

Women's Rights Organization against Discrimination (AKDER)  
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# **THE GENERAL CONDITION OF WOMEN IN TURKEY AND THE EFFECTS OF HEADSCARF BAN TO GENDER INDEX**

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# **THE GENERAL CONDITION OF WOMEN IN TURKEY AND THE EFFECTS OF HEADSCARF BAN TO GENDER INDEX**

## **ABSTRACT**

This research report which investigates the negative effect of headscarf ban on the development of women rights and to draw a map of general problems of woman in Turkey according to statistical data. Thus, the problems of woman in the fields of education, employment, political presentation, violence, rural areas, health, social security and social life are stated expressly depending on statistical data. Following this, a research about the effect of the headscarf-ban which is applied to headscarved women who constitutes the %65 percent of women population in Turkey is conducted. The difficulty of collecting statistical data about the discriminative treatment to headscarved women in the public and the ratio of women who affected from this ban is discussed. The juridical character of headscarf ban is evaluated in accordance with international law norms and especially United Nations documents, the differences of European Human Rights Convention (EHRC) from UN agreements, different protecting areas of EHRC from The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the effects of Leyla Şahin decision. The arguments which are offered to legitimize this ban like; the freedom of dressing will in fact cause the limitation rights and have an adverse affect on women who do not use headscarf, will change the regime in the country, everyone should obey the rules of the state, turban is something different than headscarf, the headscarf should be banned because it is a political symbol, the laicism principle legitimates a different treatment, the headscarved might be kept out of the public sphere, headscarf is banned with the decision of the court. In the result and evaluation, our ideas for the solution of women problems are stated. To get specific results in the study, the statistics and research reports prepared by General Management of Woman's Statute(KSGM), non-governmental organizations and universities are used.

## **I. INTRODUCTION**

When Turkey had signed The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Turkey subscribed to eliminate all forms of discrimination against woman and to get the required measures and to provide realization of the rights given to woman in the Convention (education, working, voting and being voted, maintaining equal rights with man in front of law, to get domestic law measures in political, economic, juridical and cultural fields, to get measures to prevent woman exploitation and prostitution, discrimination against woman in political and public life of country, to maintain the applicability of social care services and convention terms for women in rural areas, the responsibility to prevent the differentiation between marriage and family care).

To maintain equality between women and men and adequate progress of women, many articles about woman has been revised after 2002. In 2004, the constitutional provision "Woman and man have identical rights. State is liable to put this equality into practice" is included to Constitution. In the latest point, as stated in EU Progress Report, the legal framework to put under cover the equality of genders is present in Turkey.

However the specific figures show that, the rights which are our under cover by conventions and law are only on paper and have no actual application environment. The difference between woman by means of economic participation and opportunities, education level,

health and political power is at an evident level<sup>1</sup>. Turkey which owns the 17<sup>th</sup> biggest economy of the world ranks 105<sup>th</sup> in World Gender Map among 115 countries<sup>2</sup>. Turkey is behind EU member States and even some Islam Countries by means of gender based inequalities<sup>3</sup>.

The general low level of participation of women in education, working and political life shows that Turkey could not assess adequate protection of equality between women and men. The general rates about women prove that state has not fulfilled its liability to take the required measures about political, economical and cultural areas to maintain the equal participation of women. State fails to get effective temporary measures to solve general problems and is inefficient to maintain actual equality between man and woman. Preventing headscarfed woman to exercise their rights makes the solution of present problems more difficult.

## **II. THE IDENTIFICATION OF GENERAL PROBLEMS OF WOMEN IN TURKEY**

It is not always possible to reach healthy information about the general rates of women in Turkey. There is not certain and adequate data about women and the present data do not comprise all problems about the condition, roles and rights of women<sup>4</sup>. General Management of Woman's Statute (KSGM) shows that there are gaps in statistical data production<sup>5</sup>. The data used in 2008 "the Condition of Woman in Turkey"<sup>6</sup> is taken from a research made between 1994-2003; this shows the lack of contemporary systematic data about woman problems. Thus, international, regional, formal and informal reports are used together to acquire proper data.

### **2. Education**

#### **a. Woman in the Field of Education**

There is a booming in education field all over the world. However, the education of woman is problematic in many regions of the world. In spite of efforts to generalize basic education, women are educated less than men and they can not reach information and experience to increase their life standards and help them to harmonize with social and economic changes.

The rate of literacy and numeracy of woman in Turkey is %87, 93 in 2006-2007. This rate is %99, 21 for men<sup>7</sup>. The rate of women who have university education is only %3 of the population<sup>8</sup>. Basic education is supported since Ottoman Empire by law and regulations.

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<sup>1</sup> EU Progres Report for Turkey 2007 (woman) [http://www.ucansupurge.org/index.php?option=com\\_content&task=view&id=4022&Itemid=72](http://www.ucansupurge.org/index.php?option=com_content&task=view&id=4022&Itemid=72)

<sup>2</sup> ESI (European Stability INitiative): "Sex and Pover in Turkey Feminism Islam and the Maturing of Turkish Democracy", Berlin İstanbul, 02.06.2007, [http://www.esiweb.org/pdf/esi\\_document\\_id\\_90.pdf](http://www.esiweb.org/pdf/esi_document_id_90.pdf)

<sup>3</sup> Turkey who ranks the lowest among OECD countries in human development index rates, ranks 84<sup>th</sup> among 177 countries in bhuman development index. UN Development Programm 2007-2008 Human Development Report.

<sup>4</sup> European Parliement Proposal about the Condition of Woman in Turkey, 08.04.2008

<sup>5</sup> General Management of Woman's Statute, the Condition of Woman in Turkey Report, Ankara January 2008. (<http://www.ksgm.gov.tr/kadindurumu.pdf>) (08.04.2008)

<sup>6</sup> Prime Ministry General Management of Woman Statute, Report 2008, p. 32.

<sup>7</sup> Prime Ministry General Management of Woman Statute, Report 2008, p.10. Especially in rural areas the population records are not proper the real rate may be lower.

<sup>8</sup> "Half of the women face violence in the first day of marriage" RADIKAL, 08.03.2007.

After the republic is founded the basic education has become compulsory. The international conventions and agreements which are signed by Turkey, it was promised to increase the rate of literacy to %100 for women<sup>9</sup>. However, the literacy of the population and especially education of women are one of the biggest obstacles in front of country development. The researches show that, 8 million women do not know reading and writing and 640 girls can not attend school<sup>10</sup>. To encounter the problems caused by regional inequalities<sup>11</sup> especially campaigns to promote schooling of girls are mounted. Ministry of Education and UNICEF has started campaigns called “Girls lets go school” has started mainly in south east of Turkey and than expanded to all country<sup>12</sup>. According to UNICEF, this campaign resulted in 177.000 girls and 87.000 boys to start education and this is definitely lower than the targeted number<sup>13</sup>.

### ***b. Effects of Headscarf Ban on the Rate of Woman’s Education***

One of the reason’s of low rate of educated women is the necessity of uncovering their heads. In Turkey, headscarf is banned in all levels of education. According to Unified Teaching Law dated 06.03.1934, a unified education system is compulsory so, there are no alternative education systems. The application is same for private schools. After 1998 post modern stroke headscarf is banned in higher education institutions.<sup>14</sup>

There are 19,437,566 students and 1.946.442 of them are university students. The headscarf ban is applied even in faculty of Theology. The women who are forced to leave their education through the application of headscarf ban are reflected to the education level of Turkey as a negative indicator. The number of students who left school because of headscarf ban in 1998 is not known. The universities have removed the pictures of headscarfed students

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<sup>9</sup> Prime Ministry General Management of Woman Statute, Report 2008

<sup>10</sup> The manager of EKAM, Prof. Dr. Nurselen Toygar explained that the schooling rate is %29.94 for faculties and high schools.

<sup>11</sup> According to population census in 2000 the rate of men who do not know reading and writing is %12, this rate is %35 for woman in South East Anatolia. There are researches which demonstrate that nearly half of the woman population does not know reading and writing in rural areas of this region. Regional inequality has dramatically prevented the education and employment opportunities to be in use of people. The economic deprivation which is combined with socio-cultural deprivation has imposed an unbalanced burden to women of these regions. (application of 60/251 numbered, 15 March 2006 dated, plenary assembly decision headed “Human Rights Commission” report of independent reporter Yakın Ertürk’s report about “Violence against Women, its Reasons and Results” Turkey Mission, 05 January 2007)

<sup>12</sup> The projects like “Girls Lets go school” “dad take me school” organizations which are mounted in collaboration with international institutions, private sector, and non governmental organizations aimed to decrease the rates of girls leaving school and planning education programmes for thses girls and woman. T.C Prime Ministry General Management of Woman Statute, Report 2008

<sup>13</sup> BÜYÜKÖZTÜRK, Ş.: “Girls lets goto school” campaign: subjective evaluation study, 2005

<sup>14</sup> Higher Education Code additional Art. 17 says: “the dressing is free in condition that if this freedom will not be contrary to law rules in force”. (Higher Education Code additional Art. 17) But this rule is not in application practically for the headscarved women. Moreover nothing is done when this law rule is removed from the Law books. Higher Education Code additional Art. 17 was removed from the 208th page of the book called “The Higher Education and İstanbul University Regulations” published by İstanbul University Press at 1998, 1500 paged in two series. Inside the book Additional Art. 18 comes after Additional Art.16. It is a clear proof of being unlawful and unjustifiable act not to place the Art.17 even it is in force legally and not to initiate any legal proceeding against the people concerned.

from the yearbooks<sup>15</sup>. Also, since 2002 headscarfed girls are not allowed to enter university entrance exams, the number of girls who lost the chance of entering university is not known.

Whereas, a woman's criticizing patriarchal thinking and customs is possible with their education. Headscarf/turban ban causes woman not to have equal chances for education. As stated by international human rights organizations, the prevention of women who wear headscarf because of their religious beliefs, from state's education institutions is one of the chronic human rights violations in Turkey<sup>16</sup>.

The girls being unable to benefit from education because of literacy rate, schooling rate, traditions and customs, patriarchal society is one of the priorities waiting for solution to promote development. Preventing girls from education is also a form of economical discrimination.

Participation of woman in economic and social life is one of the most important instruments to maintain equality among genders. Socially equal change is possible through assurance of economical and education rights of woman. Economic independence is an important factor to empower women. The economic independence of woman is only possible with education.

Education has an autarchy which increases education and social mobility, enables poor sections to change classes and thus provides social integration. From this point of view, education is the most important social balance which shows that anyone who deserves and has talent can rise. In a country where education does not function properly, social peace and social order is violated seriously.

For development of society, education should be given more importance and required resources should be allocated to education. States are not only liable to education and training to its citizens but also liable to provide equal opportunities to its citizens and to fulfill this liability in a complete justice and equality.

## **2. Employment**

### ***a. Woman in Employment***

Participation of woman in workforce is an important factor of sustainable development. While the participation rate of males to workforce is %74, 4<sup>17</sup>, the participation rate of females to work force %24, 9 in 2006, the participation rate of women has increased in proportion to previous years<sup>18</sup>. The employment rate of woman in Europe is %49<sup>19</sup>. The employment rate of woman in Turkey is the lowest among EU and OECD.

Also the researches demonstrate that women densely work in traditional woman jobs and accept low statute and low waged jobs. The %48.5 of woman participating in work force work in agricultural sector, %14, 4 work in industry sector, %37,1 work in services sector. only 14 of 100 women owns her own business, 47 work for any amount of fee and 39 work without

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<sup>15</sup> "The pictures of previous headscarfed students are removed from the yearbook.", ZAMAN 05.12.2005

<sup>16</sup> Summary report of Human Rights Agenda for Turkey's EU integration period's next step January 2003 and 31 January 2003 Troika-Turkey meetings Human Rights Agenda (Report)

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

<sup>18</sup> This rate was %34,1 in 1990. Prime Ministry General Management of Woman Statute, January 2008

<sup>19</sup> Prime Ministry General Management of Woman Statute, January 2008

payment as family worker<sup>20</sup>. These jobs also mean part time and temporary works and lack of social security rights. The reasons for this are low educational level of women, improper services for children, elderly people and disabled relatives who are cared by women and division of labor in the society.

The rising unemployment affects woman more dramatically. Woman working in private sector are not preferred as much as men, and in case of dismissing they are dismissed predominantly. Also woman are generally employed in low income jobs. The discrimination in entering workforce market decreases the participation of woman in the work force. The strict work hours, limited opportunities of elastic working conditions, not fulfilling the liability of day-cares for children and the abolishment of present day-cares by the law are very effective in this situation. In rural areas 83 of 100 women works in agriculture and %81.9 do not receive any fee and work as a family worker. They also do not have any social security rights<sup>21</sup>.

It is claimed that the reason for low participation of woman in employment is the cultural structure of Turkey. But the study of TESEV called “Woman not participating in high management of politics and not participating in work force” demonstrated that as in education, the poor participation of woman in employment is not related with the conservative ideas or traditions of Turkish people. %92.2 of people think that working woman will have a higher self-respect, %87.2 thinks that even if the woman is rich, working will make woman a better citizen, %92.2 think that every woman willing to work should be allowed to work. Only %7.6 of people thinks that working women can not save their virtue.

The majority thinks that, the reason why woman should not work is the debate about housework and childcare. They are afraid that woman cannot fulfill these liabilities if she works. In the same research the majority also thinks that state should play its role to solve the problems of working woman. Also %95.6 of the participants thinks that, the state should be an actor in providing day-cares for babies and children of working mothers. The %52.7 of the participants support that if father wants to take care of the baby after birth, the man should be paid during these allowance period<sup>22</sup>. The state only makes the legal framework but does not get specific measures to increase the employment rate. The women are not provided with part time working opportunities and flexible working hours.

### ***b. The negative Effect of Headscarf Ban on Working Woman***

One of the reasons of low employment rates for woman is the headscarf ban in Turkey. It is compulsory to uncover one’s head in all stages of public jobs. The 811.668 of 2.438.239

Government officers are women<sup>23</sup>. The employment rate of woman in public jobs is %33 and the rate of woman in this total employment is more than %26<sup>24</sup>. There is no gender discrimination or unequal wages in public sector. But, none of these women are allowed to wear headscarves. After 2000, in the examinations for public officers, headscarfed women are not allowed to participate. Moreover, in some jobs women are expected not to wear

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<sup>20</sup> Prime Ministry General Management of Woman Statute, January 2008

<sup>21</sup> TOPRAK Binnaz/KALAYCIOĞLU Ersin, “Woman Not Participating in High Positions of Politics and Economy” Turkish Economics and Social Studies Foundation (TESEV), İstanbul 2004

<sup>22</sup> TOPRAK/KALAYCIOĞLU, <http://www.bianet.org/bianet/kategori/bianet/32110/siyaset-ust-yonetim-ve-is-yasaminda-kadin>

<sup>23</sup> <http://www.ucansupurge.org/images/stories/ssgss-rapor.pdf>, p.51

<sup>24</sup> <http://www.ucansupurge.org/images/stories/ssgss-rapor.pdf>, p.51

headscarves even out of work hours. For example the state council decided that an officer's using headscarf after work hours is a reason for punishment<sup>25</sup>.

In 1998-2002 about five thousand officers were dismissed from their positions and about ten thousand of them were forced to abdicate.

However the legislation or the women who were successfully working in the previous years had not changed. Only the ideas about headscarfed women had changed. among the officers who were dismissed without any recruitment chance and did not have the chance to work even as an office staff, there is a teacher who has worked for eighteen years and who was dismissed before receiving the health commission report about her cancer treatment<sup>26</sup>.

In Turkey the law regulates the working rights and prohibits discrimination<sup>27</sup>. Majority of the people is against the headscarf ban in schools and in public sphere<sup>28</sup>. The researches show that the %67.9 of the public think that women should be able to use headscarves if they wish in government work<sup>29</sup>. However there is a strict ban on headscarf. This ban is applicable even for the surgery nurses who should wear bonnets to do their work<sup>30</sup>.

The doctors, pharmacist, dentists, advocates and notaries who are not in public service but work independently or depended to a chamber could not work with their headscarves due to the restrictions of their chambers and associations. Headscarfed advocates are not allowed to participate in court.

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<sup>25</sup> Aytaç Kılıç who is a nursery school teacher used to take off her headscarf when she was at work. In the manager examinations which took place in 2000 in Ankara, she got 85 out of 100 and ranked the third in the examination. She was appointed as director to a school. But she could not enter the garrison area while her photo in the identity card was headscarfed. Also she was removed from her position upon the complaint by the garrison. the administrative court overruled the decision. but the state council stated that the teacher's being headscarfed constitutes a negative example for children and overruled the decision. (2<sup>nd</sup> Section of Council of State, E: 2004/4051, K: 3366/2005, 26.10.2005).

<sup>26</sup> BENLİ Fatma "There is no Limit in the Illegality of the Headscarf Ban" İstanbul 2005, p. 325

<sup>27</sup> In the Constitution it is stated that "Every Turk has the right to participate in public services. In services no other discrimination other than qualification is considered. In the 70 numbered Government officials regulation's 48<sup>th</sup> article "the general and private requirements to be attained as government official" are arranged. There is not a passage about dressing of officials. Working law regulates that "anyone could be subject to discrimination because of his/her religious beliefs or ideas"( art 5). In the regulation about" the regulation about dressing of the personnel 25.10.1982 dated, 17849 numbered official gazette, it is stated that woman should wear, ironed pretty, clean, simple suits, simple and elegant low-heeled, painted shoes, their heads should be uncovered, their hair should be open, the nails should be in normal length. The skirts can not be over the knees or with long vents." According to 125A/g article "not obeying the regulations about dressing" is subject to disciplinary punishment.

<sup>28</sup> According to the research of TESEV the number of people agreeing the evaluation that "the female public personnel should be allowed to use headscarf if they would like to" is %67.9. "The university students should be allowed to use headscarf" evaluation is agreed by %71.1 of the participants. All researches have the common outcome that about %70 of Turkish people is against the headscarf ban in public sphere and in universities.

<sup>29</sup> TESEV, <http://www.tesev.org.tr/etkinlik/Final%20Rapordin%20toplum.pdf>, 2006

<sup>30</sup> Kadriye İlhan has been working as a surgery nurse for eighteen years when she was investigated for wearing headscarf in Cerrahpasa Medical University. Her permanent situation was immediately changed and with ideological motives she was accused of creating unrest and than was forced to leave the service.



Courts regard these operations legal Council of State declares the dress code of the intern attorneys which force not to wear headscarf even in their private lives.<sup>31</sup> Similarly, Istanbul Bar Association carries a resolution to launch disciplinary investigation for the lawyers wearing headscarf if they attempt to enter into the courtroom in such a dress.<sup>32</sup> This decision invades the labor rights of the lawyers who wear headscarves.

Furthermore, such examples can be expanded to the practices in the mainstream media organizations and in educative foundations of private sector such as private establishments preparing student for various exams and courses, and kindergartens. Even in sectors for production of tradable goods and service, the employment level of head covered women is low. As a result of the broadcasting policies of the main media prompting the ban and marginalizing women with headscarves, especially in recent years, private firms and organizations do not prefer women who wear headscarves as employees in order not to loss profit by being categorized as fundamental or stained. Moreover, researches indicate that several private firms force their head covered employee to choose either to uncover their headscarf or to resign.<sup>33</sup>

As a result, private firms and companies embedded in a free market economy which employed head covered personnel offer relatively low wages and standards to these employees who have not other job opportunities. Although the statements against gender based wage differentiations in labor law, a 25 percent wage differentiation is generally observed in women/men comparisons.<sup>34</sup> In other words, despite the equality principle, inequality in wages is still a matter. This fact is disguised through women's employment in low level jobs as unskilled workers.

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<sup>31</sup> Sentencing "an intern attorney can not be allowed to wear headscarf", 8<sup>th</sup> Section of Council of State declared that covering hair outside the Courthouse even during transport to the Bar was "against the principles and revolutions of Atatürk" and "incompatible with the principles of laic (secular) republic". The conclusion is corresponding to the covering of a female attorney's hair even in her private life might be accepted as an inappropriate attitude and behavior to her profession of law. ( 8<sup>th</sup> Section of Council of State, D: 02.03.1994, E: 1993/843, K: 1994/686 )

<sup>32</sup> The İstanbul Bar started hunting attorneys who are wearing headscarves after the decision of board directors prior to the election for chairman which will be held on October 2008. In a declaration heading Istanbul Bar which was billboarded at all courthouses of Istanbul city, the board of Bar claimed that the profession of law was not only confined to the court rooms and declared that wearing either headscarf or other inappropriate dressings during all types of advocacy services in the courthouses which are no doubt public spheres are disciplinary faults according to the profession principles and rules. In the declaration, all the people at the Courtroom were forewarned for not wearing headscarf and other inappropriate dressings during any piece of work at the Bar, executive committees, clerks' of Office as well as investigation and distraut places under the surveillance of public prosecutors because of the public sphere nature of the task and also were asked to report attorneys to the Bar who violate the abovementioned points after drawing up a record about them. ("**Baro'dan başörtülü avukatlara 'cadı avı'**"<http://www.haberaktuel.com/Istanbul-Barosu,-basortulu-avukatlarin-pesine-dustu-haberi-138241.html>)

<sup>33</sup> It is impossible to collect reliable data about the number of violations on this issue. Because vast majority of violations are not reported to human rights associations and media and some others are masked by unjustly treated victims. A great many of charitable trusts and schools abstain from acquainting people who are somehow aware of the violation and if the person spoken to is a journalist he/she is begged not to transmit news and if is a human wrights association asked not to mention in the violation reports. (Freedom of Religion Report in Turkey: " Relations between Religions: Search of Peaceful Cohabitation Existence in a Secular and Democratic System", Liberal Thinking Association, Ankara 2005, p. 22-23)

<sup>34</sup> This rate is 15% in Europe.

Similarly, women who wear headscarf are generally employed in jobs outside of their educated and qualified fields or in positions under their occupational qualifications. In addition, they are constrained to accept lower wages compared to the women at the same positions. In general, a head covered woman is regarded appropriate for low status jobs such as agricultural works and cleaning. While in Sweden, rejection of application of a woman wearing headscarf for a teacher position had been regarded as discrimination and the respondent was obliged to amend,<sup>35</sup> in Turkey, however, people implement policies to bar women with headscarves from the employment.

If a woman achieved to have a high education and be a lawyer, a doctor or a teacher, then she can easily be accused of being ‘a political symbol’ due to her headscarf. In this regard, European Parliament declares the gender-based indirect discrimination<sup>36</sup> observed in working lives of head covered women. Since, the dress discrimination in services sector affects the women’s labor force participation negatively. The necessity of uncovering heads in their occupational lives bars these women with headscarves from the use of universal labor rights through invading the statement that “each individual have right to work, freedom to choose her/his occupation, to improve in its jobs, and to have security in working environment and to benefit from the facilities of his/her services.” This situation also prevents head covered women to be economically independent and make them auxiliary in public life unlike taking advantage of their education to contribute society.

### **3. Participation in Political Spheres and Decision-making Mechanisms**

#### *a. Women in Political Representation and Participation into the Decision-making Mechanisms*

Women in Turkey had right to vote and be elected as early as 1934, at the same time men had the same right. However, past experience proves that it is not possible to claim that women used this right as it should be. Compared to men, the rate of women’s participation into the political spheres, decision making mechanisms and representation are very low that Turkey’s ranking is 165<sup>th</sup> among 187 countries in women representation.<sup>37</sup>

Similarly, according to the results of July 2007 general election, the ratio of women in Parliamentary has only rose 9.1 percent from 4.4 percent. Despite all the campaigns in this issue, the ratio remained under the targeted 17.3 percent which is world average.<sup>38</sup> Participation rate in local governments is 0.558 % and only 18 of 3207 of the mayors of towns are women.<sup>39</sup> In addition, women generally have not duties in decision making boards or positions in political parties such as group leadership, vice presidency, and boards as well as local municipal councils.

The sole exception is the experience of a female Prime Minister from 1993 to 1996.<sup>40</sup> In this respect, in each cabinet of varied political movements, there exists only one female minister who would be generally responsible for the women and family affairs. From the foundation of

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<sup>35</sup> <http://www.do.se/t/Page1145.aspx>, <http://www.do.se/t/news1032.aspx>

<sup>36</sup> European Parliamentary Resolution on the Role of Women in Turkish Social, Economic And Political Life, 13 February 2007, Strasbourg (2006/2214(INI))

<sup>37</sup> “Half of the Women are Exposed to the Violence in Their First Married Day”, RADİKAL, 08.03.2007

<sup>38</sup> World Average According to the data at [www.ipu.org](http://www.ipu.org) on 30 June 2007 is %17.3.

<sup>39</sup> “18 Women against 3207 Men”, RADİKAL, 08.03.2007

<sup>40</sup> Tansu Çiller was the Prime Minister from [25 June 1993](#) to [6 March 1996](#).

the Republic, only once a cabinet with 32 ministers included three female ministers at the same time,<sup>41</sup> whereas, there are periods when male ministers became responsible for the women affairs in cabinets.<sup>42</sup>

It is claimed that the reason why women do not sufficiently represented in politics was cultural or their interests in other subjects. However, researches put it forward that there is not a serious opposition for women's political participation. Women in Turkey generally appreciate an active political life by means of a membership in a political party. In addition, 39-43% of them express that they would accept deputy candidacy if they offered for high ranking place at the electorate lists. For the 64% of Turks, "inequality of opportunities" is the most important reason for low representation of women in politics.<sup>43</sup>

NGO's demand for constitutional and legislative gender quota through enforcements in political party and election laws of a minimum of percentage for women within all political party decision making bodies. However, this proposition has not been taken seriously and appreciated by the political parties. Ironically, the political parties, which never come to a composition on any subject, adopt similar attitudes towards the legislation and on the issues related to the positions of women's in decision mechanisms. As a result, in Turkey, there are only one female governor, 14 head officials of districts and very few managers in public institutions. Thus, the lack of women existence in policy making even in gender based issues prevents women to offer solutions to their own problems. Therefore, decision mechanisms operating without women are generally not in conscious of women's problems and do not provide efficient methods to raise women status in society.

### ***b. Political Representation of Women wearing Headscarf***

Women wearing headscarf practice strict restrictions in political life. Aside from the rights to vote and to be elected as a *mukhtar* (the elected head of a village or of a neighborhood within a town or city), a head covered woman cannot participate in political life. There is no way to be a Parliamentary Member, a governor, a mayor, a head official of a district or a member in local governments.

There is not an absolute impediment in this issue. But, the only accurate reason for being a focal point of laicism that caused the closure of Virtue Party by Constitutional Court was the candidacy of a head covered woman, Merve Kavakci. Although she had been elected; due to her headscarf, her vow and her entrance into parliamentary were prevented. Due to the fact that Constitution Court closed 24 political party since 1960 coup d'état, the Kavakci experience is a clear menace to the political parties. Thus, they could not dare to offer critical positions to a woman wearing headscarf in party mechanisms. Indeed, wearing headscarf cannot be a barrier for representation.<sup>44</sup> Denmark declares the possibility of a head covered Parliamentary Member,<sup>45</sup> while in Spain there is already one.<sup>46</sup> However, in Turkey, even in

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<sup>41</sup> At the 52<sup>nd</sup> Turkish Cabinet; Ministers of State İmren Aykut and Ayfer Yılmaz, Tourism Minister Işıl Saygın

<sup>42</sup> Former Minister of State for Women and Family Affairs Hasan Gemici, 57<sup>th</sup> Turkish Cabinet – 5<sup>th</sup> Ecevit Cabinet (28 May 1999 - 18 November 2002)

<sup>43</sup> TOPRAK Binnaz/KALAYCIOĞLU Ersin: "Women who can not Join in Politics Top Management and Work Life" TESEV Publication, Istanbul 2004, p.54 (Based on face to face interviews with a sample data; 1557 women and 993 men that significantly represent Turkish people.)

<sup>44</sup> "My Electoral Body Voted for me in Concious of My Dress Codes", VAKİT, 03.12.2006

<sup>45</sup> Salima Abdeslam, 06.11.2006

<sup>46</sup> <http://www.zaman.com.tr/haber.do?haberno=675293>

the year 2008, a declaration of a PM argued on the representation rights of women wearing headscarf caused him to undergo a trial in Constitutional Court which might lead to be banned from political spheres for duration of five years.<sup>47</sup>

To put an end to the exclusion of women from decision-making, the necessity of a positive discrimination with gender quotas is proposed. However, it should be noted that in such a situation, for example under a 33 percentage quota, the women who could benefit from the regulation is the only 38 percent of total. Since, the head covered women would not take places in decision mechanisms except general elections. In general, young urban women who have potential to be in decision making mechanism but wear headscarf, are have barred from politics or remained uneducated. In this circumstance, the men who hold power in their hands have stronger voices in declaration of women's problems.

#### **4. Inadequacy of Women's Shelters, One of the Ways of Protection from Violence**

##### ***a. Violence Directed to Women***

Violence directed to women is still one of the most important problematic fields in Turkey as it is worldwide. According to crime statistics of Security General Directorate that covers 2005 and 2006, 333.227 crimes that include violence against women were committed, 113.724 women have been victims of crimes, 1985 women died in these cases.<sup>48</sup> The State and non-governmental organizations are working on this issue. Especially, education is given prime importance. However, increase in education does not reduce violence, just renders it less apparent. **A study carried out by undergraduates<sup>49</sup> shows that one student out of three**

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<sup>47</sup> Egemen Bağış (PM) replied to a journalist's question on headscarf ban as: "Deputies of NMP (Nationalist Movement Party) were uncovering their head while entering into the Parliament. Who gains when people forced to live dual lives? I thought this duality is much more dishonorable for humanity. It is much more absurd to force a deputy to change her clothes at the gate of Parliament; to uncover her head inside the door and cover it outside the door. But in Turkey we enforced people to behave absurd." After the following question of the journalist, 'then, you advocate the representation of a head covered deputy at the Grand National Assembly?', continued his reply "Who serves in Assembly? Deputies. Whose deputies? of this nation. If so, the deputies should represent this nation. There should be varieties. This is my opinion. If you ask how my party deals with the issue, we have not discussed it, yet." (Indictment for Closure of JDP, 'Egemen Bağış', p. 98)

<sup>48</sup> Official datas obtained about crimes of violence that Turkish women exposed to in 2005 and 2006 in accordance with written applications:

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

\* Wounding: in 87.626 events, 3002 under 18, 11.572 women victims over 19,

\* Injury: in 118.176 events, 2682 under 18, 33.390 women victims over 19,

\* Threat: in 38.897 events, 589 under 18, 12.597 women victims over 19,

\* Bad treatment towards family members: in 26.965 events, 1378 under 18, 22.305 women victims over,

\* Assault: in 2506 events, 1045 under 18, 1002 women victims over 19,

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

"Türk Kadını 3 Dakikada Bir Şiddete Uğruyor, Yılda 113 Bin 724 Kadın Şiddet Mağduru Oldu" ('Women in Turkey Encounter Violence Once in Three Minutes, 113.724 Women are Victim to Violence in a Year'), <http://www.kanalturk.com.tr/21411/kad%C4%B1na-%C5%9Fiddet-art%C4%B1yor.html>, 09 July 2007.

<sup>49</sup> Metropoll Research Company, It was carried out interviewing with 4949 students in 30 universities.

says ‘ I kill for customs’ and undergraduates support beating by the partner.<sup>50</sup> A research made in 2007, shows that women’s gaining more money doubles the probability of encountering violence.<sup>51</sup>

As a matter of fact, violence while leading to torture, and actions that are cruel, inhuman and insulting, violates the right to live with extreme occasions. **But “honor killings” that should be investigated more deeply was not included to this study.** Because penalties were increased when Turkish Penalty Code was changed in 2004, the beginning of giving aggravated life sentence to the custom-motivated crimes, increase in sensitivity of society with the help of media lessened the problem. But it rendered the problem invisible at the same time. The attempts of determining the number of “honor killings” in Turkey are away from demonstrating real extent of these murders.<sup>52</sup> Commission of Honor Killings was established in The Assembly on 11<sup>th</sup> October 2005,<sup>53</sup> after the negotiations Prime Ministry Circular<sup>54</sup> with the purpose of preventing honor killings was published. General Management of Woman’s Statute (KSGM) undertakes the duty of coordination about violence against women and honor killings. However, this attempt that should be affirmed and implementation of this circular remained as Governors’ meeting once in three months or directly taking reports from non-governmental organizations and sending it to KSGM. This situation prevents the finding of sound and clear information, evaluation of the issue not quantitatively, but qualitatively is necessary.

As a matter of fact, studies demonstrate that 90 percent of the crimes that are committed in family are directed to women, and 9 percent of women considers violence something normal and does not need to complain.<sup>55</sup> Not applying to official agencies results from inadequacy of actual protection against violence. The implementation of Law for the Protection of Family that is related to prevent violence within family is insufficient. According to the data of Ministry of Justice, yearly distribution of cases started in law courts about the Law for the Protection of the Family no.4320 is 4114 in 2002, 6147 in 2003, 8276 in 2004, and 8966 in

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<sup>50</sup> According to results of the survey made with 450 women by Bursa Municipality Women’s Status Unit, 41 percent of women face with violence of the partner. It was determined that 33 percent of violence victims graduated from primary school, 23 percent from University, 16 percent from high school. Vide “Eğitimli Kadınlar da Şiddete Maruz Kalıyor” (‘ Educated Women are Subjected to Violence,too’), ZAMAN, 23 January 2006.

There are universities that percentage of supporters of beating the partner rised to %37.9. Vide “Üniversiteli Eşe Dayak Taraftarı” (Supporting Beating the Undergraduate Partner), <http://www.hurriyet.com.tr/yasam/5330897.asp?m=1>, 28 September 2006.

<sup>51</sup> ARAT, Yeşim/ ALTINAY, Ayşegül: “Türkiye’de Kadına Yönelik Şiddet Raporu 2007” (‘Report of Violence against Women in Turkey 2007’)

<sup>52</sup> According to Prime Minister Presidency of Human Rights ‘2007 Turkey Human Rights Report’ “While the number of victims to honor killings was 159 in 2003, this number become 233 in 2006, and 231 in 2007. The numbers of people died due to honor killings in last 5 years exceeded 1100. 167 murders in Istanbul, 144 in Ankara, 121 in İzmir, 69 in Diyarbakır, 58 in Bursa and 46 in Antalya were committed.” Vide “Töre cinayetlerine her yıl 200 kurban veriliyor” (‘ 200 victims are given to honor killings every year’)SABAH 03 July 2008, <http://www.sabah.com.tr/haber,7B134D860E8A4639B29948EECDAF41F4.html>

<sup>53</sup> The report of Assembly Research Comission Established to Study the Reasons of Honor Killings and Violence against Women and Children, and Determine Necessary Precautions No (10/148,182,187,284,285)

<sup>54</sup> Official Gazette, N:2006/12, 04 July 2006

<sup>55</sup> “Kadınların Yarıısı Evliliğin İlk Günü Şiddet Görüyor” (‘ Half of Women Face Violence on First Day of Marriage’), RADİKAL, 08 March 2007

2005.<sup>56</sup> Changes in the enacting were carried out in 2006, an Ordinance about the Execution of Law for the Protection of the Family enacted.<sup>57</sup>

However, precaution for protection is removing the partner who performs violence, from the house for six months. After that time, state cannot provide a safe place for the individual suffering from violence. Changes in Local Authorities Law were carried out in 2004. Municipals with population over 50 thousands are obliged to open Women's Shelter. Government officials declared in session of CEDAW 2005 that they aim at opening 300 Women's Shelters according to the changed legislation. However, there are 38 women's shelters in Turkey by 2008<sup>58</sup> since no sanction is made about the municipals which do not establish women's shelters according to legislation. This number is so low comparing to other countries such as the USA with nearly 2000 women's shelters.<sup>59</sup>

Inadequacy of women's shelters hinders effective struggle with violence. Disconnection between institutions and too many procedures make it difficult for women to ask for help from official institutions. Health centers that victims of violence can go do not give reports of injuries and conduct to forensic medicine institute. The attitude of police stations that can be applied at the first step is limited to tell women how to apply to the court instead of starting transactions. Most women having no relationship with courthouses and "court fear" beyond even not knowing of their places result in not applying and not determining violence. Women's rights centers of bars allocate free lawyers for women but recent information on this issue is not enough.

#### **b. Headscarf Ban's weakening the methods of women's struggle against violence and Ban's damages.**

As headscarf ban is preventing women's power getting stronger, it weakens women's methods of struggle. It's also limiting education, having an economical independency or especially struggling against violence in family.

Not allowing them to use their basic rights or banning their entrance in some places as long as they take their headscarves off is a clear violence. According to CEDAW, the social generically violence against women is "torturing a woman only because she is a woman."<sup>60</sup> Then again "not being equal in rights" affects women. In addition, we cannot accept differences of clothes as violence.

Many women sometimes took their headscarf off just because they were convinced by an employee or they were threatened or injured physically. Sometimes they were insulted by workers or have been thrown out of the place and threatened to bring a lawsuit. Common practice is being had to return from university's yard. YÖK (Institution of Higher Education in Turkey) has published documents to prevent veiled women enter into university's buildings.<sup>61</sup>

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<sup>56</sup> The Sixth Periodic Report of Turkey Prepared to Present United Nations CEDAW Committee, KSGM Text Outline, Ankara 2007.

<sup>57</sup> Official Gazette, N:26803, 01 March 2008

<sup>58</sup> General Management of Woman's Statute, The Condition of Woman in Turkey Report, Ankara January 2008. p.37-38

<sup>59</sup> This number rises to 3000 with Legal Counseling Centers." (ZAMAN, 08 March 2006)

<sup>60</sup> Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1at 84 (1994), prg. 6

<sup>61</sup> Regulation of Institution of Higher Education (YÖK), N:B.30.O.Hkm.06.01.001-3699/20644, 15.09. 2000



Moreover, we saw some women who had to leave the exam saloon because their wigs were not nice<sup>62</sup> or when one of them went to take her driver license, she was told “showing your hair will not damage her virtue”<sup>63</sup> and accompanied to outside by police caps.

All veiled women (out of some exceptions) are like black people who were not allowed to enter into some places or white people's churches, had different places in restaurants or bus stations and could not walk into institutions of higher education. And it causes psychological trauma.<sup>64</sup>

Physically harmed person is exposed to physical harm. It threatens his physical health. Emotionally hurt person's not physical but emotional health is threatened. As psychiatrists say headscarf ban is an attack to women who take headscarf as their existence reason.

Veiled women's anger and infighting when their future plans are ruined, the very strong preventions when they refuse to take their headscarf off, infightings and guiltiness they feel when they take it off is very destructive experience.<sup>65</sup>

Because wearing a headscarf is a conscious act and its the decision of her own. That is why the psychological damages are very strong. If “being unveiled” condition for looking more modern was only clothes problem and for instance if education condition was wearing “green from head to feet” every woman who wants to continue their education even if it was against their individual preference, would have to obey the rules. However headscarf is worn by only religious people, making it very hard for them. Headscarf ban make women decide between submitting to government authority, school or employer and wearing headscarf or using rights.

At this point, taking away a woman's right of choosing her own clothes is interference from the outside. Like wearing headscarf by force, taking headscarf off by force or like conditions being have to take it off to use your basic rights is a psychological violence as well.

In addition, it is a current issue just because the ban is still in practice and it makes veiled women the object of negative feelings and thoughts. The women who prefer to wear a headscarf, just because they got an important reason for themselves, they do not want to take it off when they come across to a coercive interference and when they take it off, they feel divided because its not their wish.

“Covered Reality of Turkey” research has determined that the women who had to take their headscarf off were affected badly. In the research its said 70.8% of the women who took

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<sup>62</sup> “Laikçi Zorba Terör Estirdi”, VAKİT, 02.06.2008

<sup>63</sup> “İşgüzar Okul Müdürü Örtülü Hanımı Ehliyet Sınavına Sokmadı”, VAKİT, 20.02.2007

<sup>64</sup> E.g;Serkan Aydın had taken the first place in graduation from the university and invited his parents to the graduation ceremony to share that moment,however his mother had not allo<ed to attend to the ceremony due to she was wearing a heasarf. (“Oğlunu Tebrige Başörtüsü Engeli, YENİŞAFAK, 07.06.2008, <http://yenisafak.com.tr/Gundem/?t=08.06.2008&c=1&i=121925> on the other example; A woman wearing headscarf who had brought her handicapped child to the university exam had not been let to escort her to his child to the class. “Safiye'nin annesinden rejimi korumak”, 18.06.2008, ZAMAN, <http://www.zaman.com.tr/yazar.do?yazino=703683> It is possible raise more examples about the moments of women which they are hindered by officers in front of their children,when their children have the most need of their support and give the pride to their mothers.

<sup>65</sup> ULUSOY Mustafa; the Headscarf Ban as a Violence that is applied to Existential Identity

headscarf off think it damaged their personalities, 63.2% feels insulted...<sup>66</sup> Therefore many women decided to stay away from education and to deploy instead of taking their headscarf off. However it causes these women feel empty in their lives because they are not allowed to use their potential.

## **5. Rural Area**

### ***a. Rural Women's Problems and the Struggle with Patriarchy***

The feminization of poverty is a worldwide problem. The Poverty rate of women in Turkey is higher than men, like in most developing countries. Men in Turkey own 92 % of all property and 84 % of all the country's gross national product.<sup>67</sup> Customs, patriarchal families, stereotyped sex roles, materialism, economic dependence, marriage at youth, and poverty are some of the problems that rural women, who lack both education and employment opportunities face. Dependency on help, being forced to work illegally or unregistered, and being unable to take advantage of their educational rights are ignored and indigent women are stereotyped. Women in rural areas suffer indirect discrimination because of their deprivation of economic material resources.

Insubordination of rural women to all kinds of pressure, their struggle with forced or arranged marriages, violence, and external pressures about clothing and occupation, can only be avoided through empowerment of these women

The only way of struggling against traditional and cultural practices that create discrimination is by empowering women. Resisting and eliminating traditional and stereotypical visions of women would only be possible through empowerment. Decreasing the discrimination faced by women in uneducated areas in Turkey is dependent on educating women and helping them establish a work-life. However, necessary financial support to deal with these issues of discrimination has not been provided.

### ***b. The Effects of the Headscarf Ban on Rural Women:***

The overwhelming majority of rural women cover their heads. When women who wish to break out of narrow traditional confines and take up a position for themselves in society encounter the headscarf barrier and are usually forced inside their homes. The struggle against patriarchy and stereotypically established roles of women and men in society depends on eliminating the obstacles for the education of women. The headscarf ban furthers these obstacles on the way to women's economic independence, and cultivates more impoverishment.

## **6. Health and Social Security Rights**

### ***a. Women in health and social security:***

Only 24% of salaried women workers have health insurance. Outside of this however, married women can benefit from their husband's social security. Single women can benefit from their fathers' social security up to the age of 18 assuming they do not resume their education, or

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<sup>66</sup> "The Research of Covered Reality of Turkey", Field research on headscarf ban, Hazar Eğitim, Kültür ve Dayanışma Derneği, İstanbul 2007 (<http://www.hazargrubu.org/panel/BasortuluGercek1-2007.pdf>), <http://www.hazargrubu.org/panel/BasortuluGercek1-2007.pdf> Made by the help of ANAR (Ankara Social Reseaches Center) with the direction of Hazar Education Culture and Solidarity Association at 2007. At 9 cities there has been meeting with totally 1112 headscarved women.

<sup>67</sup> Amnesty International, June 2004, The Report of 'Turkey: Women in Combating against Domestic Violence' / p. 10 (AI Index 44/018/2004)



benefit up to the age of 25 ages if they do resume. Women outside of the above constructs, however, do not benefit from social security, thereby creating many difficulties for them.

In Turkey, not all of the population of women has government-sponsored health insurance. Women's health services are inadequate and unequal in prevalence and effectiveness. While only 80% of urban women receive pre-natal care, this drops down to 53.2% of women in rural areas. One out of every six births are administered without medical help. According to "National Mother's Mortality Research" in 2005, the mortality rate of mothers is 28.5 women out of 100,000 births. According to research four out of every five deaths are preventable.<sup>68</sup> Moreover women in rural areas also have issues with accessing health services. Not only patriarchy but also poverty, lack of social health insurance, attainability, and acceptability of health services are effective barriers to benefiting from health services.

The lack of employment for women also restricts their ability to take advantage of their social security rights. Especially in agricultural areas, women are working without pay and without social security benefits. 66 women out of every 100 working are doing so without any record in the Social Security administration; 58.1% of these women are unpaid family workers. 16.1% of women who are working as wage workers, 95.7% of women who are working with daily wage, 34.8% of female employers, and 90,3% of self-employed women are working unregistered to any social security association. In 2006, 23.2% of male and 76,8% of female workers in agriculture were working as unregistered and unsalaried family workers.<sup>69</sup>

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

Woman who choose to wear the headscarf become dependent on their fathers and husbands for social security and health care due to the fact that are unable to access education freely and cannot work for above-average wages. Thus, women marry very young. Young girls, who choose not to attend high school realizing that a university education will not be within their reach after they graduate, severely hinder their freedoms with respect to their careers. Depending on how low the family's gains and educational level, the probability of forcing their girls to marry at very young ages. Pregnancy at young ages can be harmful for both the mother's and the baby's health. One of the most effective way of prevent early marriages is giving young women education opportunities.<sup>70</sup>

### **III. EFFECTS OF HEADSCARF BAN ON SOCIAL LIFE**

#### ***1. Headscarf ban in social life:***

A democratic state governed by the rule of law must treat its citizens equally. Citizens who are fulfilling their obligations through taxes, military service, and by observing laws, must be able to benefit from the rights and opportunities provided by the state equally. Following a

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<sup>68</sup> General Management of Woman's Statute, The Condition of Woman in Turkey Report, Ankara January 2008

<sup>69</sup> General Management of Woman's Statute, The Condition of Woman in Turkey Report, Ankara January 2008

<sup>70</sup> Amnesty International, June 2004, The Report of 'Turkey: Women combating against domestic violence' / p. 10 (AI Index 44/018/2004)

certain religion or practicing a certain belief cannot be a basis for depriving citizens of their rights.

In Turkey, however, the modernization process is viewed as if women who are more modern, more educated, younger, or more independent should not cover their hair with a headscarf. When women who were accepted in seemingly lower-class jobs in agriculture, as housewives and maids demanded an education and a great role in society, the accepted norms for what constituted a social status for these women was shaken. Thus, women who wanted to attend universities after the 1960s were regarded not as citizens practicing their right to an education, but rather as a source of problems for the imposed perception of modernity. The increase in numbers of covered women in universities was perceived as a threat and a danger.

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

After the introduction of the requirement in 2002 that students entering the university entrance exam must enter with their heads uncovered, women were unable to even attempt a university education. Headscarved women are unable to enter to universities’ open spaces or closed areas (including libraries<sup>71</sup> or social facilities<sup>72</sup>). Also, covered journalists<sup>73</sup> students’ mothers<sup>74</sup>, as well as researchers are also barred from entering.

The ban does not discriminate between the elderly, the youth, Turks, foreigners, students, or visitors. Samira Moosa, assistant director of the Sociology College of Sultan Qaboos University in the Sultanate of Oman, was invited to speak in a panel at the First International Children and Communication Congress at Istanbul University on 16 October 2003. Since headscarved women are not admitted to any part of the university campus, on arrival she was not even permitted to set foot on the premises. University officials’ excuse for their behavior was “*We thought she was a man.*”<sup>75</sup> Where as a man who may have the same opinions as a covered woman honored with an invitation from an overseas university to speak on a panel because of his coveted knowledge, where as headscarved women are not even allowed to enter campus.

The ban, which especially manifests itself in universities and public institutions, affects solely women. A woman who wears the headscarf is isolated from society because of her religious practices and lifestyle, whereas a man who has the same philosophy as her can pursue his

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<sup>71</sup> “Başörtülü Vatandaşa Kütüphane de Kapalı”, (“Library is closed for headscarved civilians) VAKİT, 12.04.2002

<sup>72</sup> İstanbul Üniversitesi Arnavutköy Sosyal Tesisleri (İstanbul University, Arnavutköy Social Facilities)

<sup>73</sup> “Başörtülü Gazeteciler Kadir Has Üniversitesi’ne Alınmadı”, (“Headscarfed journalists may not enter to the university of Kadir Has.”) ZAMAN, 03.03.2005

<sup>74</sup> “Başörtülü Şehit Annesini Üniversiteye Sokmadılar”, (“A headscarfed Martyr Mother not Allowed to Enter University.”) YENİ ŞAFAK, 14.06.2005

<sup>75</sup> “Bir iletişim skandalı” (A communication Scandal), MİLLİYET, 16.10.2003

education and a business life without any issues. **This ban is a serious discrimination and isolates only women.** Men and women's equality in political, economical, social, cultural, personal, and other human requires not to be faced with discrimination or isolation because of their clothing. The ban is hindering women's ability to achieve a higher socio-economic status through an education. **Women who wear the headscarf are either obliged to uncover in some areas and cover in other areas (living through a constant change of personality) or are forced to become housewives.**

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

The headscarf outlaw attempts to clarify the complicated concept of the "public sphere", a non-legislative distinction which can be used discretionarily. Thus covered women who go to court as defendants can be faced with judge's warnings to take off their scarves.<sup>76</sup> At Malatya National Training Center, at the time of the celebration ceremony of "The Day of Teachers" it has been paged to make the headscarfed woman out of the ceremony room.<sup>77</sup>

One can see many individual examples about headscarf in the social life. 71-year-old Medine Bircan, an ill woman on her deathbed, was asked to take off her headscarf before hospital staff would resume treatment,<sup>78</sup> Likewise another ill woman who forwarded from another city was not treated.<sup>79</sup> Neşe Gündoğar was expelled from her driving examination for wearing a headscarf<sup>80</sup> Tevhide Kütük, a student, was required to come down from the stage during an award ceremony, even though it was not at her school.<sup>81</sup> Although Abdullah Yadigar, a teacher, who was second in a national teaching exam was not sent overseas because his wife wore the headscarf.<sup>82</sup> Emine Erdoğan, Prime Minister's wife, was not allowed to enter the GATA (Military Hospital) on 23.11.2007.<sup>83</sup> Şeyma Türkan, a student, was refused registration to her school, because of her wig.<sup>84</sup> When Emine Ergin, a housewife, went to pay

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<sup>76</sup> "Başını aç öyle gel" (Come without headscarf). (2003, November 07). YENİ ŞAFAK\_ "Kamusal Alan Mahkemelere Sıçradı", NETHABER

<sup>77</sup> "Türbanlı izleyiciler dışarı çıksın" anonsu, MİLLİYET, 25.11.2006 <http://www.milliyet.com.tr/2006/11/25/guncel/gun03.html>

<sup>78</sup> "71 yaşındaki hastaya başını aç işkencesi", YENİŞAFAK, 21.06.2002 (Take off your scarf cruelty to 71 year old sick lady) YENİŞAFAK

<sup>79</sup> "Örtülüye tedavi yasak", ("No treatment for headscarfed women,"), YENİ ŞAFAK, 22.06.2004

<sup>80</sup> "İşgüzar Okul Müdürü Örtülü Hanımı Ehliyet Sınavına Sokmadı" (Administrator blocked a headscarfed woman to the driving licence examination), VAKİT, 20.02.2007

<sup>81</sup> Başörtülü Öğrenci, Kürsüden İndirildi, <http://www.haberler.com/basortulu-ogrenci-kursuden-indirildi-haberi/> ("Headscarfed student bring down from stage") YENİŞAFAK, 24.11.2007,

<sup>82</sup> "Danıştay: Eşi türbanlı öğretmen yurt dışında çalışamaz" ("Council of State: A teacher whose wife is headscarfed may not work overseas.") CNN TURK, 23.02.2006

<sup>83</sup> "Emine Hanım GATA'da Uygur'u Ziyaret Edemedi", ("First lady Emine Erdoğan did not able to visit Uygur in GATA") HÜRRİYET, 23.11.2007

<sup>84</sup> "Peruklu olduğu gerekçesiyle üniversiteye alınmadı" ("She was not allowed into the University because of wearing wig") YENİ ASYA, 06.09.2006 Gaziantep 2nd Administrative Court "It is regarded as lawful because of that the necessity to obey dressing rules at the Universities which aim modern education system in the direction of Atatürk principles and revolutions and in accordance with the

her taxes, she was not allowed to enter Kadıköy Municipality Building because of her black chador even her faces open.<sup>85</sup> Perihan Dinç, a doctor, had been invited to a “Diabetes and Eyes” symposium organized by the Turkish Ophthalmology Association in Cerrahpaşa Medical Faculty’s auditorium. Although she attended, she was ousted by security guards according to the dean’s order.<sup>86</sup>

There are many examples of such events. Recently, top graduate of a school invited her mother to her prize ceremony but her was not allowed up to the stage because of her headscarf.<sup>87</sup> In the University Entrance Examination(ÖSS), a headscarved mother who came to give her children moral support, was not allowed to enter school and waited on the sidewalk.<sup>88</sup> The application of the ban has gone as far as revoking the licenses of female ping-pong players.<sup>89</sup>

The enforcement of the ban has started to create hate speech. Even private associations have started not to accept headscarved women. In a school fieldtrip, a private factory did not allow a headscarved mother to enter, even though she had come to oversee her disabled children.<sup>90</sup> Ahmet Aydın was not allowed to enter into the Hotel even if he had booked a room and paid all the cost because his wife was wearing headscarf. Further the Hotel competents continue to send notices to agencies stating that they won’t allow the headscarved women to enter into the Hotel. **Private Hotel administrators did not hold back in saying that it was company policy not to serve headscarved women.**<sup>91</sup> A comment of on keeping ban, and attitude of judicial bodies is causing administrators’ arbitrary practise.

The discrimination is actualizing in every area of society and every social class of women, and it is constantly changing with administrators’ attitudes.

The former president of the Institution of Higher Education Erdoğan Teziç, states that women wearing the headscarf as they walk down the street can be treated and threatened with the same actions:

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secularism principle of Consitution and the binding effect of decisions of Court of Constitution” (07.12.2007 , 2006/2756E., 2007/1171 K)

<sup>85</sup> Presidency of Kadıköy Municipality 08.08.2006, S.705834

<sup>86</sup> “Başörtülü doktora dekan densizliği”,

<http://yenisafak.com.tr/gundem/?t=04.05.2008&c=1&i=114893>, YENİŞAFAK, 03.05.2008

<sup>87</sup> “Oğlunu Tebriğe Başörtüsü Engeli”, <http://yenisafak.com.tr/Gundem/?t=08.06.2008&c=1&i=121925> Genel uygulamada anneler, mezuniyet törenlerine ve hatta sınavda destek için geldikleri okulları bahçelerine alınmamaktadır. “Başörtülü Anneye Büyük Ayıp”, <http://www.zaman.com.tr/haber.do?haberno=699391>. “The headscarved families of the students still could not pass through the University door”, ZAMAN, 18.06.2008, <http://www.zaman.com.tr/haber.do?haberno=703725>

<sup>88</sup> “A shock for the mother wearing a headscarf and hoping to encourage his son at the University Entrance Examination” “ÖSS’ye Girecek Çocuklarını Yalnız Bırakmak İstemeyen Başörtülü Annelere Başörtüsü Şoku”, <http://forum.shiftdelete.net/index.php/topic,39683.0.html>, 15.06.2008.

<sup>89</sup> [http://www.aktifhaber.com/news\\_detail.php?id=164134](http://www.aktifhaber.com/news_detail.php?id=164134), 09.04.2008.

<sup>90</sup> (“Hatice Ünsal said that i felt my self as leprose when I were not allowed to enter in to factory.”) A covered mother was not allowed to enter with her autistic son by factory administrators (“İlaç Fabrikası, Okul Gezisinde Başörtülü Veliyi İçeri Almadı”), <http://www.zaman.com.tr/haber.do?haberno=660496>. In Swedish, bus driver have to resign when he did not let women to enter in to bus because of her burka, whereas there are not any law sanction for this event in Turkey)

<sup>91</sup> “He was not allowed to enter into the Hotel because of his headscarved wife and he passed the night at the Police station.”, ZAMAN, 03.06.2008, <http://www.zaman.com.tr/haber.do?haberno=697155>

*“A justice who does not wear headscarf in court, cannot go to a bazaar wearing a headscarf. She cannot say that this is a belief, a freedom. A teacher can not wear the headscarf school grounds, nor in the bazaar. Imagine you are a woman wearing a headscarf. If a police says I am having difficulty identifying you because of your headscarf, you have to take it off. Even if you are within the confines of your home, you have to do this.. This becomes part of the public sphere, and it will only become your personal space after the police officer thanks you and leaves.”*

## **2. Ratio of Women who are Affected by the Ban and Difficulties Estimating Statistical Data**

There is no research done in Turkey to assess how the regulations against using a headscarf affected women at different social positions. At their 32<sup>nd</sup> session, CEDAW, Convention on the Elimination of All Forms of Discrimination against Women, expressed their concern regarding the effects of headscarf ban on girls and women in schools and universities and requested government to observe and to evaluate the dimensions of the effects of this ban on women who wear headscarf and to estimate the data pertinent to number of female students and women who were dismissed from schools and universities <sup>92</sup> Despite international obligation, Turkey did not take any action. Additionally NGOs also requested government to do a statistical study <sup>93</sup> . However this request was ignored and no reason was shown to explain the absence of statistical study. In general Government policy is to engage in conduct which ignoring existence of problems regarding this issue which in fact affecting many women. However ignoring the existence of ban does not eliminate the negative effects of it.

Rate of women who use headscarf in Turkey is so high which can not be underestimated. According to report of TESEV <sup>94</sup> and another researchs<sup>95</sup>, %62 and %69.4 of Turkish women are using headscarf respectively. A research report of the same newspaper in 2003 reveals the fact that 14 million women which is about two thirds of 22 million women above age 17 are covering their head with a cloth outside home <sup>96</sup>

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<sup>92</sup> Committee on the Elimination of Discrimination against Women (CEDAW) Thirty-second Session 10-28 January 2005 Para. 34. CEDAW/C/2005/I/CRP.3/Add.8/rev.1 ADVANCE UNEDITED VERSION

<sup>93</sup> The report of AKDER ‘Suggestions related to 6th Turkey Country Report Outline that will be presented to CEDAW’ in the uptitle extra dated 30 April 2007, The suggestions related to the all problems of women in the report of AKDER were considered, but the suggestions related to the estimation of discrimination against women with headscarf at least factually were disregarded.

<sup>94</sup> ÇARKOĞLU/TOPRAK, “TESEV Değişen Türkiye’de Din Toplum ve Siyaset” ( TESEV Religion Society and Politics in Changing Turkey), İstanbul 2006, p. 8, [http://www.tesev.org.tr/etkinlik/final%20rapordin\\_toplum.pdf](http://www.tesev.org.tr/etkinlik/final%20rapordin_toplum.pdf), for the study in which the rate of mistake is alleged as %2, there has been face to face negotiations with 1492 people consist of 18 year-old and come from the cities and villages of all around Turkey. At 23 cities, there has been constitute frequency research companies and the addresses were received from Turkish Statistics Institute

<sup>95</sup> “Türkiye’nin üç sorunu, “değerlendirmeler” (Turkey’s Three Problems ‘Evaluations’), MİLLİYET / KONDA Research Center, Another research made by the same newspaper dated 03 December 2007 is related to the fact that the percent of women with headscarf rised to %69.4. (MİLLİYET, “Gündelik yaşamda din, laiklik ve türban – 1” (Religion, Secularism and the Headscarf in Daily Life-1 ), <http://www.milliyet.com.tr/2007/12/03/guncel/agun.html>)

<sup>96</sup> The newspaper’s survey dated 03 December 2007 claimed that women with headscarf rised to %69.4. “Gündelik yaşamda din, laiklik ve türban – 1”, (Religion, Secularism and the Headscarf in Daily Life -1 ) MİLLİYET, <http://www.milliyet.com.tr/2007/12/03/guncel/agun.html>.

Considering that headscarf is a women dress style in Turkey which is used widely, it is obvious that important number of women using headscarf, especially in cities, have been effected badly by this discriminatory treatment.

In fact, a research called “Covered Truth of Turkey” was performed with women wearing headscarf and %93.9 expressed that they would have a different life if there was not a ban.<sup>97</sup>

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

Number of female students in higher education institutions of Turkey is 812.302.<sup>98</sup> Thousands of women with headscarf were getting education until 1998 at the time the ban was started. Those students started to their education with headscarf and got their picture identity cards with their scarf on. However when the ban was started they were not allowed to enter to universities, then university otorities had reported them as failed because of non-attendance. It is unfortunately not known how many of those female students took their scarves off and continue to their education and how many did not. Number of applications to a human rights organization, MAZLUMDER, only in year 1998 is 26.669<sup>99</sup>

When the fact that scarf is a common way of attire for women in Turkey is taken into consideration, it is conveyed that a big part of women especially in cities is affected negatively by the discriminatory attitude.

Similarly 677.000 student had benefited from amnesty between 29.06.2000 and 15.03.2005<sup>100</sup>. Among them 270.000 were affirmed to be headscarf victims. According to the statement of a political party, number of students who were dismissed from schools is 80.000<sup>101</sup>. However Institution of Higher Education reported those students with headscarf as dismissed because of non-attendance. %90 of students who were dismissed because of non-attendance had reported that they were even not allowed to walk in to the university because of headscarf they were wearing and for that reason they were dismissed<sup>102</sup>

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<sup>97</sup> While %67.6 of the subjects who think that ban of headscarf changed their lives, considers they will have beter education if there is no ban, %63.8 of them a different social life, %45.1 more comfortable conditions financially, %44.6 of them state that they will have more self-confidence. Look at. “Covered Reality of Turkey”, HAZAR, Istanbul 2007.

<sup>98</sup> <http://www.ksgm.gov.tr/tcg/17.pdf>

<sup>99</sup> 1052 female civil-servants which were taken, dismissed, banished from their jobs, 7126 female civil-servants who were investigated, 8238 female students who were not accepted to school and regarded absent, 1573 students who had various punishments. These informations are about personal applications made only to MAZLUMDER Istanbul Branch in 2000 and the numbers expresses the number of applications to the association. MAZLUMDER, Report on Human Rights Violations, 1998.

<sup>100</sup> The Law about the Addition of Temporary Articles to Higher Education Law, Acceptance Date: 15 March 2005, No:5316.

<sup>101</sup> The Law about the Addition of Temporary Articles to Higher Education Law, Acceptance Date: 15 March 2005, No:5316.

<sup>11</sup> The Law about the Addition of Temporary Articles to Higher Education Law, Acceptance Date: 15 March 2005, No:5316.



In 2002, headscarf was forbidden at University Entrance Exam(ÖSS). After this date, number of students with headscarf who could have taken the entrance exam and won right to enroll to university education **if there was not a ban, is not known. For this reason, no statistical data can be formed.**

Same situation is true for women who are government employees or some private sector employees. No data exist showing how many women could have worked if there was not a ban. To be able to work at governmental institutios, one should not be wearing a headscarf. However there is only one directive about this issue. After 1998 inquisitions had been started about governmnet employees who use headscarf and many of them were become subject to law suits for disobedience. With this application government employees were either forced to take their scarves off or resign. Rest of them were dismissed from employment. They lost their income, social and health insurances and retierement rights. At the time when inquiries were actively started on employees with headscarf between 23.04.1999 and 14.02.2005, 20.543 governmental employee got disciplinary punishment <sup>103</sup>. It is not known how many of this punishments were related to their headscarf. However after amnesty, the headscarf ban had continued and those women could not return to their employment

The condition of ‘uncovered hair’ began to be asked for the Public Staff Choosing Examination (KPSS) that is made to be civil-servants of the state by 2000. After that date, women with headscarf cannot show their accomplishments as they cannot have these exams to work in public institutions. *For this reason, it cannot be known how many women with headscarf could work if there was no ban.*

Same ban has been applied to females who work at private sector such as lawyers. Istanbul Bar Association has 23.164 lawyer and 2.264 intern lawyer member and they have issued a regulation which requires lawyers to denounce other lawyers with headscarf, who are already not allowed during trials, if they attempt to enter to court buildings <sup>104</sup>. It is very unfortunate that many women who were trained as lawyers are not able to perform their proficiency because of headscarf. Similar applications are true for other private sector workers.

The survey titled ‘the Covered Reality of Turkey’ showed that the ban on headscarf has a negative impact on work life of women wearing headscarf. 20.8 % of women participating the survey claimed that they were not employed due to their headscarf, 17.8 of participants stated they were forced to work in posts that have no connection with customers. And others forming 17.1 % of participants said that they had to work in a job unrelated to their own profession. <sup>105</sup>

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<sup>103</sup> 9361 warnings, 5682 denunciations, 3123 cut from salary, 1551 stop progress in degree, 639 dismissal from being civil-servant, and 187 civil-servants had punishments because of different crimes. Moreover, it is signified that the number of those with no record who were dismissed when they were internal officer, and those who had dismissed when the ban started is over 100. The disciplinary penalties given were erased by the Amnesty no.5525. <http://www.milliyet.com.tr/2005/03/01/son/sonsiy06.html>, 01 March 2005. Amnesty of file for 20 thousand civil-servants, Law about Pardon of Some of Disciplinary Penalties of Civil-servants and Public Employees, Acceptance Date: 22 June 2006, No:5525, RG 04 July 2006, N:26218.

<sup>104</sup> <http://www.haberaktuel.com/Istanbul-Barosu,-basortulu-avukatlarin-pesine-dustu-haberi-138241.html>

<sup>105</sup> The survey titled ‘The Covered Reality of Turkey- Turkiyenin ortulu gercegi’, Hazar, Istanbul, 2007 XXX

Long duration of the ban has caused female students not even enroll to high schools since they already know that they will not be able to go to university and qualified women have to take their scarves off at work place and put it back on afterward or they'd rather do not work at all instead of working for a very low salary. These difficulties has pushed women with headscarf out of employment and out of social positions, for that reason estimating a definite number of victims is very difficult.

Women of Turkey are not educated in a way which would make them able to seek their rights. Besides this ban has been employed by universities and governmental executive institutions. Ironically complaints regarding ban has been submitted to these institutions which invented the headscarf ban. Consequently, there is a noteworthy concern regarding fair mindedness of agencies which would evaluate the complaints from those women who were effected by ban. In Turkey judges whose wives wearing had scarf has been subject to inquiries <sup>106</sup>, and they have been exiled because of their judgement favoring headscarf <sup>107</sup>, on the other hand prosecutors themselves were also subject to inquiries <sup>108</sup> if they accepted law suits against rectorate who did not allow students with headscarf to enter to university. In such an environment hundreds of law suits were rejected and women who are subject to discrimination feel desperate and unsecure when they want to applicate to the courts.

Filed and rejected law suits against discriminative applications related to headscarf shows that a woman with headscarf has no chance of winning when they appealed to courts. Courts finds it rightful to dissmiss a student from training even if they are using a wig instead of showing their own hair<sup>109</sup>. Strict attitudes of higher adjudication authorities against headscarf has caused many women not to apply to courts when they face discrimination. In a field research report, %76.2 of women with headscarf who were victimized, answered no when they asked if they applied to courts. When they were asked why they did not apply, % 62.8 said it is because they could not trust to adjudication authorities and %14.9 said it is because they knew they would not get any solution <sup>110</sup>. This points at another aspect of difficulty to estimate a statistical data.

There is no institution exist where women with headscarf can apply and get their rights back when they were subject to discrimination. Contuniation of the ban for years, has caused a decrease on the thrust to official channels. Therefore, records that will show the real size and coverage of violations of rights have not been possible to be formed.

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<sup>106</sup> The Cheif Inspector of Justice, 03 October 2000, numbered 152 and 03 October 2000, numbered 149, Two requirement letters of the Chief Inspector that ask a defence from two different judges.

<sup>107</sup>, 'Adalette Turban Suprizi- Headscarf surprise in the Justice', RADİKAL, 12 December 1998, 'Judges approving headscarf will be dispelled- Turban vizesi veren hakimlerin isine son', The center og news in NTV Channel, 09 June 2000, 'The exile of Judge due to headscarf decision- Hakime ortu surgunu', AKIT, 20 November 1999.

<sup>108</sup> General Directorate of Punishments of Ministry of Justice, Subject: Ex-publice prosecutor of Yozgat, at present he is still resigned, Resat Petek, numbered 2.89.7.225.1998 Explanation: After receiving complaint letters coming from office of Chief of general staff, Union of Bars of Turkey, and Institution of Higher Education, an investigation was started, Consideration of the Ministry of Justice and letter of General Directorate of Punishments requesting a defence, were to delivered to Higher Board of Judges and Public Prosecutors.

<sup>109</sup> The Administrative Court of Gaziantep, E: 2006/2756 and K 2007/ 1171, 07 December 2007

<sup>110</sup> The survey titled 'The Covered Reality of Turkey- Turkiyenin ortulu gercegi', Hazar, Istanbul, 2007



#### IV- EVALUATION OF HEADSCARF PROHIBITION ACCORDING TO INTERNATIONAL LAW

At the 4<sup>th</sup> conference of Organization of The Islamic Conference Parliament Union, UN secretary general Kofi Annan expressed that no institution or individual can insult or humiliate a religious symbol. Human rights, freedom of speech and freedom of expressing religions are undeniable rights.

Most important parameter of the existence of freedom of conscious and religion is that one should be able to fulfil the requirements of him/her religion. Article 18 of Universal Declaration of Human Rights include following arbitrament;

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“All have right to freedom of religion and conscious, this right consist of freedom to express their religion by means of rituals and ceremonies, individually or as a group, in public or in private field”.

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Article 2 section one of UN International Covenant on Civil and Political Rights express:

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

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With this convention, states are expected to respect to all religious, political or other opinions of individuals or groups and protect their rights.

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Turkey as being part to Covenant on Civil and Political Rights describes freedom of religion and opinion as a right and should not allow any restriction even in unusual circumstances. During unusual exceptional conditions cutions can not be taken outside the limits described in article 18<sup>111</sup>

Article 22 of the committee:

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“ Freedom to express religion and belief can be carried out individually or in asociation with others in society. Freedom to express religion and belief can consist of wide range of activities such as worshipping, compliance, acting and teaching. Concept of worshipping can contain rituals and ceremonies and many related activities which express beliefs directly, to build places for worshipping, to use ritualistic formulas and instruments, displaying symbols, compliance with holidays and resting days. Excercising religion and belief is done not only by means of ceremonial activities but also by special diet traditions, wearing special clothes and headscarf, joining to rituals related to certain stages of one’s life....” <sup>112</sup>

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In this interpretation dated 25.06.1993, wearing special religious hats or scarfs is considered as part of religious life which shall be protected <sup>113</sup>

Same expressions was emphasized at Vienna Declaration on 25.06.1993:

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“ Freedom of expressing religion and believes shall not include only practicing particular jobs or rituals but also shall include living religious traditions, fasting regularly on certain days,

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<sup>111</sup> Freedom of Religion Report in Turkey”, Liberal Thinking Association, p.126

<sup>112</sup> General Interpretation N.22: Religion, Concious and Expression (Articl.18):.30.07.1993. CCPR/C/21/Rev.1/Add.4, General Comment N:22.

<sup>113</sup> [BM İNSAN HAKLARI İZLEME KOMİTESİ \(İHİK\), http://www.hrw.org/backgroundunder/eca/turkey/2004](http://www.hrw.org/backgroundunder/eca/turkey/2004), 2004, p: 33

applying special diets (such as vegetarian diets), wearing special dresses or hats or headscarves, joining to certain rituals regarding different stages of life."

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Freedom of religion include applying religious activities and prevents human rights from being abused because of religious activities. Applications restricting individuals from accessing education, medical care, employment are against article 18-section 2 of Covenant on Civil and Political Rights.

Headscarf as being part of expression of religion and conscience should be respected since respect to fundamental human rights and freedom requires so. According to texts regulating freedom of religion and conscience, this freedom can not come true with only securing beliefs and conscientious decisions. For that reason it also includes freedom to fulfill, express and exhibit requirements of one's beliefs in individual and social life.

States are responsible for taking precautions to guarantee and secure the use of this freedom actively. Along with right to have religion and beliefs, fulfilling the requirements of these beliefs are protected by all national and international human rights documents. In Turkey it is expressed that there is freedom of beliefs. However people are restricted to fulfill the requirements of their religious beliefs freely. As being a secularist country Turkey is expected treat equally to women no matter if they are using headscarf or not. Amnesty International dictates that government is responsible for protection of women's own choices, instead of restricting them. Every government is also responsible for providing a secure environment in which women can make their own choices without danger of coercion and violence<sup>114</sup> From this point of view Turkey has been violating its international responsibilities

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### **1. European Court of Human Rights (ECHR) and CEDAW's Different Protection Fields and Effect of Decision on Leyla Sahin Case**

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It is claimed that students with headscarf can not get university education and national and international authorities can not make any further decision because of an unfavorable decision given by ECHR. In fact ECHR refused the application of Leyla Sahin. This decision is a barrier to students with headscarf to get university education.

First of all the decision on Leyla Sahin is considered among the most polemical decisions by ECHR. Because this decision was not based on existing realities but based on possible dangers which could come true in future. The court has ignored living realities and has overlooked the concretely violated rights because of concerns regarding the possibilities in future.

On 19 December 1999 ECHR decision on case of Serif;

"Creation of tension is possible at dividing points of societies caused by religion or any other reason. However this is an unavoidable result of pluralism. In such situations duty of authorities is not eliminating the pluralism. On the contrary, they are responsible for generating tolerance among competing opposite parties". It is emphasized that social legitimate differences are supposed to be protected instead of elimination,

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Judge Tulkens who wrote dissenting vote says:

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<sup>114</sup> ULUSLARARASI AF ÖRGÜTÜ, <http://thereport.amnesty.org>, 2007: 8

“Hindering a right protected by conventions requires realities and reasoning which should be unquestionably legitimate and beyond discussion. Court itself declares that when hindering a fundamental right is in question, this decision should be supported by concrete examples and verification itself would not be enough <sup>115</sup>. However decision on Leyla Sahin was given without a concrete evidence.

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ECHR defended its decision saying that administration has right to decide on such a delicate matter like headscarf when fulfilling its responsibilities based on contract, ECHR’s judge can only be a secondary attribution and monotonous solutions can not be imposed <sup>116</sup>. Court particularly avoided making a decision which can constitute an example among candidate countries and attest absence of a consensus on this issue within Europe. However as judge Tulkens expressed in his defence there is no different application within European regarding universities <sup>117</sup>. Although France has the most strict attitude on this issue, prohibition regarding religious symbols is applied only in state’s primary and secondary education institutions but not in private schools or in universities <sup>118</sup>. Besides there also are private primary and secondary schools where students with headscarf can get education and there is no prohibition about headscarf in universities.

Decision on Leyla Sahin case has no legitimate reason which could concretely justify the rule preventing education right of students with headscarf. Besides this decision has totally prevented students with headscarf from being able to get education and there is no explanation how this decision can be compatible with the freedom of a woman to choose her own dressing style and with women rights.

Sahin case explains “prohibiting headscarf is not a must but to do so is lawful in conditions of Turkey”. There is no such expression saying whether using headscarf can be considered appropriate or not according to ECHR. The court has no such authority. None of the international conventions including ECHR are in position to regulate what a person can wear or what can not wear <sup>119</sup>. In fact there is no application prohibiting headscarf in any European Country.

If the court decides that violation of a human right is against European Human Rights Convention, participant countries are responsible to eliminate this violation. If the court does not make such a decision then participating countries do not have to take any action according to the human rights convention. To broaden the dimensions of freedom is in hands of each participating country. Even though the court finds an application appropriate, countries are not obliged to carry on the same application. Again to draw a broader line of freedom is possible with free will of a country. ECHR has made a decision regarding Sikhs that using a helmet when they use a motorbike is not a violation of freedom of religion but it is a precaution for health and it is obligatory. <sup>120</sup> However United Kingdom has made a regulation favoring freedom of religion and freed Sikhs from being obliged to use a helmet. ECHR’s decision finding England government rightful did not prevent England to change its

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<sup>115</sup> Smith v. Grady v. The United Kingdom, 27.09.1999, § 89

<sup>116</sup> SAHİN v. Turkey, Tulkens, p.2

<sup>117</sup> SAHİN v. Turkey, Tulkens, p.3

<sup>118</sup> ARSLAN Zühtü, The Freedom of Religion in Europe Human Rights Protocol. Ankara: Lİberte the Puplication, 2005 p.73

<sup>119</sup> PAKDİL Necdet; Law and Democracy Magazine, Ankara 2005, Law and Democracy Association, Year 1 Nu:10., p.44.

<sup>120</sup> X v. United Kingdom, N: 7992/77, 12.07.1978, DR 14, JUNE 1979, p.234-235

application about helmet use for Sihs. For that reason, ECHR's decision about Sahin can not be the legal reason for continuation of headscarf ban.

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## **2. Differences Between European Human Rights Convention (EHRC) and CEDAW and International Covenant on Civil and Political Rights**

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The fundamental aim of CEDAW Convention is to eliminate stereotyped prejudices based on male and female gender role and all traditional or other discriminative applications in order to generate equality between men and women. Taking all temporary or private precautions to change social and cultural behavioral trends is guaranteed with this convention. Convention is an existing actual document to prevent discrimination against women.

CEDAW differs from EHRC with being a convention only for women not being a convention that defends equality of men and women. All kinds of discriminations were prohibited in this convention. The convention holds participating countries responsible for providing equal opportunity for men and women to benefit from economical, social, cultural, personal, political and other rights. Fundamental principle is that discrimination is unacceptable. CEDAW with principles of equality and nondiscrimination in its very base, defines discrimination against women and requires countries to eliminate by all means any kind of discrimination against women without a delay.

Discrimination is every kind preventive, restricting and dismissing application preventing women to take benefit from fundamental human rights no matter what their social position is. Turkey is also responsible for taking precautions to prevent any type of obvious or hidden discrimination. Eliminating discrimination only in legal texts is not enough. This written rights have to be actively applicable in real life.

Applications in Turkey has been restricting education and employment rights of women who wear head scarf for religious reasons and preventing them from being able to make their own choices. Prohibiting women even to wear what they chose to wear has been restricting their right to education, freedom of conscious, thought and religion, right to have personal lifestyle. Besides government has been creating discrimination with its own authority.<sup>121</sup> Treating women with headscarf in a different way means denial of principle of all civil rights such as freedom of religion and expression, right to education and employment, being equal, tolerance and being legitimate.<sup>122</sup>

Discriminative attitudes and applications against women with headscarf are contrary to UN's conventions and decisions. Turkey is also a participant to International Covenant on Civil and Political Rights. Turkey is obliged to regulate its domestic legislation and policies in compliance with United Nations Human Rights Committee.<sup>123</sup>

According to International Covenant on Civil and Political Rights and EHRC, freedom of religion and opinion is obligatory. These can not be restricted even under unusual circumstances.<sup>124</sup> UN Human Rights Committee explains the article 18 which is about

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<sup>121</sup> İHİK, <http://www.hrw.org/backgrounder/eca/turkey/2004>, 2004:6

<sup>122</sup> YAYLA, Atilla: [http://www.hurfikirler.com/hurfikir.php?name=Kose\\_Yazilari&op=viewarticle&artid=47](http://www.hurfikirler.com/hurfikir.php?name=Kose_Yazilari&op=viewarticle&artid=47), 16.11.2005.

<sup>123</sup> EKİNCİ Abdullah: "The Researches of Human Rights", 2005

<sup>124</sup> "The Report of The Freedom of Religion in Turkey": "The Relations between Religions: The

freedom of religion by emphasising that this right consist of a broad range of activities including one's right to revelate him/her religion or believes including right to wear their own special dresses.<sup>125</sup>

As Human Rights Committee paraphrases freedom of expressing religion as being also able to wear special dresses and using headscarf and defines any application limiting this freedom as illegal.<sup>126</sup>

Human Rights Committee has made a decision about a female student who were dismissed from university because she did not take her head scarf off. This decision; "Committee accepts the freedom of epressing religion and belief comprises wearing dressess in public which is suitable with religious belief. Besides committee consider any prohibition preventing an individual from wearing religious dresses in private or in public as violation of article 18, section-2 of UN's Civil and Political Rights Convention which prevents any constraint damaging the freedom of chosing or changing a religion."<sup>127</sup>

As obvious from above examples, decision on Leyla Sahin has not eliminated discrimination against women with headscarf as it is demanded by CEDAW and International Covenant on Civil and Political Rights.

## **V. THE JUSTIFICATIONS OF THE HEADSCARF BAN AND CRITISISM**

The people who worked to establish the headscarf ban and also those who defend the ban try to justify their reasoning in many different ways. Many reasons are claimed for their support for the ban, including claims that the headscarf is a reflection of a chauvinistic, male-dominated world, that women wear headscarves due to outside pressure, that allowing freedom to wear the headscarf may put pressure on uncovered women to cover, that the headscarf is a political symbol, that women wearing the headscarf must obey the law and should not try to damage the system, and that it is a reaction against secularism.<sup>128</sup>

The main flaw in this reasoning is that it is based on the idea that accepts the existence of a homogeneous category in society that includes "women wearing headscarves". Women who wear the headscarves are quite far from being homogenous: they have different lifestyles, passions, and self-perceptions. Even if women with headscarves agree on the same virtues of Islam, they come from diverse social classes, races, and ethnic backgrounds. They are not a homogeneous group of people and do not hold the same experiences with wearing the headscarf.<sup>129</sup>

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Seeking of the coexistence in a Secular and Democratic System in Peace", Liberal Thinking Association, Ankara 2005, p 126.

<sup>125</sup> UN Human Rights Council, "Article 18: The Freedom of thought, religion and belief", General Conclusion, 22, 30.06.1993.

<sup>126</sup> ÖKTEM, Akif Emre: The Freedom of Religion in International Law", Liberte Publication, Ankara 2002, p. 6.

<sup>127</sup> UN, İHK, AUTHOR v Uzbekistan, Communication No. 931/2000, U.N. Doc. CCPR/C/82/D/931/2000 URL, [http://www.unhchr.ch/tbs/doc.nsf/0/622eb4103da2c6a0c\\_1256f9b004fd445?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/0/622eb4103da2c6a0c_1256f9b004fd445?Opendocument), 18.01.2005, rg .5)

<sup>128</sup> ÖZİPEK, Berat: "Within The Axial of Human Rights and Vialation, A Sample Headscarf Ban Problem", Uncovering Problem: Headscarf, The Headscarf Ban Problem in Turkey with Basic Dimensions", AKDER Publication, Istanbul 2008

<sup>129</sup> BULLOCK, Katherine: "Rethinking Muslim Women and the Veil: challenging historical and modern stereotypes, Karakalem Publishing, (Trans: ŞEVİKER, Muhammet), Istanbul 2005, p. 113.

Research on women with headscarves has shown that these women have varying opinions on various issues. According to “(Örtülü Gerçek Araştırması) The Survey of Covered Reality of Turkey”, 3.2% of participants noted that women with headscarves must be homemakers, 6% of them accept polygamy, and 3.9% of them specify that honor-killings are acceptable. On the other hand, 98.6% of participants say that women must choose their spouse by herself before marriage, 85.6% of them say that women should work to be economically independent and 87,5% of them think that men and women have equal rights and responsibilities in the family. This research also shows that covered women are comfortable near uncovered women. While 12.4% of participants responded that they only feel comfortable around women who wear the headscarf, 85.6% of them noted that their choice of clothing is not a factor in choosing their friends.

### ***1. The Allegation that Headscarf Ban is in Favor of Women***

Ones who support the ban on the headscarf argue that the headscarf is not a freedom, and causes the one wearing it to become a second-class citizen in society. They also alleged that the headscarf limits a woman’s public life, and it creates a world-view without freedoms. Thus, the argument goes, the headscarf ban is in favor of women.

As a consequence of classical orientalist views it is accepted that “The headscarf is a symbol of oppression”.<sup>130</sup> This viewpoint declares “the headscarf is intrinsically oppressive. Women are forced to wear it not by the laws of the state, but are indoctrinated by their families and cultures. These women do not have the enough intellectual capacity for questioning their customs.”<sup>131</sup>

As a matter of fact, according to Mernissi “The headscarf can be interpreted as a sign of a collective fantasy of a Muslim community where women are forgotten, eliminated from the public life, kept inside of a place where they are easily controlled (such as the home), prevented from moving freely and exposing themselves in front of men by means of a mask (veil).<sup>132</sup>

According to this perspective, there is a realized pressure to cover, therefore an official pressure to uncover is justified. The main problem with this approach is that it mixes freedom with emancipation. In other words, this means that a government or an individual, in a philosophical sense, must substitute the meaning of freedom with either the concept of liberation, or the idea of liberating. The meaning of freedom may be different for everyone: for some freedom is the freedom of production, for others it may be freedom from obligations, and for others it may be living according to the ideas of a specific religion, ideology, or a philosophy. It is possible to construe freedom in many different ways, but the laws must be based on eradicating compulsions, rather than being based on government’s conception of emancipation. For some, wearing (or not wearing) a headscarf may seem wrong, bad, or, harmful. However defending this viewpoint and defending its prohibition should not be confused. People who think that headscarf is good or bad are limited to expressing their opinions and persuading (using philosophical and political means) the opposite viewpoint. In short, the problem is confusion between the different philosophical understandings of freedom, and the understanding of freedom in human rights literature. Different political and

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<sup>130</sup> BULLOCK, *ibid*, p. 110.

<sup>131</sup> BULLOCK, *ibid*, p. 152.

<sup>132</sup> MERNISSI, Fatima: “Virginité and Patriarchy,” in *Women and Islam*, (Ed.: ALHIBRI, Aziza), Oxford, UK: Pergamon Press, 1982, p. 189.

philosophical thinking about "Real freedom" can be accepted without the approval of an entire society if they do not infringe on other's rights.<sup>133</sup>

An individual would not wear a headscarf if she evaluates the headscarf as a restriction upon herself. Although the headscarf is a form of obedience, it is not obedience towards men but rather obedience to religious obligations. Also, socialization about the benefits of covering is not the same as compulsion.<sup>134</sup> No one can decide for an individual what is 'good' or 'bad' especially with regards to religious matters.

The headscarf represents pressure if it is insisted on by a political system. As for Turkey, there is a perceptible pressure to uncover women's heads. Ultimately, wearing a headscarf brings about many disadvantages, especially in Turkey. Women with headscarves are not only isolated from education and a working life but are also belittled in society. It is also not easy to discuss the existence of social pressure with respect to covering in Turkey. As a result, like many Muslim countries, covering symbolizes backwardness and signifies being in a lower class. The mainstream 'media' constantly imposes a modern and contemporary outlook. It is indeed difficult to decide to cover. A woman is confronted with serious discrimination and prejudice as soon as she covers her head. Being covered causes one to be isolated from society. Thus, this shows that there is a pressure in the opposite direction; that is, a pressure against wearing the headscarf.

**The main issue in Turkey is the ban against headscarf for university students and public officers/workers.** Even if it is claimed that there is social pressure from the families of uneducated women who are unable to express themselves, this situation would not apply to university students and public workers. It would be considered insulting to these women who have excelled to the level of an university education, or have met the strict requirements necessary to become a public worker to claim that they have been "brainwashed" or cannot "stand up to cultural norms".

In a study done by TESEV, the following question was asked: "What would you do if your social circle took off their scarves?" 87.7% of respondents answered "I would still keep my scarf on" and 3.6% of respondents said "I would take off my scarf"<sup>135</sup> This implies that even if the hypothetical influence were removed, women would still keep their scarves on. In reality, restricting the economic independence of these covered women causes them to be more susceptible to social and familial pressure.

*If rural women are covering due to external pressure, not providing them with an education or alienating them from society will only increase that pressure. If in fact social pressure or patriarchal structures push for women to cover and "be more traditional". The headscarf ban brings into effect a much greater pressure. To continue this ban is to say women wearing headscarves "do not go school and get educated, do not work and stay at home". It is clear that women who are cut off from higher education, who can not work, who do not have economical independence, lack the strength to resist against external pressures. After the headscarf ban in Turkey, women were looked down upon as if they are*

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<sup>133</sup> ÖZİPEK, Berat, ibid

<sup>134</sup> BULLOCK, ibid. p. 153.

<sup>135</sup> "Değişen Türkiye'de Din, Toplum ve Siyaset", [Religion, Society and Politics in a Changing Turkey] TESEV, ÇARKOĞLU/TOPRAK, 2006:58, [http://www.tesev.org.tr/etkinlik/Final%20Rapordin\\_toplum.pdf](http://www.tesev.org.tr/etkinlik/Final%20Rapordin_toplum.pdf), Interviews were carried out with 1492 people over the age of 18 representing a cross-section of Turkey's urban and rural population, 2006.



*weak beings that did not possess the ability to choose how to dress themselves, beings who were told whether or not they could cover their hair. Based on the understanding that women with headscarves do not possess freedom (which is defined arbitrarily by outside agents), women must uncover to attend school or to work. The ban, which is persisted on by privileged elites who believe that they can decide in the name of headscarved women, has trampled the dignity of women. Ultimately women decide to cover their head on their own accord. They do not need anybody to dictate the truth on their behalf.*

## ***2. The Allegation that freedom in clothing will have negative effects on uncovered women and will bring about regime change***

There is no concrete reason that warrants the headscarf ban in Turkey. Thus, commentary is usually based on hypotheses. It is claimed that if the headscarf is allowed on university campuses, the basic character of the republic will be damaged and Turkey will transform into Iran. However, Turkey's proximity to Iran and practices of other countries do not mean that Turkey will have experience the same issues.

Statements such as "banning the headscarf by the state is legitimate so as to prohibit the creation of a regime that forces all women to cover their heads. It is also warranted so as to not infringe on the rights of uncovered women" capitalize on people's fears. **Existing rights are** encroached upon as this issue is continuously brought up with threats and warnings about the future. **Vague remarks about the headscarf issue without concrete support or facts do not change the reality that today the rights of women with headscarves are being violated.**

*In TESEV's research titled "Religion, Society and Politics in Changing Turkey", it is found that the danger of Islamic Law, or Shari'a, does not exist in Turkey. TESEV also notes that this fear is only held by a small subset of people who are trying to legitimate the ban.<sup>136</sup> As it can be seen in TESEV's work, there is no hope or desire for Islamic Law in Turkey. Religion-based projects and political parties are not well received in Turkey. Interference of religion into matters of the state or vice versa is not welcomed in Turkey. It is not possible to prolong this ban by basing it on possible future dangers.*

Moreover, students with headscarves were able to attend universities for a period of time. Before the beginning of the ban in 1998, There were no occurrences of "fundamentalist activities" at universities that pointed to Turkey transforming into Iran, or the "Malaysianization" of Turkey.

During the ban's February 28 process, it was claimed without any concrete evidence that the scarved students who chose to practice their educational rights caused damage to the system and hindered education, while also harming the "basic principles of the Turkish Republic."

When headscarf was free at universities, it is known fact that there were no negative events concerned with clothing. After the headscarf ban started, clothing has always been on the agenda and has constantly been a source of problems. In all surveys more than 70% of people

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<sup>136</sup> The majority of the community is religious and religiousness has increased according to research done seven years ago. However, being religious requires a great tolerance towards people who chose different lifestyles. Moreover, it is believed that the reforms of the republic will improve the state of Turkey. (See "Religion, Society, and Politics in a Changing Turkey", TESEV)



respond that the ban should be revoked.<sup>137</sup> The facts invalidate the argument that the existence of students with headscarves has made a negative impact on students who do not wear the headscarf. To state that university students or public officers influence each other's clothing would be unfounded.

### ***3. The Allegation that a Political Symbol, the Reality Behind the Differentiation Between the Headscarf and the Turban***

There are allegations that there is a difference between the headscarf and the turban, and that the turban should be banned because it has become a political symbol. In reality, insisting on differentiating between the usage of 'turban' and 'headscarf' splits the speaker and the woman that either word is referring to into opposing sides of the ban. An important point to note here is covered women refer to the clothing they wear without differentiation between the headscarf and the turban. Looking at the users of the word "turban", it becomes apparent that it is mostly used by mainstream media and supporters of the ban. The latter group attributes features such as being a villager, uneducated, or elderly to the word 'headscarf', while also attributing characteristics such as being 'young', 'educated', or 'urban' to the word turban. For example, the proponents prefer to call a woman who is the wife of a doorkeeper as a 'woman wearing a headscarf', but, on other hand, if she is the wife of a president, they labeled her a 'woman wearing a turban'. An elderly grandmother who is a housewife is labeled as a 'woman wearing a headscarf', but her grandchild who wants to achieve a higher level of education is stigmatized as a 'woman wearing a turban'. Women who do not fit the imagined role of a lower class woman described by proponents of the ban are labeled as 'women wearing the turban'. Thus, there is a push to stigmatize these women so that they are viewed as aliens and not members of society.<sup>138</sup> Because the ban applies to all women wearing the headscarf, regardless of age or class, it shows that in reality, the differentiation made between the headscarf and turban and their users does not exist.

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<sup>137</sup> According to research by TESEV, 67.9% of respondents believed that "Female civil servants should be allowed to cover their heads if they wish." 71.1% believe that "Female university students should be allowed to cover their heads if they wish." A number of surveys conducted throughout Turkey have shown that more than 70% of the public are opposed to the ban on university students and civil servants wearing the headscarf. (BENLİ Fatma, "Evaluation of the Headscarf Ban in the Light of Surveys and Reports of Human Rights Organizations." *Köprü* [Bridge] magazine, p. 84, 2003) Demanding 100% public approval before women who wear the headscarf are relieved from discrimination and permitted to go shopping, go to the hospital, and receive an education contradicts what is being said officially about the protection of human rights. Another survey stated that 10% of respondents stated that women should not be admitted into the hospital for treatment while wearing the headscarf, and 5% believed that women should not be permitted to go shopping while wearing the headscarf. (Turkish Social Economic and Political Studies Foundation [TÜSES], "Research Series on the Ethnic/Religious Identities and Political Orientation of Political Party Supporters and Electors in Turkey")

<sup>138</sup> Because of this point of view, a woman who is buy things from the bazaar is labeled as wearing a headscarf, while the women who is shopping in luxury shopping centers is labeled as wearing the turban. In addition, one actress said "They come to theaters for making their turban conspicuous in society;" her statement can only be explained by such a view. The main problem with the headscarf issue started when women wearing the headscarf were no longer exclusive to villages and they themselves or their husbands found jobs indicating a higher status in society. People who support the ban frequently mention to the media that "The headscarf and the turban are different. For example my servant wears a headscarf." This example is not coincidental and is an indication of the views of many proponents of the ban.

It cannot be claimed that millions of women wearing the headscarf do so for ‘political aims’, nor can it be claimed that all of these women possess the same thoughts and viewpoints. In the survey entitled ‘The Covered Reality in Turkey’, out 1112 women who participated, 97.7% of women wearing the headscarf stated that they wear the headscarf to comply with religious doctrine. These results show that allegations that the headscarf is used as political symbol and therefore deserves to be banned is not grounded in reality. On the other hand, when evaluating the matter from a human rights perspective, women should have the right to use the headscarf for any reason - including political ones - as the law should respect their personal preferences.

Surveys show that for the great majority of Muslim women wearing the headscarf, the headscarf is a personal preference as a manifestation of their sincere beliefs, and it worn to comply with religious doctrine. The allegation that ‘the headscarf has become a political symbol and should be banned’ is contrary to the realities revealed by the survey.<sup>139</sup>

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

- I wear the headscarf because it is an obligation in Islam, 71.5%
- Because it indicates that I adhere to a certain political view, 0.4%
- Because my husband/fiance wants me to wear it, 0.9%
- My family (apart from my husband, father, mother, brother or sisters) wants me to wear it, 0.2%
- I wear it to move comfortably in society, not for my family, 1.2%
- Everybody in my social circle wears it, I can not be the only one who does not wear it, 7.6%
- I think that wearing headscarf is a condition for being a virtuous woman, 3.4%
- I did not wear it when I was young, after getting older I started to wear it 7% (in 1999)
- Wearing the headscarf is part of my identity. If I did not wear it, I would feel naked in society, 3.9%.

Women wearing the headscarf state that the headscarf is not a religious symbol, and that they wear it to fulfill a religious obligation, not to indicate their religion or their religiosity. Muslim women wear the headscarf because they believe that God commands to do so, not because they think it is a symbol of their piety, their political views, or their ideologies. **Similarly, a person who obeys a different obligation of religion by praying the daily prayers does not worship to show that he/she is a Muslim, or to distinguish herself from those who do not partake in these religious practices.** People who do not partake in the same religious activities could perceive and oppose the worship of others or the fulfillment of duties as a symbol, but this does not change the fact that these religious obligations are fulfilled because they are a part of religion, and are not used as symbols.

Similarly, if we suppose that wearing a headscarf is a symbol, it indirectly indicates that not wearing it is also a symbol expressing a certain lifestyle. Thus women who wear the headscarf can be considered an active effort by using this symbol throughout their lives). Allegations that the turban is a political symbol should not become a ground for discrimination, or the ban on the headscarf.

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<sup>139</sup> CARKOGLU/TOPRAK 2006

#### ***4. The Allegation That the Principle of Secularity Necessitates a Ban on Headscarf***

It was alleged that secular character of Turkish Republic necessitates that women who are present in the public sphere should be uncovered. However, as a prerequisite to a fully developed secular nation, women who wear the headscarf and those who do not should be treated in the same manner by the state. *In a state governed by rule of law, people have the right to freely choose whether or not to partake in religious duties.* Modern States do not have to protect religion. However, states must protect the freedom of religion and belief and to prevent situations in which individuals who chose to comply with religious duties are deprived of their rights. The responsibility of a secular state is to ensure that all individuals from enjoy their rights freely; treating equally those who believe in a certain religion and those who do not, and to also equally treat those who fulfill their religious duties and those who do not.

According to human rights literature, subscribing to a particular religion, belief, or school of thought, and arranging one's life accordingly are included in the 'right to be different'. Every society contains inevitable ethnic, cultural, and religious differences.

Differences distinguish one being from another. Equality requires respect towards those that are different. Because of these principles, if everybody is free to choose their clothing, but only the covering of the head and neck are banned, this creates discrimination among those considered to be different. It is not rare in Turkey to have individuals with different religious views and different dress preferences are members of the same family in the same household. Similarly, people attached to different religious views live together in all areas of society. As a matter of fact, the public sphere only gains meaning by providing a place where people can exist and express themselves as they are, not by trying to hinder diversity.

The Principle of Secularism requires that states treat all religions, beliefs, philosophies, and ideologies equally without supporting any one of them over others <sup>140</sup> Secular states have to be impartial and should treat equally all of its citizens. Impartiality of a state should result in no discrimination, either positive or negative, on the basis of religion.

The principle of secularism is described in the preamble for Article 2 of Turkish Constitution as follows:

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

**Therefore, reality of wearing the headscarf should reflect the principles of a true secular state. The Turkish Constitutional Court's interpretation about secularism does not suppress the written ground of the Constitution itself.**

All international human rights treaties hold the provision that women are born as equal and free individuals with regards to rights. Turkey is a democratic republic governed by rule of law and based on human rights, therefore the State should treat all women equally without discriminating among women wearing and not wearing the headscarf.

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<sup>140</sup> ARSLAN Zühtü, p. 87

The United Nation's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, dated 25 December 1981 brings provisions on these kinds of issues.<sup>141</sup> According to this declaration, "States should avoid any distinction, restriction, exclusion, and preference based on religion or belief."

Freedom to choose types of clothing over others is an indicator of freedom of thought, consciousness, and religion. The covering of the head and neck is a manifestation of practicing one's religion within the context of freedom of religion and belief. *Existence of freedoms like freedom of religion and consciousness requires that people can freely practice the religion they subscribe to, and that practicing should not expose them to any discriminatory treatment.*

## VI. CONCLUSION AND EVALUATION

The United States Supreme Court Justice Louis Brandeis in a judgment in 1927 stated that "Men feared witches and burnt women." As problems of women's rights, modernization, human rights, and democracy are being discussed throughout the world in the 21<sup>st</sup> century, Turkey, for the last ten years, has been concerned with whether women with headscarves have the right to enter higher education institutions. In the name of modernization women that are alienated from society, and arguments regarding the headscarf create neglect for broader women's problems without any concrete step being taken to alleviate them.

International indexes of gender equality place Turkey at low levels and shows that women in Turkey have to face great difficulties in all areas of life (education, work, family life, health etc). Research on related areas show that Turkey provides equality of women and men on paper in legislation, but laws are not reflected in practice. Turkey's low placement in the World Gender rank reveals that prejudices and discriminatory treatment based on gender perpetuate violence against women. This affects women negatively in many areas of life including education, employment, and health. **Discrimination against women wearing the headscarf makes this situation worse in Turkey.** Placing obstacles in front of women based on their clothing prevents them from becoming financially stronger and from potentially solving their other problems.

As much as 62% of women wear the headscarf in Turkey, and therefore, exclusion from social life and discrimination against these women would inevitably lower Turkey's rank in gender equality indexes. Women who refuse to uncover are excluded from higher positions and this results in their lower participation in the labor force. One of the only remaining choices is to work in agriculture.

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

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<sup>141</sup> United Nation's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, dated 25 December 1981, Article 2(2)

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

Governments that exclude various voices cannot be called a democracy. There are other places that also implemented a headscarf ban but none of these cases were as rigid and wide reaching as Turkey. Apart from Tunisia, none of the countries with bans demands a woman to uncover her head to enter buildings and even gardens. Looking at France, with the most rigid implementation of secularism, one can see that the ban was implemented only in public primary and secondary schools. In some provinces of Germany, the law was amended and women wearing headscarf were banned from teaching in schools.<sup>142</sup> On the other hand, there are court decisions stating that firing a nurse from a Church Hospital is an act of discrimination.<sup>143</sup> Not employing a coiffeur due to headscarf was accepted as legal ground for compensation.<sup>144</sup> Similarly a headmaster in Switzerland was punished with expulsion from his post and was fined because he did not hire a woman solely due to her headscarf.<sup>145</sup> In the United Kingdom, women wearing headscarves are allowed to become police officers, and thus appropriate uniforms were designed. Scandinavian countries have no ban on wearing of the headscarf, and additionally public and private institutions provide headscarves with the institutions' logos to their covered workers. The problem in Holland and Spain is the use of the 'veil' to cover the face.<sup>146</sup> Military authorities in Denmark stated, "Our soldiers who would like to wear a headscarf can do so." The only exception is the use of the 'burka', but there are even examples that allow the use of a veil for the face. A driver in Switzerland did not allow a woman with a burka to board a bus and was subsequently fired.<sup>147</sup> A woman wearing a headscarf in Belgium was elected to the General Assembly.<sup>148</sup> A woman in Spain was elected as a Member of Parliament.<sup>149</sup> It was stated that women wearing the headscarf could be members of the General Assembly of Denmark, and that they could give speeches in meetings of the Assembly.<sup>150</sup> There is a female lawyer wearing a headscarf in Holland.<sup>151</sup> It was stated in the United Kingdom that a female lawyer wearing a veil for the face could work.<sup>152</sup> A 15 year-old girl wearing the headscarf was elected to play in the Danish National

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<sup>142</sup> Baden-Warttemberg, 11 November 2003

<sup>143</sup> ZAMAN, 20 July 2008

<sup>144</sup> STAR, 17 July 2008

<sup>145</sup> [http://www.do.se/t/Page\\_1457.aspx](http://www.do.se/t/Page_1457.aspx)

[http://www.do.se/t/Page\\_1145.aspx](http://www.do.se/t/Page_1145.aspx)

[http://www.do.se/t/news\\_1032.aspx](http://www.do.se/t/news_1032.aspx)

[http://www.do.se/t/Page\\_1145.aspx](http://www.do.se/t/Page_1145.aspx)

<sup>146</sup> <http://yeniasya.com.tr/2008/02/25/haber/butun.htm>

<sup>147</sup> [http://www.haber7.com/haber.php?haber\\_id=236785](http://www.haber7.com/haber.php?haber_id=236785)

<sup>148</sup> (My voters elected me while knowing my appearance), VAKİT, 03. December 2006

<sup>149</sup> Salima Abdeslam, 06 November 2006

<sup>150</sup> 'Permission for headscarf in meetings of General Assembly of Denmark', ZAMAN

<sup>151</sup> 'Holland allows women wearing headscarf to work as lawyers', ZAMAN, 28 August 2002

<sup>152</sup> Muslim women should be allowed to wear the veil in British courts, senior judges said. Muslim women should be permitted to wear the full facial covering, known as the niqab, as long as it does not

Football team.<sup>153</sup> **It is impossible to even imagine these kinds of permissive practices in Turkey. Women wearing headscarves cannot have such high goals in their lives in Turkey.**

Where as in Turkey, there is no social force or need for excluding women wearing the headscarf from education or work. Many Surveys show that there is not a problem with women wearing the headscarf in civil and social life.

**The problem in Turkey is that through its official ideologies and its modernization projects, the state forces and intervenes into the society and the lives of individuals. Statements that try to justify that unequal treatment towards women is justify inevitably add a political aspect to the issue.**<sup>154</sup>

**The headscarf issue has almost come to the point where discussions surrounding questions like “Do women wearing the headscarf possess essential liberties?” and, as if we are in the medieval period, discussing “whether women have spirits”. The ban has been in place for a substantial period of time, and therefore the issue is frequently discussed. The most popular discussion subject for the past ten years in Turkey is whether some people should be allowed in the public sphere or into various buildings. This problem continues to feed such discussions and forms greater tensions.**

**Moreover, Turkey spends a lot of time and energy to ensure that women in the public sphere have a modern appearance without the headscarf?. If Turkey spent one tenth of that energy and time to bring solutions to the long list of women’s problems, women in Turkey would be in a much better position. Problems such as only a fourth of women holding a job, difficulty of access to a pension and health insurance, more then five million women being illiterate, a drastic shortage of women’s shelters (there are only 38 shelters for women, despite the fact that one in every three women has been exposed to violence), and a great lack of women majors in local governments.**

**Since there will always be women who prefer to wear headscarf in Turkey, the ban should be lifted as soon as possible without wasting more time and energy. The ban not only significantly impacts the lives of women wearing the headscarf but it, overall, impedes the whole of Turkey.**

*The enjoyment of the human rights of all women and real equality between men and women in Turkey can be achieved by not discriminating against women wearing (or not wearing) the headscarf, and not depriving women of their rights with the ban on the headscarf. Women’s rights should be advanced and ensured, and these rights should be protected in reality. To be able to provide these rights in practical life, discrimination based on clothing should be*

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interfere with the administration of justice, the Judicial Studies Board's Equal Treatment Advisory Committee said. “the Veil is allowed for Muslim lawyers”, HURRIYET, 10 November 2006

<sup>153</sup> 15 year- old girl in the National Team of Denmark, 03 June 2008, <http://www.gazetehayat.com/haber/Danimarka-da-15-yasindaki-basortulu-kiz-milli-takimda/53122> Zeynep, the first player in the Denmark National Football Team to wear the headscarf said “I was expecting not to be chosen due to my headscarf. Actually, this decision is important for me because it showed me that they treated me not according to my belief or appearance but according to my playing abilities. I love football very much, but my headscarf is a part of my identity and is a religious obligation.”

<sup>154</sup> Liberal Thinking Association, Ankara 2005, p.25

*eliminated. In the 21<sup>st</sup> century, we are pushing to provide women with the legal, political, and social rights and freedoms that they are entitled to; eliminating the oppressive bans on women's clothing and also taking effective measures for solving actual problems they face are major steps to achieving this goal.*

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## VII- ABBREVIATIONS

ECHR	:European Court of Human Rights
EHRC	:European Human Rights Convention
ESI	:European Stability Initiative
CEDAW Women	: Convention on the Elimination of All Forms of Discrimination against Women
CEDAW	: Committee on the Elimination of Discrimination against Women
D	: Dated
HAZAR	: Hazar Education Culture and Solidarity Association
HRW	: Human Rights Watch
KSGM	: General Management of Woman's Statute
N	: Number
OECD	:
ÖSS	: University Entrance Exam
UN	: United Nations
UNICEF	: United Nation Children's Fund
PM	: Member of Parliament
RG	: Official Gazette
T.C.	: Republic of Turkey
TESEV	: Turkish Economics and Social Studies Foundation
TÜSES	: Turkish Social Economic and Political Studies Foundation
YÖK	: Institution of Higher Education

