantages.
- ❖ In 5th of January 2004, she applied to the Interior Ministry to take an entrance card, and she provided papers needed. However, two pictures with scarf were rejected due to the fact that they were not suitable according to the regulations of The Public Security Facilities, 63th clause (**Annex 1**). Unless she gives pictures without scarf, she can not get an entrance card.
- ❖ The mentioned 63th clause was changed by the Ministry of Interior in 5th of November 2002. In the new clause, it is said that pictures must be without scarf and that if their parents are elder, their parents can wear scarf with some hairs seen from the front, and their father can have short beard (**Annex 2**).
- ❖ There is not part in the regulations of Public Security Services for official’s parents or relatives. Besides, there can not be any legal regulation like that elder women can wear scarf only if their some hair is seen in the front.
- ❖ The applicant has all conditions needed to take an entrance card. She has been wearing scarf for 33 years. She has used her pictures with scarf for identity card, health. Insurance paper. Therefore, pictures with scarf do show her identity clearly. If she gives pictures without scarf, it can be reason to ask her to take of her scarf because of her entrance card with picture without scarf.

**CONCLUSION** : Even if you are a housewife wearing scarf for 33 years, you can not use your rights to use facilities. At least, you can be asked to show some hair in front of your heed.

**14\* SUBJECT** : Application of the head must be uncovered at Imam Orator High School (a professional high school), to put handcuff on high school students who don't cover their head, make them to get on the police car, take them far away district from their school, to uncover a student by police force

#### EXPLANATIONS

- ❖ The concerned are Sultanbeyli and Esatpaşa Imam Orator High School students. Imam Orator High Schools are formal schools related to government. With the other science and culture lessons, teaching 40 per cent Holly Koran and related religion lessons.
- ❖ 07.12.1981 dated "The costume regulations about officials and students at schools that related to The Ministry of education and the other ministries " allowed to use headscarf at Holly Koran lessons. And, since 1990 **the girl students use headscarf as a settled practice**. The students being registration the school with headscarf, the photographs which taken photographers who came to school, were stick on the student identities (**Annex 7**) Even on 2002 the student identity were given them with headscarf photographs. (**Annex 8**) Until 2000-2001 education year there was no problem at this school about headscarf. (There are no schools, which a girl with headscarf can take education. The whole schools are related to The Ministry of education, even when a cover student photo take place an advertisement it that can be a investigation reason.) (**Annex 10**) the students who want to take religion education prefer that school; in spite of the school time take one more year.
- ❖ 12\02\2002 dated Istanbul Governorship published a notice. At this notice determined that students of Imam Orator High school take education, as being headscarf and that must be prevented. (**Annex 9**)
- ❖ After that date, the cover students don't allow to enter school, the girl students with headscarves who enter their school with headscarf with no force or difficulty before 26\02\2002, prevented by police. **This situation takes place at newspapers that "According to constitution the education is free but even entering the school street is ban" ( Annex 4)**
- ❖ The students came the school for not fail the by absenteeism and take minutes that they are came, couldn't enter inside and waited the garden. But, the second day of ban, when the concerns people just sat the garden without any action or speak, arrested by Swift Power Team and with students who waiting the bus stop taken the Sultanbeyli Security Station. The students Semra Yıldırım, Elif Eryurt, Zennure Yapar, Zeynep Tuğba Erdem, Nuray Koç and Hacer Olgun were arrested.
- ❖ The concerns people's identity knowledge was taken at The County Security Office, in spite of the students who younger then 18 years old must see public prosecutor, not allowed seeing their lawyer, after 6 hours under arrest they released when their lawyers came.
- ❖ The made applications only MAZLUMDER which is a human right foundation show that at Istanbul 2001-2002 education year 1678 students couldn't enter the class the education interrupted, 336 students had to left school by taken certificate, at going on process 1868 students and parents were arrested, was opened penalty lawsuit about almost 100 person. 1650 students failed by absenteeism.
- ❖ **When the students arrested they handcuffed (Annex 3)** and that takes places the newspapers as " to handcuff who wants education" **A girl student's head was uncovered by police (Annex 1) and was beat at the street (Annex 2)** This photos takes place on the newspapers too.
- ❖ Besides to prevent the students to came back to school they made to get the cars (**Annex 5**) and **the students were leave the desolate districts far away the school. The students who only intermediate school age and doesn't gave ticket money couldn't get on the bus, after walk 3,5 hours they arrived their home and that takes place at the newspapers.**

- ❖ Turkey Great National Assembly Human Right Commission made an investigation about this subject. The deputies who constitute the commission wrote a report that, this is a human right violation, Imam Orator High School students use headscarf cause of their religion believes, it's constant by Piety Juridical decision and if there is a discipline crime it's response wasn't that not to take the students the school. At the commission report " There is begin a arbitrary practice by governorship and unnecessarily the education order and piece was disturbed." Besides at the commission report takes place that the teenager students was handcuffed and taken from the school and left different districts.

### **EXPLANATIONS**

- ❖ The penalties that can give at The Minister of Education Medium Education Association award and discipline regulations are warning, send away from school for short period send away from school by certificate and to take out the education.
- ❖ There is no discipline penalty at the regulation like not to take the student the school, uncover her head, not allowed to being at the school garden.
- ❖ According to penalty law the handcuff can't use on teenagers. And there is no punishment at the body of current law as " to take the suspect and leave her/him another district "

**CONCLUSION** : Even if you are a intermediate school student who prefer to take education at a school which gave religion education you can send away cause of using headscarf, your head can uncover by the police, the handcuff can use on you and even they can made you get on the police car and leave you the far away district from your home.

**15\* SUBJECT** : Making an inquiry about a lawyer by the reason of that due to an Official Institution of the State's invitation, she attended to a meeting done for a draft bill related to women as being with headscarf and giving her penalty as suspending from job for three months by the reason of that she has been in the bar room with head scarf.

#### EXPLANATIONS

- ❖ Advocacy, as specified in its law, is a public service and independent profession. Lawyers as an Institution belongs to Bars and Bars Unions. There is not a consideration in Attorney's Law that head will be uncovered. Despite this, according to regulations made by Bars Union, lawyers with scarf can't attend courts. There is an award that "lawyer will do their professions as being uncovered head in the courts" in professional rule.
- ❖ Some bars apply this unfair regulation in other places. In 2003, there was a **meeting held in the building of Women Affairs about women issues in Turkish Criminal Law**. Because there are some unacceptable decisions about women rights in the subject "for girls under 15 years old being raped". The representative lawyers of some civil organizations were invited to the meeting, laboring was done, proposals were advanced to the Ministry. Committees in the Parliament have made some changes in draft law. **However, the meeting was taken place in a different place from courthouse**, Lawyers with headscarf Fatma Benli and Zeynep Şen, who has attended to the meeting in the name of the association she belongs, **were alleged by Ankara bar and inquiry about them was started. (Annex 1)**. Besides, it was not cared that the meeting was not associated with the court or bar, and there was an official invitation for these lawyers, and the lawyers have contributed to studies in the draft law very much.
- ❖ Lawyer Zeynep Şen stated in her defense that there was no connection between the mentioned professional rule and the actualized meeting. **(Annex 2)** The allegation is still continuing.
- ❖ Lawyer Zeynep Şen was alleged due to her presence in the bar with headscarf. She declared that her scarf was a part of her identity and her beliefs, and she said that bar clerk's office isn't same with courthouse. In addition to this, she said that a basic right can not be invaded or limited by a professional rule, regulation done by bars. **(Annex 3)** The disciplinary committee of Ankara Bar claimed that "*a lawyer can not wear a scarf in every places related to judge and that wearing scarf is not a part of belief, but is a sign of same plans to form a state based on Islamic religion, which turns the country in to Middle Ages, and that none of lawyers can have a this kind of ideas and beliefs, fighting against those beliefs and behaviours are is a responsibility of Bar*". And then, the related person, due to her presence with scarf in the Bar, was supposed to be dismissed from doing her job for THREE MONTHS because of her clean background **(Annex4)**. Lawyer Zeynep Şen sued the decision made by Bar, and Ankara Administrative Court found that the decision about her suspension was cancelled due to lack of coherence with laws. (Ankara 9<sup>th</sup> Administrative Court's, 2nd of February, 1999 dated, 1998/15 main, 1998/58 decision). However, to get the result of sue took too much time, therefore she had already been suspended from her job for three months. Moreover, the related person has similar difficulties in the Bar still.
- ❖ Istanbul Bar actualized the similar ones of the same practice. It considered participating of lawyers with headscarf as guilt. Bar asked Lawyer Fatma Benli to defend herself due to the fact that "she gave picture with scarf for brochure in the Bar election and this is against the profession rules", 11/11/2002. **(Annex 5)**. According to regulation; "Lawyers and barristers do their duties with suitable clothes to their profession and being uncovered head in the courts. (They can't wear headscarf.) They have to wear a certain clean coat, whose figure has been determined by Turkish Bars Union, in court salons." **(Annex 6)**. She claimed that like profession rule can't prevent her to use her basic rights. In addition, "uncovered head" clause included the garments in the hearings, it can not be

practiced to her photograph in the election brochures in the elections done on Sunday, she used the right to be candidate, she was not in the court". (**Annex 7**) In spite of this defense, Administrative Board of Bar decided to send her a written warning. (**Annex 8**). Istanbul Bar obliged to be "uncovered head" even in the Code of Criminal Procedure professional seminars, which were taken place in an hotel.

**CONCLUSION** : If you are covered lawyer women, you can be alleged in case of your presence in buildings or you can't be candidate in elections.

If officials invite you, you can attend meetings to make new laws for women rights, you can contribute socio-economic level of women in Turkey. However, you can be alleged and punished just because of your appearance even if your benefits for women rights.

**16\* SUBJECT** : A male lawyer was asked to defend himself by the reason of that he has been violated the professional rule related to be uncovered head.

#### **EXPLANATIONS**

- ❖ Necati Ceylan (male) is a lawyer registered in Istanbul Bar. He was alleged because of that he gave a press conference in his office in the courthouse of Istanbul and at that time in the conference, there were lawyers wearing headscarf. He was asked for defense with the statement that "It is assessed that you were in the behavior against lawyer's professional rules in the room of Bar in the courthouse of Istanbul." **(Annex 1) In the annex of the inquiry writ** and a circular about that doing works in courts as being uncovered head. **(Annex 3).**
- ❖ The lawyer, Necati Ceylan, stated that "As a Head of Lawyers Association said that he gave press conference, and there were men and women professional colleagues lawyers." He didn't understand why he was alleged by the reason of violating professional rules, AS HE DID NOT MAKE PRESS STATEMENT WITH TURBAN and none of his women colleagues did not also. **He explained that due to his head is uncovered, infringement to professional rules by him can not be point at issue. (Annex 2)**
- ❖ The Istanbul Bar decided that participating in press conference with headscarf is not a professional activity and due to the fact that he didn't wear scarf during Press conference not starting the disciplinary inquiry by majority of votes. Turkish Bars Union declared that "The 20<sup>th</sup> article of Lawyers Regulation can not be interpreted as limiting in a way only entering to the hearings in the courts, the fact of doing professions in the courts can not be understood as only watching the hearings, it is obligatory to accept the work in the courts as a definition that includes whole duties in the judicial circle, to evaluate whole works in court's clerk's offices, execution office, bar and judiciary circles of the person, carrying the lawyer identity, as professional activity" and with the explanation cancelled the award given. **(Annex 4)**
- ❖ Although this declaration, Istanbul Bar didn't give any fair to lawyer Necati Ceylan. However, his allegation took very long time disturbing his situation. And, he was the first male lawyer who was questioned duets wearing scarf in world history.

**CONCLUSION** : If you are a lawyer who is against a practice as hindering your colleagues to use their rights to work by the reason of their garments, you can be alleged with violating the professional rule including the "head will be uncovered" decree even if you are male.

**17\* SUBJECT** : The suspension of a university student due to a newspaper report which stated that she had attended an international conference and there she had declared that she could not attend school because of her headscarf.

### **THE EVENT**

- ❖ The subject is a student in the Cerrahpasa Medical Faculty of Istanbul University. After she had studied in her faculty for 3 years, she started being disallowed from going to the university because of wearing a headscarf.
- ❖ The subject went to U.S.A in order to attend the 2nd International Islamic Unity Conference held in August 7-9 in Washington, D.C.
- ❖ In Akit newspaper dated 26 of January 1999, it is said that the subject attended the Islamic Conference and she introduced herself as a victim of headscarf ban in Turkey. In addition, Akit newspaper informed that she had some interviews with journalists in U.S.A The subject was told that she had an inquiry because of the news in media. **(Annex 2)**
- ❖ The subject explained that she had not done anything against HEC (Higher Education Council ) Students' Disciplinary Regulation. In spite of this explanation, she was suspended from the University for a half-year period.
- ❖ The punishment report stated "After your inquiry about the news report in Akit Newspaper, you are punished with 'suspension from the University' for one half year period according to the HEC Students' Disciplinary Regulation Section 9/d." **(Annex 1)**
- ❖ HEC Student's Disciplinary Regulation section 9/d states it an offence to act in a way that incites hatred against any ethnicity, religion, language, colour, and culture.
- ❖ The University's decision did not involve any explanation as to how she violated this code (HEC Student's Disciplinary Regulation section 9/d) as a result of her actions at the conference.
- ❖ The subject appealed against the decision with reason that going abroad isn't a legal reason for her punishment especially since she was not even a speaker at the conference. However, she did not win her appeal.

**CONCLUSION** : The student's comments at an international conference relating to her experiences about the headscarf ban were seen as enough reason for her to be suspended from the university for a half year period.

**18\* SUBJECT** : Removing the name of a student from the list of students who has right to take exam before the exam date without knowing whether she would come from exam wearing headscarf or not.

### EVENTS THAT HAVE HAPPENED

- ❖ The applicant is a student in Cerrahpaşa Medical Faculty of Istanbul University in English programme. After having studied in that faculty freely for 3 years, she was not allowed to go to school anymore because she would wear headscarf.
- ❖ The lists for exam include the names of students who have right to take the exam provided that they have been studying in university, they enrolled for the year and they paid tuition fee. Full attendance record is not required to have right taking mid-term exams. The name of applicant was included in all lists for exam except that of surgery exam.
- ❖ The applicant was told that her name was not included in the list when she went to the lecture hall in 01 April 1998.
- ❖ The applicant has asked the reason for the situation with writ, Cerrahpasa Medical Faculty Directorate answered with a petition dated 22 May 1998 stating "their names were not included in the list for exam, because they disobey the provisions of Student Clothing Regulations" (**Annex 1**)
- ❖ The applicant sued for cancellation of procedure and she claimed that before she came it was not certain whether she would come for exam wearing headscarf or not and therefore the administration did not have right to give such a punishment. (**Annex 2**) However, her application was rejected with printed decision without assessing the petition. The court considered the procedure the action of not allowing the student to the exam. (**Annex 3**) The special feature of the case is erasing her name from the list before the exam and Council of State did not take this feature into consideration. The leading opinion for the decisions and operations was the preconceived idea that the applicant wear headscarf and therefore she deserves any operations performed.

### EXPLANATIONS

- ❖ A Student Clothing Regulation which students at universities have to obey is not present. The only regulation related to topic is "Regulation Concerning the Clothing of Students and Officers who study and work in schools that are under administration of Education Ministry or Other Ministries " which is publish in Official Newspaper numbered 17537, dated 07 December 1981. it is legally impossible to apply the regulation dated 1981 to university students, since universities are autonomous institutions which are under administration of Higher Education Board. Besides, the additional 17<sup>th</sup> article of Higher Education Law contains the ptovision of that, "provided that it is not against the laws being in operation, clothing is free in Higher Education Institutions"
- ❖ The Student Disciplinary Regulations defines and lists the punishments that could be used to punish students and there is not such a punishment that "to erase the name from the list for exam". The authority of erasing the names of students who have paid their tuition and enrolled for the year, from lists for exam is not among the authorities vested in Directorates of Departments. The applicant`s name was erased from the list for exam before she came for the exam. Before they decided to do this, they even did not wait for the date of exam and for seeing whether she would come with headscarf or not.
- ❖ The reason for restricting the applicant`s right of education was not her clothing during the exam, because it had been thought that she would come to exam wearing headscarf.
- ❖ The administration of university judged the applicant and reached a decision in advance and punished the applicant by impeding her from taking exam. They

even did not wait for the date of exam and the erasing of her name was a clear expression that they considered her potential guilty. Before the exam it was not even certain that my client would come to exam wearing headscarf.

**CONCLUSION** : The wearing of headscarf could cause to erase the name of student from the list for exam and therefore it could be a reason to punish the individual without she committed the "crime" which is a term used by administration.

**19\* SUBJECT** : The appointment of a civil servant –who has been investigated due to her wife’s clothing and behaviors- from Istanbul to Hakkari as a punishment and to be obliged to sue for divorce against her wife for 14 years

#### **PHYSICAL EVENT**

- ❖ The subject is a deputy headmaster in a school in Istanbul. He had been a successful teacher and an administrator for 14 years. He had never been instituted a disciplinary proceeding. There have been successful studies and positive registers of him. (More than 1000 signatures were gathered in a petition to support him when he was given the punishment.)
- ❖ Education Ministry was informed that his wife wears headscarf and teaches Koran to students. Legally it was understood that a person with false signature and name sent this information to the Ministry.
- ❖ In spite of this fact, Head Office of Staff conducted a disciplinary investigation about him. The writing in which his defense was requested contains the following: “The subject’s wife provided some religious books for young girls and, she encouraged them to wear headscarf by explaining fundamentalist ideas resulting in breaking of relationship between families and their daughters. Because the subject allowed his wife to carry out these meetings at home and he supported her, he has to defend himself about this issue within 7 days **(Annex 1)**.”
- ❖ He expressed that it was completely wrong to be requested a defense only because of his wife and not to be instituted inquiry about an accusation he had done. He also expressed that the attribution mentioned was not true, his wife had never been to such activities, nor had he supported her in any such action and **thing -which has not been- could not be proved**. He said that **it was not possible him to know the neighbors who visited his house when he was working**. At this point he asked whether it was requested him to stay at home all day and not to allow their neighbors into home or to get a divorce. **(Annex 2)**
- ❖ The applicant gave his defense on the date **18/12/2000**. But without being waited for his defense on the date **30/11/2000**, he has been exiled to Hakkari (a city, which is 1500 km far from Istanbul) which is a border city in the east of the country. It was mentioned in the appointment text that his duty station has been changed by the reason of the inquiry. **(Annex 3)**
- ❖ The investigation was conducted against him because of his wife, consequently he was forced to divorce his wife of 14 years in Tuzla-Istanbul Civil Court of First Instance. **(Annex 4)**.

#### **EXPLANATIONS**

- ❖ According to juridical regulations and laws about civil servants, civil servants will be punished or an investigation will be conducted against them if they violate the regulations.
- ❖ **Legally it is impossible to punish a person because of his/her partner’s activities and his/her visitors when he/she is working.**
- ❖ The interested person’s wife is a teacher who has been excluded from Civil Service in the period after the year of 1998 because of she has been covering her head with scarf. The relevant’s wife has only covered her head. All the other things that mentioned are consisting of false accusations. These claims have no another ground excluding only a letter of notice which has false name and signature. Because there has not been seen any minor fact in the researches done about this. With this reason, the people in the applicant’s duty district gathered signatures relating to the accusation done have not been true. However the administration has done the appointment processing without needing any physical evidence, moreover without waiting the applicant’s defense and has not taken the

relevant petitions into consideration. There is no legal explanation about the issue and it was reported as "arbitrary exile" in newspapers. **(Annex 5 and 6)**

- ❖ Despite the fact that defense has been taken from the applicant on the date 18/12/2000. the appointment has actualized on the date 30/11/2000 and subsequently "censure" disciplinary penalty has been given in order to not to make invalid this appointment, appointment to a place where has no safety of lives at that period have been showed that there is not a legal ground.

**CONCLUSION** : A successful teacher who had took higher register marks up to that day could be exiled to the eastern of the country because of that her wife has been with headscarf and a sham notice letter about her sent.

In this situation a successful civil servant has been obliged to make compulsory to her wife to uncover her head or to divorce of her wife from him in order to not to take punishment. For as much as being a civil servant's ideas different from his wife, loving each other, having a marriage over 14 years or a legal fact that a person can not be punished because of particulars of charge of other have not been able to consider by administrative organs.

**20\* SUBJECT** : An appointment, as a punishment, of a civil servant just because of her wife`s preference of wearing headscarf and their life style and the legal approval of this punishment by decision of Council of State (Council of State, 5th Department 1999/ 4112 basis, 1999/ 4325 Decision) (**Annex 1**)

### **PHYSICAL EVENT**

- ❖ Applicant is a successful civil servant in management department as it is expressed on the the Council of State, 5th Department 1999/ 4112 basis, 1999/ 4325 decision. By the reason of that her wife has been with headscarf, he was complained and an investigation report has been prepared about this issue. On the report; it was expressed that
  - His wife wear headscarf which was defined as symbol(!), goes out when she wears it and keeps in touch with just people wearing headscarf like herself.
  - Applicant has never been in any meeting also including national celebrations and ball of being republic with his wife; in this concept it has been stated that a family life style emerged far from the social and cultural atmosphere of the surroundings, compromised! with only particular section and activated together with this section.
  - Applicant has relationship with some people called "fundamentalist", when he is not working.
  - During working days, he usually goes to Friday`s pray.
  - APPLICANT HAS DONE SUCCESSFUL STUDIES IN HIS EDUCATION ACTIVITIES CONTAINING HIS WORKING AREA besides his ordinary work; but there was a gossip about him in a small city and it was understood from gossip, there was a violation of neutrality which is one of the main characteristic of manager by this civil servant; even though there is no proof about it, there are some comments about him that he has tendency to certain ideas; his family keeps in touch with certain families; without thinking that it can cause wrong message, he supports his wife in wearing headscarf which become a symbol of fundamentalists in a secular country and as a result of this, rumor has been increasing about him. (**Annex 1**)
- ❖ An appointment was took place as a punishment about the applicant.
- ❖ Applicant sued against appointment in administrative court. He asked for annulment of decision because there was no concrete reason and provision of appointment should be certain.
- ❖ Defendant discerned the administrative decision. Attorney general of administrative court got the explanations on the report mentioned. He expressed that defendant has been working successfully and there was no reason for punishment. But attorney general of administrative court expressed that defendant has lost his representative features in his work and situation in management because his wife wears headscarf; he asked for cancellation of decision.
- ❖ In the report and decision separating the society into a particular section and without having a physical example announcing the concerned person together with this section, the statements of considering themselves abstractly from the other section are other important points which could not be explained in mentality of law.

**CONCLUSION** : No matter how successful civil servants in management department are, they can be punished if their wives wear headscarf. Because of that they should force their wives to take off their headscarf or they should divorce. Only concrete reason approved by Council of State for appointment is that applicants` wife wears headscarf. As it was seen on decision, applicant has been doing very successful works. According to this, one person`s wife being with headscarf can be an enough reason for disturbing all his family life as sending him to the other frontier of the country.

**21\* SUBJECT** : Judges who made decision in favor of applicants with headscarves were sent to different places, by the reason of that "her wives' wearing clothes which are not modern" starting inquiry about the judges whose wives wear headscarves.

### **PHYSICAL EVENT**

- ❖ The laws protect the justice for everyone without any discrimination. The judge should be independent from the parties and executive.
- ❖ Despite being this, in the circumstances that the judges give decisions in favor of the litigants who are with headscarves, the suits have been filed about themselves, even their wives' clothing manner could have been the issue of the inquiry.
- ❖ Inquiry was started for judges whose defense petitions are in appendixes. But in inquiry there is no disciplinary offence according to the Judge and Prosecutors law regulations. In Justice Chef Inspector writing (**Annex 1**) "because of your private life style and dress of your wife code which is not contemporary, you are suspected having ideas against secularism."
- ❖ In addition, another inquiry was about a Tax Court Judge because of his wife dress code and his life style such as sitting women and men separately, listening religious programmes and musics from radios (**Annex 2**). By this way, judges have not been inquired because of a crime according to Judges and Prosecutors Law, but only with the reason of their wives' garments.
- ❖ In this point, a judge was inquired just because of the dress code of his wife without any offense determined in regulations; this prevents making fair decisions about applicants with headscarves.
- ❖ As a matter of fact; when headscarf ban started in University of Istanbul in 1998, students claimed that they lost their education, they applied to Administrative Court. They declared that basic rights can only be restricted by written laws and scarf ban has not any written laws, besides (HEC) law section 17 said that wearing style is free unless there is offence against basic rules. Also, if there had been restrictions on wearing. They could not have studied in previous years. Moreover, if hearing headscarf was an offense according to the regulations, they would face inquiry and law sentenced according to the regulation, but they were restricted to enter even the University's garden, they completely lost their education right without any judgement.
- ❖ After press informed about assignments of judges to different cities due to the 'dress code' of their wives, nobody could take decisions in favor of applicants using headscarves in courts even if they are right. As far as we could get information from newspapers, five judges from Edirne Administrative Court who made decisions in favor of applicants with headscarves were assigned to different provinces. One of the judges in 6. Administration Court of Istanbul was sent to Edirne, other judge was assigned to Administrative Court of Sakarya. The Judge in Administrative Court of Van province was inquired, while judges in Administration Court of Samsun and of Bursa were inquired after their decisions about headscarf events. The attorney general of Yozgat who decided to start a civil law about rectors and deans not allowing students with scarf to go in to the University was assigned to another province as a normal judge. Due to importance of issue, detailed information about judges was given to public.
- ❖ (aa)- The decision of 6th Administrative Court of Istanbul made in 26th of June 1998 and numbered 1998/369 about the applicant said "the administrative notice restricting students from using their educational rights is against the laws. A disciplinary investigation was started about Judge Selami Demirkol, who signed the decision and the file, which has been in final decision grade, has been taken from himself. During his inquiry, 4455 numbered law "Ambassy in Discipline Fairs Civil Servants" became effective, hence the inquiry ceased to be effective. On the other hand, he had to face some irrelevant inquiries unnecessarily and he was

sent to 2nd Administrative Court of Sakarya. Another judge Seher Bayrak was assigned from Istanbul to Administrative Court of Edirne. Because of her assignment, she had to move to Edirne and due to some extra inquiries about her, she had to resign from her job.

- ❖ After judges who gave decision to stop actions were send, 6th Administrative Court made decision in favor of scarf ban.
- ❖ (bb)- 8th of July 1998 and 1998 /410E. Numbered decision made by Administrative Court of Edirne said **(Annex 5)** "dress code is not determined by HEC (Higher Education Council)'s Student Disciplinary Regulation, hence any penalty can not be given in like situations. This decision was taken by judge Ali Kaban, Abdurrahman Beşer were inquired after their decision. Ali Kaban was assigned to Trabzon, Mesut Güngör was assigned to Malatya, Mustafa Dinç was sent to Administrative Court of Aydın. These Assignments were reflected in the news as a "scarf surprise in justice" **(Annex 4)**
- ❖ These assignments mode an impact on other judges and therefore Administrative Court of Edirne had found giving disciplinary punishment to the students as illegal, it has started to dismiss the cases. So it could not be understood whether written laws were changed or not.
- ❖ (cc)- In Bursa 2th of june 1999 and 1998/1138 E. 1999/704K numbered decision mode by judges Sabri Unol and M.Ali Ceran were inquired after this decision. In 22 pages law decision, it is stated that restriction of students with scarf to attend classes in Imam Hatip High Schools is against national and international laws **(Annex 8)**. Head of Administrative Court of Bursa, judge Sabri Unal was sent to Administrative Court of Aydın as penalty. Judge Mehmet Ali Ceran also was assigned to Tax Court of Gaziantep. These assignments were known as "scarf exile to the judge " in newspapers **(Annex 5)**.
- ❖ (dd)- 1th of October dated and 1999/139E.1999/908K. numbered decision mode by Administrative Court of Samsun said "The directors of schools punished because their actions are against the laws"(App.10). This decision was signed by Judge Cafer Erdem was assigned to Administrative Court of Kayseri, Recep Tas had a different fair. These events were reflected in press as "scarf finished the judges' job"**(Annex 6)**
- ❖ In Addition, all judges in Samsun were inquired even the judge who did not sign the decision above. Inquiry papers were sent to every 5 judge without looking their sex. Because in the inquiry paper, it is written that the inquiry was about your spouse scarf. This inquiry was sent to women judges too, but it is not understood how their husbands could use scarf in practice life. **(Annex 3)**
- ❖ (ee). A student from science and Literature Faculty of Erciyes University applied to Attorney Generalship of Yozgat because she lost her education right due to her headscarf. Attorney General of Yozgat brought a suit against Rector of Erciyes University and Dean of Science and Literature Faculty because of violation of students' education brought this civil suit was inquired by Justice Ministry **(Annex 14)**. He lost his seniority and was assigned to Istanbul as a Prosecutor, they he had to resign.
- ❖ dd) furthermore, judges in Administrative Court of Van who decided in favor of students to give pictures with scarf for registration of school as it is done in previous years in Theology Faculty of Van University. Because of their decisions, judges were inquired.

## EXPLANATIONS

- ❖ These examples are only known because of news published in newspapers. So judges who signed this kind of decision were assigned unfairly as a punishment. Hence it is not understood how their assignments decision were mode, whether they are legal or not according to written laws.
- ❖ The Administration has a big impact on judges specifically who mode decision in favor of students with scarf. They were inquired and assigned to other provinces.

Army gave some seminars to judges. Those events showed that judges can not be independent and impartial.

- ❖ After inquiry their assignments to other provinces is a clear punishment . according to the Judges and Prosecutors Law. 68th edition the assignment to another province is a kind of punishment. These kind of punishments have already big impact on Judges prevents them to make fair decisions. Because regions of Turkey have not same level as economically on socially.
- ❖ The punishment of judges who stated that banning of education right is absolutely against to law have big impact on other judges to make independent decisions. In this point, Judges and Prosecutors of Administrative Courts have lost their independent and impartial features.
- ❖ Because of that application, only one type of decisions began to be taken and these were decided by not into consideration of students current situations ,physical law norms, but with objective comments and generalizations. This case even reach up the copy decision to be taken in which only the names were changed, any information, even the names of lawyers were confused because of lacking of any investigations.
- ❖ In the last decisions about headscarved clients, according to laws, instead of rejecting the suit, such a complicated suppositions and comments about the students personality. "there is a appropriateness with the application of not accepting headscarved girls and beared students to the practises and courses in respond to aims of YÖK to bring up individuals with free thoughts, free conscious, modern opinions modern dressed, respectful to national values. In the establishments of Higher Education. In which wise and science pioneers.
- ❖ In the decisions it is concluded that only the rectorship has the right of decision the headscarved students spoil the order of class and so that every treatment about them comply with the law. It isn't taken into consideration that in the campus 18-20 year-old students with different colour and shape dress take education. Some students wearing headscarf can't spoil the order .

**CONCLUSION** : Because of having a headscarfed wife for a judgement or giving a decision in favor of an applicants with headscarf could be a enough reason for their assignments to other cities as punishment or their inquires without any legality.

**22\* SUBJECT** : The awards, about the cases with different subjects suited by the plaintiffs who cover their heads, are all same word to word and are sent to a lawyer who is not related to the case as printed writing to plaintiff' s counsel.

### EXPLANATIONS

- ❖ During the period beginning in 1998, many covered women bring their cases to Administrative Courts with the ground of violations of their education and working rights. However, without assessment of their individual situations or the petitions for the cases prepared writs were declared at the end of trials.
- ❖ The plaintiff, Rafiye Sakin, was punished by removal from school for one semester for going to the school while she was covered and causing the postponement of lessons. The decision of stoppage of execution dated 02/26/1998 was made unanimously by the court with the ground of "the punishment was contrary to the law". It was stated in the decision that " presence of related person in lesson does not require the punishment by removal from school for one semester"**(Annex 2)**.
- ❖ The newspapers announced the news with investigations<sup>1</sup> launched about the judges who had made decision in favour of covered women in accordance with present law articles. After that prepared writs against the plaintiffs have started to be declared in the courts. A court, in which a decision had been made in favour of one plaintiff in 27/10/1999 made a decision against another plaintiff with a prepared writ which only name, date, the disciplinary punishment and the ground for the punishment were filled in the blank areas after the preparation of writ. **(Annex 1)**.
- ❖ The same prepared writ which only name, date, the punishment and the ground disciplinary articles for punishment were filled in blank areas of the writ was declared as the final decision of the court or a case related to another plaintiff's application for stoppage of the execution of the punishment reproach. The subject of the case related to the punishment of reproach was completely different from the previous plaintiff's. A medical student in the sixth year was invited to the university to defend herself for a subject, which has already finished because of time limit. The student, Medine Kocaman , came to the disciplinary board and gave a written defence stating that: " She had come to the school for five months and the investigation had been already finished because of time limit **(Annex 5)**. Then, the student was punished by reproach not for the subject of first investigation but for coming to disciplinary board while she was covered **(Annex 6)**. The student filed a suit and asked for the cancellation of the punishment. She stated that:" As first investigation was not started in required period discontinuance of action was necessary, and the punishment given to her without a new investigation and just for coming to investigatory board was against the law **(Annex 7)**. Nevertheless, the court refused the requirement of the plaintiff, who was covered, by sending a prepared writ, which had been sent before as final decision to another case related to removal from school for one semester. **(Annex 3)**.
- ❖ This situation shows that covered plaintiff's cases have been refused without assessing their case petitions. As a matter of fact, the second Administrative Court of Istanbul made a decision writ, which was prepared, and only the name of plaintiff, number of file, number and date of Higher Disciplinary Board's decision were filled in blank areas of writ and even the name of plaintiff's lawyer and address were prepared. Despite the fact that, the case was related to dismissal

---

<sup>1</sup> About Judges of Administrative Court of Samsun, Bursa, Istanbul, Edirne, Attorney General of Yozgat, Judge of Regional Administrative Court of Van. There were headings in newspapers such as "Judges who are dismissed because of allowing covered women", "Banishment because of headscarf", "Headscarf surprise in the court". Four of judges were investigated because of their covered wives, and one female judge was investigated too. For more detailed information see 21<sup>st</sup> subject.

from civil service because of being covered therefore the case was extremely important for the plaintiff. **(Annex 8)**.

- ❖ To give the printed writing of the lawsuit influencing an individual's whole life to the plaintiff's counsel will damage the principle of justice and at the same time Fatma Benli, Lawyer who is not determined as plaintiff's counsel, is not related to this lawsuit. Fatma Benli, lawyer thinking that there was a mistake, wrote a report including that she did not start this lawsuit; she did not know the plaintiff and she was not related to this lawsuit; she gave back the decision to the court. **(Annex 9)**. The court decided that: " It was understood that another lawyer started this lawsuit and the name and address of the real lawyer of plaintiff should be written on the decision." But the latter and the last decisions of the court were again notified to a lawyer who is not related to this lawsuit **(Annex 10)**.

**CONCLUSION** : Regarding lawsuits, which were litigated by individuals whose education and working rights were violated because of headscarf, it is not important whether or not the topics of the lawsuits are different, they are not taken into consideration that the petitions and topics of the lawsuits can differ. Printed decision containing the name of plaintiff's counsel can be prepared before the decision itself and they can be sent to lawyers who are not related to these lawsuits and even though the court is informed about the mistake, they can make the same mistake.

**23\* SUBJECT** : Administrative Court's approval of dismissal punishment of a civil servant because Administrative Court's explanation that " She is not sincere about regulations of clothing because she wears a wig."

#### **EXPLANATIONS**

- ❖ The aforementioned person is a teacher teaching religious culture and morality and she started to work as a civil servant in 1992 and she wears headscarf. She did not have any problems during her works and she was successful until 1999.
- ❖ Disciplinary investigations were started against her in 1999. After that she gave a written petition that she obeyed the regulations about clothing dated 24/11/1999 and 10/12/1999. She started to work according to clothing regulations and she stopped wearing headscarf. After that she stopped wearing headscarf even in the garden of her work place. Reports were written about her obedience to regulations. **(Annex 2)**.
- ❖ At this time, a new investigation was started because she started to wear a wig in work place. After warning she stopped wearing a wig. She informed that she did not wear a wig any more but the investigation did not stop.
- ❖ She was dismissed from being a civil servant because it was claimed that she damaged the peace and the regulations of work place by her ideological and political aims. **(Annex 3)**. There are no events about her like ideological and political behaviour, damage to work place's peace, any break on education or working while wearing headscarf.
- ❖ She started a lawsuit and wanted the punishment to be cancelled. She explained in her petition that:" wearing headscarf in work place does not damage the peace and regulations of work place; she did not damage the regulations; she did not have any ideological and political behaviour; she obeyed the regulations and the event itself was a mistake<sup>1</sup>."
- ❖ Sakarya 2<sup>nd</sup> Administrative Court refused her request with a decision that " she was not sincere about regulations because she wears wig and because of that the decision about damage to the peace of work place by ideological and political aims was true." **(Annex 1)**

**CONCLUSION** : It is not enough to work without wearing headscarf not to lose one's social rights and income, and to continue his/her job. They have to persuade that they are sincere about obedience to clothing regulations.

---

<sup>1</sup> 21/12/2000 dated twelve pages lawsuit petition

**24\* SUBJECT** : The Attorney General of Republic, thought of that was a crime not to enter the universities students in campus opened a public suit, because of General Staff complaint had a investigation and sent a city as a simple prosecutor.

#### **MATERIAL EVENT**

- ❖ The dean of Faculty of Science and Literature of had sent the security guards a written about not to take the headscarf students in campus.
- ❖ The headscarf students are registered the school and they were going to take education in order. They had registered the school with headscarves. After that decision, in spite of there is no change on the law, the students who are not uncover doesn't taken the school. The headscarfed students are prevent from entering the school. There was no law or regulation and there are no disciplinary investigations about students.
- ❖ No law or regulations presented when the headscarf students were prevented from entering the school. There are no discipline investigations about these students. The students had crime notices for Prosecutor of Republic because of their educational rights are prevented actually.
- ❖ As a rule open a public suit about an official depends on investigation permission from managerial position. But there is an exception about education right according to law. At 2547 issue, 53<sup>th</sup> item (c) article 7<sup>th</sup> paragraph **"These situations which restrict to learn and teach freedom direct or indirect way the Prosecutor of Republic make the process directly."** The students had required directly to open a public suit.
- ❖ The Turkish Criminal Code 188<sup>th</sup> article 7<sup>th</sup> paragraph arranged as a crime that "by illegal way to using force on persons or things or prevent by threaten a person from enter the every kind education and instruction associations or dormitory or some like that where the students live collected or accessory building or stay there" 8<sup>th</sup> paragraph says that they will have punishment whose "cause cutting or having break studies of education and instruction by unjust actions or behaviours"
- ❖ Like explaining on settled Supreme Court decision, for be formed the attribution crime which mentioned The Turkish Criminal Code 188<sup>th</sup> item; suspects should **(...education and instruction associations... enter or stay there... using force on persons or things or PREVENT by threaten the others"** Crime as a result of suspects actions the crime come true, actually cutting or because of these actions has importance that can cut the education and instruction.
- ❖ Yozgat Prosecutor of Republic with indictment which is article, opened public suit about dean's office who had given order not to take the students with headscarves the school and employees who perform the illegal orders. At the indictment there is no comment sentence. The suit based on simply concrete law norm and authority principle. **(Annex 2)**
- ❖ General Staff, High Education Association, Turkey Unity of Bar Association complaint the Attorney General to the Ministry of Justice.<sup>1</sup>
- ❖ Ministry of Justice penalty service general directorate opened an investigation about the Attorney General because of he had opened a suit cause of headscarf students.
- ❖ They want him to defence in spite of he resignation before. **(Annex 1)**
- ❖ At the ministry decision; *"The public prosecutor has no authority for investigation directly."*(Law of High Education 53\7 c paragraph were not taken into consideration)
- ❖ It is impossible to think the protests organized by students wearing headscarf and studying in the universities and people supporting this kind of protests and

---

<sup>1</sup> This situation was expressed in the request writ for defense sent by Ministry of Justice. For more detailed information see Annex 3

behaviour as innocent and intentioned wishes when we evaluate the main aims of them know by all people. These protests seems to aim to break the rule of secularizm and to exploit the religious beliefs with an organized way. But they try to mislaid people by saying that the aim of them is to get their freedom. We should be very careful about the situation. It is impossible to think the situation as a misinterpretation of the decision and assessment. By this action which can encourage the aforementioned people and seeming to support these people by jurisdiction it is impossible for him to work as ana objective person because he became a candidate to be a candidate from "Fazilet political party" for 18 April 1999 dated general election and he showed that he had some political aims by his actions. **(Annex 3)**

- ❖ After the investigation the prosecutor was sent a city as a simple prosecutor for penalty.

**CONCLUSION** : To establish decisions benefit headscarf student, even if it's originate from concrete law norm and also based on situation like the law can be evaluate as practise that"*By this action which can encourage the aforementioned people and seeming to support these people by jurisdiction*" and could open a suit about the member of judgment even after he resigned and could be accepted as a big crime as a reason for penalty.

**25\* SUBJECT** : Punishing a 6<sup>th</sup> year Medical student by removal from school for one semester because he has beard.

### EVENTS THAT HAVE HAPPENED

- ❖ The applicant is a 6<sup>th</sup> year student in Medical Faculty in Cumhuriyet University.
- ❖ The applicant is a person with beard, he had beard when he enrolled and he has taken his identity card with a photo with beard and he had not experienced any problem because of his beard until the 6<sup>th</sup> year.
- ❖ There not any restrictions about beard in Turkish legislations.
- ❖ Additional 17<sup>th</sup> Article of Higher Education Laws contains the provision that; "provided that it is not against the laws being in operation, clothing is free in Higher Education Institutions".
- ❖ Students having different opinions and clothing have been studying in Higher Education Institutions. Since 1998, only students wearing headscarf have not been allowed to open or closed places which belong to Higher Education Institutions.
- ❖ Just because he attended lectures while he had beard, an disciplinary investigation has been conducted about the applicant in 1998 according to the applied ban. There is no defined offense about beard or clothing in Student Disciplinary Regulations. **(Annex 3)** The applicant has taken the disciplinary punishment, because he has claimed that he had beard but it was not harmful to anyone and that it was his fundamental right to grow a beard and he have not shaved his beard. **(Annex 4)**
- ❖ The applicant was punished by warning, disapproval, removal from school for one month **(Annex 2)** and for one semester **(Annex 1)**, successively.
- ❖ The applicant sued for cancellation of disciplinary punishment for one semester<sup>2</sup>and it was cancelled<sup>3</sup>. But the decision of disciplinary punishment for one month was legally approved<sup>4</sup>. In his petition to court, the applicant stated that it is impossible to punish him legally in accordance with the body of current law **(Annex 3)**.

**CONCLUSION** : Just having a beard was considered a sufficient reason to punish a 6<sup>th</sup> year Medical Faculty student by removal for one semester from school in the year when he is to be graduated.

---

<sup>2</sup> The petition for the case (consists of 9 pages), dated 12/03/1999

<sup>3</sup> Administrative Court of Sivas, number of file 1999/298.

<sup>4</sup> Administrative Court of Sivas, number of file 1999/204.

**26\* SUBJECT** : Expelling a civil servant, who has been a teacher for 19 years, because she wears headscarf and without taking into consideration the health reports that show the teacher suffers from cancer.

#### **EVENTS THAT HAVE TAKEN PLACE**

- ❖ The applicant is a teacher who has been working successfully for 19 years, together with some years in private schools.
- ❖ During 19 years she has worn headscarf and she did not fare an investigation until 1999. It was broken because of wearing headscarf.
- ❖ Despite the fact that she has got health reports because of her cancer, she was expelled from her job (**Annex 10**). The applicant has claimed that she already had not been working in accordance with the health reports proving her illness and she requested the cancellation of the expelling of her from the job. Her request was rejected (**Annex 11**). Subsequently, disciplinary investigation and investigation was conducted about her juridical.
- ❖ As a result of judicial investigation, it was decided that wearing of headscarf at school was an offence necessitating to file a public suit about the applicant, although there has been no accusation of offence during her 18<sup>th</sup> years of service, The Governor made a decision of necessity of trial leading to file a suit about applicant in criminal court (**Annex 8**). A criminal suit was filed in Tuzla Criminal Court of First instance with the request of three to six months of prison sentence. The decision of acquittal was made, with the reason of that wearing headscarf was not a offensive act according to Turkish Criminal Laws and it is a disciplinary crime necessitating disciplinary punishment of warning in accordance with the laws related to Civil Servants, paragraph 125 A/g (**Annex 9**).
- ❖ As a result of administrative investigation, the file was sent to the Higher Disciplinary Council. The Higher Disciplinary Council requested a defense from applicant, because of the accusation of that "A she wears headscarf she, having ideological and political considerations, damages the peaceful atmosphere and working organization of institutions". In the writ notified in 17 April 2000, it was stated that the applicant had right to examine the file of investigation, to defend herself orally in meeting of Disciplinary Council and to call witnesses (**Annex 2**).
- ❖ The applicant has undergone an operation because of "breast cancer" in 14 February 2000.
- ❖ The applicant was given a Health Council report in 01 March 2000. She was sent to the state Hospital to take Chemotherapy and physiotherapy in 01 April 2000. She was given a Health Council Report in 30 March 2000 and valid for 3 months because the applicant started to take "the chemotherapy that will take 1 year to complete. She has taken a Health Council Report in 01 July 2000 valid for 6 month because of her continuing treatment (**Annex 7**).
- ❖ The meetings of Higher Disciplinary Council take place in Ankara province and the applicant lives in Istanbul province.
- ❖ Her continuing disease and treatment prevents her from traveling from province or even within province. Civil Servants Laws consider the health problems an accepted excuse and in the health problems was considered on accepted excuse in Civil Servant Laws and it was stated that officially given periods could be stopped during health problems.
- ❖ The applicant informed the Higher Disciplinary Council about her rightful health excuse. She sent her Health Council Reports to the Higher Disciplinary Council and she also informed "after completion of her treatment she would defend herself orally to refute the assertions and she would call vicitness" (**Annex 3**).
- ❖ The applicant's petition and report was not taken into consideration she received a ready-made printed writ which has been given to all civil servants when necessary.

- ❖ It was stated that the applicant would examine her investigation file if she came to Ankara within 7 days following notification of writ and then she would be given an appointment to allow her defending herself orally and calling witness (**Annex 4**).
- ❖ In her answers to the Council, the applicant stated that writ did not include answers to her request, there must have been a mistake. She stated that her cancer treatment was continuing, as it was proved with. Health Council Reports that was enclosed, and it was impossible for her to defend herself in this situation. The applicant requested that she was allowed to defend herself after competition of her treatment.
- ❖ The applicant's request for using her night to defend herself was decided to expel her without waiting for the end of her treatment and without her defense (**Annex 1**).
- ❖ They did not allow her to come up with the rights that are defined in 129<sup>th</sup> article of Civil Servant Law and that should be allowed to before deciding the applicant to expel.
- ❖ The reason for the investigation to be conducted was the wearing of headscarf by the applicant but not to be obey to the Clothing Regulations necessitates only disciplinary punishment of "warning" according to the laws, therefore, the punishment of expelling was given in accordance with the article of 125 E/a which defines the crimes to expel the civil servant when they commit the act of that "with ideological and political considerations, to damage the peaceful atmosphere and working organizations of institutions". To be able to give a punishment in accordance with this article, they did not look for any evidence of harmful action against the peaceful atmosphere.

#### **EXPLANATIONS**

- ❖ The investigation was started because the applicant wears headscarf. Wearing of headscarf is violation of circular concerning the clothing of personnel working in state institutions, dated 1982.
- ❖ The paragraph 125A/g of Civil Servant Law deals with the disciplinary crime of "not to obey the defined provisions about the clothing". The punishment for this crime is "warning".
- ❖ The paragraph 125A/a Civil Servants Law deals with the disciplinary crime of "with ideological and political considerations, to damage the peaceful atmosphere and working organization of institutions". The punishment for this crime is "to expel the civil servant".
- ❖ It was a general rule that to be able to give someone a punishment in accordance with a disciplinary article that we apply should be actually committed. There were not any concrete events that the applicant was associated with. Expert from violation of the Clothing Regulation by the wearing of headscarf, but still she was punished by expelling from civil service according to the article 125 E/a.
- ❖ When a civil servant is expelled, he/she legally can not work in public services anymore.
- ❖ It was obligatory to provide the freedom to the right to examine her/his investigation file, to defend herself orally and to call witnesses for a civil servant who is considered a candidate to expel.
- ❖ According to the Civil Servant Law, when a civil servant have a health report or is on vacation, she/he can still be notified but the legally determined periods to answer should begin following the last day of vacation and/or health report.
- ❖ In the petition to court, it was stated the applicant did not commit the disciplinary crime defined in article 125 E/a, and there was not any evidence proving this assertion. Besides , it was stated that when she was in a situation of life and death not to accept her health excuse was against the justice (**Annex 6**)

- ❖ But still her request was rejected on the ground of her wearing headscarf and her request for cancellation of decision was rejected

**CONCLUSIONS** : Despite of her 18 years of public service, they decided to expel the applicant according to the an disciplinary article which is indeed not violated. During the period of making a decision to give such a big punishment, 17 was not taken into consideration that she was taking treatment was continuing as it was proved by the health reports. The decision to expel was mode without needing to listen her defense which was necessary provided that they did not ignore her health excuse. Therefore, it was understood that apart from the death, no excuse could be accepted if the excuse was made by a civil servant wearing headscarf.

**27\* SUBJECT** : Some civil servant with headscarves were sued in criminal court, and asked 3 years prison sentence. Although some judges didn't give any sentence, they were alleged several times by Hospital Administration.

### DETAILES

- ❖ Governor of Istanbul gave permission for allegation of 18 civil servants working in Haseki State Hospital due to their headscarf.
- ❖ This permission by Governor can only be given for criminal courts. Therefore, it is only for actions written in the Turkish Criminal Court. There is no regulation for women wearing scarf. There were some interpretations about women doctors wearing scarf, such as, malpractice or rebellion in the Hospital.
- ❖ Related doctor women plead the allegation to the Administrative Court of Istanbul. In the plea Petition. There is no regulation of about dressing of women in the Turkish Criminal Servant's Regulation, and if there is an action against this regulation, warning sentence can only be given according to 125 A/g part of State of Civil Servant's Law. This action can be sued in the Criminal Court. 1st close of The Turkish Criminal Code says that sentence cannot be given to an action which is not written in the Turkish Criminal Code. Therefore, related-people didn't do any action written in the Turkish Criminal Code, and that's why, they cannot be sentenced, it is against the law<sup>5</sup>.
- ❖ The allegation dossier was sent to Public Prosecutor, before the Administrative Court of Istanbul hadn't given its decision yet. (According to 4483 numbered law, before the chief Public Prosecutor makes decision, the Administrative Courts must have finished their allegation).
- ❖ The Public Prosecutor made decision "There is no action written in the Turkish Criminal Code, therefore there is no need for allegation. The action can only be questioned by the chief of hospital" (**Annex 2**)
- ❖ In spite of that the allegation must be stop, another prosecutor sued related civil servants regarding 230th clause of The Turkish Criminal Code requiring three years imprisonment for the action of related civil servants (**Annex 4**). However, they were under stress unnecessarily because they had to give testimony to courts like a criminal guilty. Most of doctors have to cover their head in operation rooms. In Addition they were under stress because of risk to be jailed.
- ❖ Since 1999, Governors have made allegations for about 200 civil servant's due to their scarf in spite of that there are no changes in the regulation of civil servants. Particularly teachers with scarf have been alleged, and almost to of them were sued in Criminal Courts, and they had to give testimony to courts.
- ❖ These actions including allegations and Criminal Courts have resulted in serious stress on female civil servants. Besides, Tuzla Criminal Court didn't let a teacher to enter court salon due to her headscarf. The teacher had been working in Tuzla Imam Orator High-School as a theology teacher, and she was teaching Qur'an and related Islamic lessons. Therefore, she couldn't defend herself in the criminal Court without any legal explanation. It shows that it is not known where to draw the line. The related civil servant sued the judge who didn't let her to enter the court salon to High Committee of judges and Prosecutors (**Annex 5**), but her case was refused (**Annex 6**).
- ❖ Besides, other civil servants with scarf were not accepted Court Salon to defend them shelves. They refused the judge due to the fact that he couldn't be impartial. Their refusal was rejected (**Annex 7**). They sued the case the higher court but it wasn't accepted, they were sentenced the fine. However, all civil servants were acquitted even if they didn't have rights to defend themselves<sup>6</sup>.

---

<sup>5</sup>13th of September 2001 dated Plea-petition given to the Administrative Court of Istanbul

<sup>6</sup>17.09.2000dated decision, in 2000/191 dossier, from the Criminal Court of Tuzla

- ❖ Almost 12 courts, including one supreme Court 2<sup>7</sup>, made a decision that wearing scarf is not an action written in the Turkish Criminal Code.<sup>8</sup>
- ❖ Only The Criminal Court 1 of Uskudar made a decision fine sentence in 200/721 main, 2000/1400 numbered decision. In the decision, it was said that 3 years sentence was given according to the 526<sup>th</sup> clause of the Turkish Criminal Code, and the sentence was furred in to fine sentence<sup>9</sup>. The sentence decision was pleaded because of it's illegality. The Supreme Criminal Court disaffirmed the decision of the Criminal Court 1 of Uskudar in the 2001/22859 main, 2001/16701 numbered decision. In the Ground, it is said that warning sentence must have been given to civil servants according to the regulation of civil servants dressing. (17 numbered regulation of 657 numbered law) instead of jail-sentence or fine sentence. Because there is no action taken place written in the Turkish Criminal Code; therefore, the decision was disaffirmed (**Annex 10**). After that, The Criminal Court acquitted the related civil servant in the 19/02/2002 dated decision, and it is said that it could be given warning sentence for this action, not criminal sentence (**Annex 11**).
- ❖ In spite of that wearing scarf is definitely not an action written in the Turkish Criminal Code, and that's why, no sentence can be given in Criminal Courts, there are still some civil servant are alleged or sued due to their scarf by Administration. And, some of civil servants were suspended from their jobs for 2 year, in stated of three months. They were not allowed to work in this period. Even in the Council of Istanbul, There were some civil servants including Imam were alleged due to their dressing or their tolerance to other civil servants with scarf. Allegations were started for some civil servants wearing scarf by Governor of Istanbul <sup>10</sup>.
- ❖ Although civil servants with scarf have been working for several years without any criminal action, they had to go to courts and give testimony. It is clear that most of them had never been in criminal courts, because religious people are less likely to be involved in criminal actions due to their moral values. That's why, they have become very stressful because of these allegations for this person even if they were acquitted.

**CONCLUSION** : Even after years ,being with headscarf on duty can be a reason for open a suit and want to sent her prison for 3 years. About official who wear headscarf, not needed to wait the investigation order to become definite can open a punishment suit, in spite of a public prosecutor opposite way decision.

<sup>7</sup> 21/01/2000 dated, 1999/998 main, 200/41 no decision of Sariyer Criminal Court, and 23/05/2001 dated decision of Supreme Court 2

<sup>8</sup> 21/01/2000 dated, 1999/998 numbered decision of The Criminal Court of Beykoz; 17/09/2000 dated, 2000/186 numbered decision of The Criminal Court of Tuzla; 28/12/2000 dated, 2000/200 numbered decision of The Criminal Court of Catalca; 02/06/2000 dated, 2003/148 numbered decision of The Criminal Court 2 of Eyüp (Annex 9); 16/07/2003 dated, 2000/419 numbered decision of The Criminal Court 1 of Fatih; 27/03/2000 dated, 2000/412 numbered decision of The Criminal Court 2 of Fatih; 28/09/2000 dated, 2000/387 numbered decision of The Criminal Court 7 of Bakırköy; 12/09/2000 dated, 2000/391 numbered decision of The Criminal Court 9 of Bakırköy (**Annex 8**); 05/05/2000 dated, 2000/886 numbered decision of The Criminal Court 1 of Sisli; 29/05/2000 dated, 2000/810 numbered decision of The Criminal Court 2 of Sisli; 16/11/1999 dated, 1999/1261 numbered decision of The Criminal Court 1 of Uskudar; 23/05/2000 dated, 2000/675 numbered decision of The Criminal Court 2 of Uskudar; 08/11/1999 dated, 1999/936 numbered decision of The Criminal Court 2 of Uskudar.

<sup>9</sup> 04/07/2000 dated, 2000/721 main, 2000/1406 numbered decision of The Criminal Court 1 of Uskudar

<sup>10</sup> 14/12/2001 dated, 2001/46 numbered decision of Governorship of İstanbul, regarding 4483 numbered law)

**28\* SUBJECT** : The request for taking education at private course with headscarf and asking for head-uncovered photographs from the students who take the course.

### EXPLANATIONS

- ❖ Private courses are institutions where education is given privately at different subject like computer, accountancy, foreign language response of price. The relation between the student and the course are based on private law agreements. But the teachers who work at course and the courses are under the control of Ministry of Education. The Ministry of Education has authority to shut these courses.
- ❖ Directorate of National Education sent a written about "to obey the costume regulations" to directorate of private course. **(Annex 1)** Related written says that the photo which will be taken from the students must be suitable to the costume regulations.
- ❖ The costume regulations dated 25.10.1982, published on 17849 issue Official Newspaper costume regulations of civil servant.

"Item 5- Matters that will apply mentioned at 2.<sup>nd</sup> item staff's costume:

a) Women;

*The clothes should be clean, well, ironed, plain; shoes and/or boots should be simple, polished and with normal heels; head should be uncovered, combed or knotted at the work place; nails should be cut normally. If there is a special garment for some services, these garments can be used with the permission of the chief.*

*Trousers, sleeveless or broad collar shirts cannot be worn. Blouses or gowns cannot be worn. The skirt length should not be over the knee plate and skirts should be without slits. Sandals are forbidden. (The change at Official Newspaper dated 03/01/2002)*

b) Men;

*The garment should be clean, ironed and simple, the shoes should be painted and polished and covered. Sandals or other kinds of uncovered shoes are forbidden. Head should be uncovered in the building and work place. Whiskers should not exceed the limit of middle of the ears. The hair should be combed and clean. Hair should not cover the ears and the shirt collar with a normal pose. Daily shave of beard is obligatory. Men should not be bearded. Moustache should be natural and cannot exceed the limit of upper lip. Moustache should not be shaved from up. The edges of the moustache should be limited with the length of the lips. Down edges of the moustache should be limited with the upper lip. Men wear ties. Sweaters or fishermen's pullovers cannot be worn in order to cover the tie. Monotype garment can be worn if it is a requirement of the service. It is forbidden to be without shirt, tie or socks inside the building.*

- ❖ **The concerned regulation is for persons who are dependent on government employments and who work statue at government employment and including official's costumes only at office. There is no possibility according to law for applying regulation which is for people different statue on students who go on a private course.**
- ❖ It can't be expecting a lady who goes on a private course response price to get dress suitable concerned regulation. As a matter of fact, when a student grows

hair, nail, have whiskers too much or do anything break to regulation don't be alerted.

- ❖ But because of concerned regulation, many girl students with headscarves were not taken the computer, accountancy, and foreign language private courses. Or in spite of they finish the course they couldn't take the certificate with covered head photos.

**CONCLUSION** : Being with headscarf is can be a prevent reason to go to a private course and take a certificate with cover photos.

**29\* SUBJECT** : The decision, which was made in conformity with necessary procedures, that approves a civil servant to become staff was revoked on the grounds that the civil servant wears headscarf.

### THE PHYSICAL FACT

- ❖ As the applicant Semra Birdal would wear headscarf, she applied to the National Education Ministry for job, her application was accepted and she started to work as teacher.
- ❖ The concerning person was trainee civil servant for first one year. In this period she has attended the preparatory education and essential education courses and she passed the following exams with high marks. The manager who is responsible for qualification assessed the applicant and decided that she was a successful teacher.
- ❖ With a decision, which was suggested by Province education Directorate and approved by Province Governor Office in 23 September 1997, the applicant became a staff and was no long a trainee. This procedure was notified to the applicant. **(Annex 1)**
- ❖ 56<sup>th</sup> article of the Civil Servants' Laws, which could be applied only to trainees, was practiced to the person concerned in the date of 26 June 1998. In accordance with this article, the related person' s civil servant profession has been terminated. **(Annex 3)**
- ❖ The person concerned filed a suit for collection of the revocation and she stated that she was a staff according to the decision which had been approved one year ago, and that application of the 56<sup>th</sup> article to her has no legal possibility to be practiced to her.
- ❖ The respondent administration stated in its reply to the court that "the decision about the applicant approving her to become a staff" was revoked on the grounds that she would wear headscarf.<sup>11</sup>
- ❖ The related person also sued for cancellation of this process. She stated that it was impossible to revoke a decision if it was made in conformity with necessary procedures in her petition. **(Annex 4)** Moreover, such an important operation (revocation) about her was not notified to her, so it has no legally meaning. Disciplinary penalty as stopping the advancing by degrees, which has the capability to be practiced to only the established civil servants, has been given the related person only just before two days ago.
- ❖ Administrative Court rejected her request for cancellation, as not caring her statements in the petition because of the reason that she wears headscarf.<sup>12</sup>

### EXPLANATIONS

- ❖ The decision of approving a person far being a staff can be made after a period lasting more than a year, passing tree exams and with having approval different offices. With this decision the civil servant becomes a staff and is not in the position of a trainee anymore. When notified, it becomes a definite decision.
- ❖ It is legally impossible to revoke a decision about approval of a person's position as a staff, if the decision was made inconformity with necessary procedures. It was stated that the decision was revoked on the grounds of that the applicant would wear headscarf. However, the applicant has always been wearing headscarf when she was accepted to job, while she has been working for one year, when

---

<sup>11</sup> 23/10/1998 dated, respondence of Ministry of National Education to the 2th Administrative Court of İstanbul

<sup>12</sup> 27/04/2000 dated, 1999/702 main, 2000/473 no decision of 4th Administrative Court of İstanbul

she passed her exams and when she was approved for being a staff. This situation could be understood from photos attached to her file.

- ❖ The applicant was notified about the approval of being a staff but not notified about the revocation of approval. She learned such an important decision of reaction when she filed when she filed a suit with request for cancellation of the operations expelling her from being a civil servant.
- ❖ The two operations, one two days after the another, was applied to the applicant and these two operations have such a feature that if one of them to be applied the other one could not be applied legally or visa verse.
- ❖ The applicant was expelled in 26 June 1998 in accordance with the 56<sup>th</sup> article. This article can be applied only to trainees.
- ❖ Because she would wear headscarf the applicant was punished by stopping of promotion in 24 June 1998, this punishment could be applied to the civil servants that they have approval for being as staff and are no longer trainee.
- ❖ Despite the two operations, which have been applied to the applicant, prove that they are against the logical and legal rules, decision of expelling the applicant from being a civil servant, the revocation of approval about her for being a staff and decision about stopping of promotion could be considered legal on the grounds that the applicant would wear headscarf.

**CONCLUSIONS** : The wearing headscarf of a civil servant could be the sufficient reason for revocation of an decision which was made in conformity with necessary procedures, and was made after taking approval by different offices in a period of one year. It can be also sufficient reason for not notifying the applicant about revocation.

**30\* SUBJECT** : Punishing a civil servant firstly by dismissal from the civil service post on the grounds that she would wear headscarf and secondly by expelling from the public service.

#### **PHYSICAL FACT**

- ❖ The person concerned is a trainee civil servant. Although she was very successful in her job, she has been given negative register marks overlapping for two years on the grounds that she would wear headscarf. The person concerned' s profession as civil servant was terminated. Hence, the Civil Servant's Law article 57, an article which has practicing solvency to trainee civil servants, was shown as an only basis (**Annex 1**)
- ❖ The related person' s linkage with civil service ended. However, disciplinary investigation about her was conducted. She was punished by expelling from the public service in accordance with article 125 E/a of The Civil Servant's Law which could not be applicable to trainee civil servants (**Annex 2**).
- ❖ The applicant filed a suit for cancellation of both operations. In her petition, she stated that operations are illegal and illogical (**Annex 3**). However, the court dismissed the request of the cancellation<sup>13</sup>

#### **EXPLANATIONS**

- ❖ The dismissal from the civil service and the expelling from public service are two different so much important operations that affect the whole life of the civil servant and impede her working in a job that she had an education about.
- ❖ The dismissal from the civil service could be applied only to civil servants.
- ❖ The expelling from the public service could be applied only to the civil servants who are approved to be a staff.
- ❖ **When one civil servant' s relation has been broken off, there is no de facto possibility to be expelled from the civil service. This situation is like firstly executing someone by hanging, then taking the death body and executing by shooting secondly.** Both operation gives the same results. Besides, it is logically impossible as de facto to execute someone both by hanging and shooting. But the related person has been adreseer of two different processes which has no possibility to be actualized if one was practiced.

**CONCLUSION** : The wearing of headscarf by a civil servant could be a sufficient reason for application of procedures which are contradictory to each other and impossible to apply successively if one of them has been applied already.

---

<sup>13</sup> 31/10/2002 dated, 2000/1378 main, 2002/147 no decision of 2nd Administrative Court of İstanbul and 28/03/2001 dated, 2000/660 main, 2002/321 no decision of 2nd Administrative Court of İstanbul,