Turkish court provides explanation of its ban on headscarves

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30 October 2008

The Turkish Constitutional Court's long-awaited reasoning regarding its ruling annulling two constitutional amendments was published October 22 in the Official Gazette. Last June, the court annulled Article 10—on equality for the law—and Article 42—on the right and duty of training and education, which would allow female students to wear Muslim headscarves at universities.

The court ruled June 5 that by passing these two constitutional amendments the Turkish parliament had infringed upon the constitutionally enshrined principle of secularism. Nine of the 11 members of the court voted in favour of cancelling the amendments, affirming that they are in direct violation of the secular character of the regime, which, according to the constitution, cannot be amended.

In fact, the headscarf was not explicitly mentioned in the constitutional amendments, which were adopted by an overwhelming majority of parliament on January 29. But for all involved it was clear that the intention of the amendments was to put an end to the ongoing headscarf ban on university campuses.

President Abdullah Gul, a leading figure of the Islamist movement in Turkey, approved the amendments on February 22 when it became clear that the Kemalist-nationalist minority in parliament was not prepared to accept any compromise deal.

Shortly afterward, two Kemalist-nationalist and nominally social-democratic opposition parties—the CHP (Republican People's Party) and the DSP (Democratic Left Party)—applied to the Constitutional Court for the annulment of the changes.

It took three-and-a-half months for the Constitutional Court to prepare its reasoning on this highly controversial decision, which also in turn played a major role in the case filed by Turkey's top prosecutor against the ruling Islamist AKP (Justice and Development Party) demanding its closure.

In the 20-page document, nine members of the court underscored their argument that the amendments have political and religious content that will lead to additional social polarisation.

In a news report dated October 23, Today's Zaman quoted from the document: "This regulation targeting covering of the body on religious motives might lead to pressure on believers and non-believers, or those who are headscarved or not headscarved, in the case of these clothes being used as a political symbol. People might feel obliged to wear a headscarf, which goes against freedom of conscience. In a state regime where the nation has sovereignty, there can be no room for divine will based on Godly orders."

The document continued: "In modern systems of law, sovereignty is based on the human being. Legislative changes are about mundane affairs, not religious affairs. Laws cannot be based on religious foundations. Using freedoms to destroy them is not acceptable. Freedoms that do not comply with secularism cannot be defended and protected. It is impossible to overlook legislation introduced to protect secularism. The headscarf is incompatible with secular science."

The court's reasoning also referred to a critical decision made by the European Court of Human Rights in November 2005, which left the headscarf ban in place and upheld Turkey's constitutional restrictions on the wearing of the Muslim headscarf. This was a defining moment for the AKP leadership, which immediately lost its enthusiasm for the European Union after the court's decision. After refusing to acknowledge this fact publicly for several years, AKP leaders are now making blunt statements regarding their disenchantment with the EU.

For example, President Abdullah Gul of the AKP told Der Spiegel that they "are not in any rush" for Turkey to become a member of the EU. Such sentiments clearly demonstrate that the AKP's democratisation drive, aimed

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at EU membership between 2002 and 2005, was mainly a tactical move by the party to bypass the domestic legal barriers erected by the Kemalist establishment to legalising the Muslim headscarf.

Moreover, there are a number of grounds for questioning the AKP's policy with regard to basic rights and freedoms. Its prioritisation of the headscarf issue over and above all other violated rights and liberties, as well as numerous social grievances, confirms the AKP's hypocritical stance towards fundamental rights.

The list of AKP violations of basic rights is extensive and growing. In addition to the persecution of Turkey's minority Kurds, the state has undertaken repressive measures against atheists, gay people and their organisations and refugees who face forcible return and ill treatment. At the same time, police and paramilitary units have used excessive force against peaceful demonstrators and the government has upheld a very restrictive legal framework regarding trade unions and workers' rights. It has also imposed serious restrictions on the peaceful expression of opinion as well as imposing harsh and arbitrary imprisonment.

Prime Minister Recep Tayyip Erdogan (AKP) recently sharply criticized the Kurdish nationalist DTP (Democratic Society Party) as supporters of terrorism. These remarks, coming as the Constitutional Court makes its decision on the closure case filed against the AKP, demonstrates that the party sees the Kurdish question as primarily one of terrorism and not one of basic rights and freedoms.

Erdogan's oft-cited and infamous quote reveals the real essence of his and his party's stance on democratic rights: "Democracy is a train that you get off when you have reached your desired station." In the final analysis, this standpoint reflects the essential class character of the AKP as the political representative of a certain wing of the Turkish bourgeoisie—i.e., Islamist big business.

Irrespective of the intentions of the AKP and the Islamist movement as a whole, the World Socialist Web Site regards the ban on wearing the Muslim headscarf in universities as a violation of the freedom of religion as well as other fundamental rights, including the right to education, freedom of thought, and individual privacy. It is unacceptable and inhumane to force young women to choose between their faith and educational prospects.

The court's decision has already had a dire impact on female university students who prefer to wear a Muslim headscarf for reasons of conscience and as an expression of their faith. In other words, this is a ban on the right to religious practice. As this anti-democratic restriction applies to only women, it is explicitly discriminatory as well.

Contrary to the claims made by the Constitutional Court, in Turkey the essence of the Kemalist version of so-called secularism has been based on institutionalisation of a state-interpreted and controlled version of Islam as an integral part of public life. The Religious Affairs Directorate was set up in 1924 and controls some 80,000 Turkish mosques and thousands of Koran courses. It also appoints imams and drafts Friday prayer speeches, blatantly refuting the constitution's proclamation of a separation between the state and religion—in other words, the elimination of religion from the realm of politics. This Kemalist interpretation of secularism, which was taken up by the majority of the members of the Constitutional Court, has paved the way for the politicisation of Islam throughout Turkey's history in the 20th century.

Representing an influential section of the Kemalist camp, the majority of the court believes that easing the ban will create a suitable environment to pressure more young women to wear a headscarf and adopt Islamic behaviour.

Such an outlook ignores the social issues underlying this conflict. The desperate conditions in the shantytowns surrounding the cities of Turkey—under conditions where millions of people have been abandoned by the trade unions, social democrats, as well as the Stalinists—have led a section of youth to turn to political Islam. They wrongly regard it as a radical alternative to the existing system.

Contrary to the claims made by the Constitutional Court, such discriminatory legislation will not stop "further polarisation in the society" but will only fuel it. Religious backwardness and reaction can only be tackled in the struggle for socialist equality based on a genuinely internationalist programme for the working class.

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