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## Piecemeal Freedom: Why the Headscarf Ban Remains in Place in Turkey

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# PIECEMEAL FREEDOM: WHY THE HEADSCARF BAN REMAINS IN PLACE IN TURKEY

KERIME SULE AKOGLU\*

**Abstract:** The intersection of religion and politics has always been a volatile subject in Turkey. From the first years of the Republic to the present day, political leaders have had to balance the secular interests of the state with the religious beliefs of the public. Historically, it has been the religious public who has carried the brunt of this balancing act, specifically women. For decades, Muslim women wearing headscarves for religious reasons were fenced out of the public sphere because of a belief that their outwardly manifested religious beliefs threatened the secular structure of the Republic. They could not attend schools, hold office, or work in government offices if they chose to wear a headscarf. In 2013, most of these barriers were lifted through a by-law allowing headscarf-wearing women to work in most government offices. Although a step in the right direction, the by-law falls short of creating an equal space for all women as it continues to keep headscarf-wearing women out of crucial state offices, including the military, the judiciary, and the police force. With such limitations, the by-law reinforces the belief that headscarf-wearing women are not welcome in all public spaces.

## INTRODUCTION

In the fall of 2013, a group of teachers and their eighth grade students went to a military dining facility in Istanbul for a dinner event.<sup>1</sup> Everyone was allowed entrance into the facility, except for a female teacher wearing a headscarf.<sup>2</sup> Senior military officers told her that she would either have to take off her headscarf or be denied entrance.<sup>3</sup> Although the woman tried to reason with the officers and reminded them of her rights, she was forced to leave the facility.<sup>4</sup> Today, a headscarf-wearing woman in Turkey is denied entrance into certain state facilities solely because her appearance expresses religious belief.<sup>5</sup>

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<sup>1</sup> Necip Salacan, *Headscarved Teacher Denied Entry to Military Facility Despite Directive*, TODAY'S ZAMAN (Dec. 5, 2013), [http://www.todayszaman.com/newsDetail\\_getNewsById.action;jsessionid=3F9EC2A91CE9C4168106B9B115BF2F76?newsId=333230](http://www.todayszaman.com/newsDetail_getNewsById.action;jsessionid=3F9EC2A91CE9C4168106B9B115BF2F76?newsId=333230), archived at <https://perma.cc/5TSK-X2SQ?type=source>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

In its efforts to offer democratizing reforms, the Justice and Development Party (AKP), Turkey's ruling party, unveiled a new "democratization package" in September 2013.<sup>6</sup> The proposed reforms included implementing changes to the electoral system, imposing harsher punishment for hate crimes, improving the rights of Kurds, and finally, removing restrictions on the wearing of Islamic headscarves, among many others.<sup>7</sup> Whereas most of the proposed reforms have not yet been implemented, the government has already removed the ban on headscarves through a by-law.<sup>8</sup> Because of the by-law, women can now work at government offices while wearing headscarves.<sup>9</sup> Although many Turks applauded the reform, a caveat remains: the restriction remains in place for women who work in the judiciary, the military, and the police force.<sup>10</sup> As long as such restrictions remain, the plight of women's rights in Turkey remains on unequal footing.<sup>11</sup>

Part I of this Note explores Turkish political history and the role secularism plays in Turkish law-making. This Part also outlines the decades-long restrictions on women's dress. Part II discusses the European Court of Human Rights' opinion regarding the headscarf ban in Turkey, the treatment of headscarf-wearing women in politics, and the "democratization" efforts in Turkey, specifically the recent by-law lifting the headscarf ban in most government offices. In Part III, this Note argues that the current by-law is not only insufficient, but it, ironically, reinforces the same discriminatory practice towards headscarf-wearing women that it tries to correct. Finally, this Note concludes that if Turkey is fully committed to democracy and assuring equal rights to its citizens, all women must be given the same rights, without differentiating between those who wear a headscarf and those who do not.

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<sup>6</sup> Egemen Bagis, *AK Party's New Democratization Package: Politics Without Shackles, Democracy Without Obstacles*, HUFFINGTON POST (Oct. 2, 2013), [http://www.huffingtonpost.com/egemen-bagis/ak-partys-new-democratiza\\_b\\_4029185.html](http://www.huffingtonpost.com/egemen-bagis/ak-partys-new-democratiza_b_4029185.html), archived at <https://perma.cc/A4B8-R8MC?type=image>.

<sup>7</sup> *PM Introduces Landmark Reforms, But Admits More Needs to Be Done*, TODAY'S ZAMAN (Sept. 20, 2013), <http://www.todayszaman.com/news-327738-govt-unveils-reform-package-to-boost-democracy-headscarf-ban-removed.html>, archived at <https://perma.cc/L2UW-MLAE?type=source>.

<sup>8</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Sebnem Arsu & Dan Bilefsky, *Turkey Lifts Longtime Ban on Head Scarves in State Offices*, N.Y. TIMES, Oct. 9, 2013, at A9. According to Article 24 of the Constitution, "[t]he Prime Ministry, the ministries, and public corporate bodies may issue by-laws in order to ensure the implementation of laws and regulations relating to their jurisdiction, as long as they are not contrary to these laws and regulations." 1982 CONST. art. 124.

<sup>9</sup> Arsu & Bilefsky, *supra* note 8.

<sup>10</sup> See RESMI GAZETE [OFFICIAL GAZETTE], 8 Oct. 2013, No. 28789, Decision No. 2013/5443; Daniel Dombey, *Turks Applaud Recep Tayyip Erdogan's Easing of Headscarf Ban*, FIN. TIMES (Oct. 8, 2013), <http://www.ft.com/intl/cms/s/0/7098fe8a-3030-11e3-80a4-00144feab7de.html#axzz2wjM9xUag>, archived at <https://perma.cc/WQ8C-V3MK?type=pdf>.

<sup>11</sup> Richard Peres, *A History of the Headscarf Ban in Turkey*, TURKISH REV., Sept/Oct 2012, at 34.

## I. BACKGROUND

In the mid-nineteenth century, the Ottomans started an era of modernization and reforms, called the *Tanzimat* reforms.<sup>12</sup> The reforms transformed Ottoman society and the relationship between the government and the people.<sup>13</sup> The debates surrounding modernization focused on whether the empire could be saved by adoption of Western ideas or by stricter adherence to the state's interpretation of Islamic values.<sup>14</sup> In the end, Western ideology won over tradition and the *Tanzimat* reforms became the first real vehicle for secularism entering the Turkish stage.<sup>15</sup> Whereas religious education and law had held the uppermost rank in society, it started to decline and was overtaken by Western liberalism.<sup>16</sup> The reforms, however, were not enough to save the empire from its looming death at the end of World War I.<sup>17</sup>

*A. Birth of Kemalism: Turkish Secularism*

Mustafa Kemal Atatürk, the founding father and first president of modern Turkey, saved the last remaining soil of the Ottoman Empire from being completely overtaken by rebellious groups and Western forces.<sup>18</sup> Riding on the popularity he had deservedly won in the battlefield, Atatürk abolished the Ottoman regime and the Islamic caliphate and started an audacious set of reforms to build a new country.<sup>19</sup> Atatürk believed that Turks could come out of the destruction of the Ottoman Empire as a more modern, secular, and, importantly, European society.<sup>20</sup>

In changing the culture of the Turks to fit the European notions of modernity, Atatürk first banned the *fez*, a crimson headgear that had become a symbol of Muslim identity in the Ottoman world, and replaced it with a requirement that men wear a Western-styled hat.<sup>21</sup> Next, Atatürk banned all religious attire other than in places of worship.<sup>22</sup> In his public speeches, Atatürk made it

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<sup>12</sup> ALI CARKOGLU & ERSIN KALAYCIOGLU, TURKISH DEMOCRACY TODAY: ELECTIONS, PROTEST AND STABILITY IN AN ISLAMIC SOCIETY 8 (2007); see also Susanna Dokupil, *The Separation of Mosque and State: Islam and Democracy in Modern Turkey*, 105 W. VA. L. REV. 53, 61–62 (2002).

<sup>13</sup> CARKOGLU & KALAYCIOGLU, *supra* note 12, at 9.

<sup>14</sup> Dokupil, *supra* note 12, at 62.

<sup>15</sup> See CARKOGLU & KALAYCIOGLU, *supra* note 12, at 8.

<sup>16</sup> *Id.* at 8–9; see Dokupil, *supra* note 12, at 65.

<sup>17</sup> CARKOGLU & KALAYCIOGLU, *supra* note 12, at 11–12.

<sup>18</sup> Dokupil, *supra* note 12, at 65.

<sup>19</sup> See STEPHEN KINZER, CRESCENT AND STAR: TURKEY BETWEEN TWO WORLDS 40–43 (2008).

<sup>20</sup> *Id.* at 40.

<sup>21</sup> *Id.* at 42; Dokupil, *supra* note 12, at 70; Benjamin D. Bleiberg, Note, *Unveiling the Real Issue: Evaluating the European Court of Human Rights' Decision to Enforce the Turkish Headscarf Ban in Leyla Sahin v. Turkey*, 91 CORNELL L. REV. 129, 134–35 (2005).

<sup>22</sup> Bleiberg, *supra* note 21, at 135.

clear that he saw the headscarf as strange and barbaric.<sup>23</sup> He said, “[i]t is a spectacle that makes the nation an object of ridicule. It must be remedied at once.”<sup>24</sup> Dress reform was an important factor in assuming a European identity and convincing the Western world of the Turks’ commitment to adopting Western notions of modernity.<sup>25</sup>

Atatürk continued to implement other changes throughout his reign.<sup>26</sup> These included changing the Turkish language from Arabic script to Latin letters; giving women the rights to vote and to hold office; banning the broadcast of Oriental music; and requiring the Arabic call to prayer, the *ezan*, to be recited in Turkish.<sup>27</sup> The government, which was in the sole control of Atatürk’s party, implemented all of these changes swiftly and without much debate.<sup>28</sup>

These changes broadly illustrate how Atatürk defined secularism and how he propelled the new country into forming a new, Western image.<sup>29</sup> Kemalist secularism, based on Atatürk’s convictions, reflects a type of secularism that is hostile to religion in the public sphere—it does not aim to create a separation between state and religion, but instead aims to ban religion in the public space.<sup>30</sup> Atatürk saw this version of secularism as one of the pillars that would ensure the safety and dignity of the new nation.<sup>31</sup> This Kemalist secularism is woven into Turkish law and continues to shape political and legal debates.<sup>32</sup>

### B. Multiparty Politics & Military Coups

The first multiparty elections held in 1946 brought with them a new political party and the start of real debates about the place of religion in public life.<sup>33</sup> The Democrat Party (DP) represented a more tolerant approach to religious expression, driven by an effort to win rural votes.<sup>34</sup> The party came to rule Turkish politics for ten years, taking the reins from Atatürk’s party, the Republican People’s Party (CHP).<sup>35</sup> The DP’s tenure in politics led to the re-

<sup>23</sup> KINZER, *supra* note 19, at 42.

<sup>24</sup> *Id.* at 42–43.

<sup>25</sup> See Valorie K. Vojdik, *Politics of the Headscarf in Turkey: Masculinities, Feminism, and the Construction of Collective Identities*, 33 HARV. J.L. & GENDER 661, 676, 678 (2010).

<sup>26</sup> See KINZER, *supra* note 19, at 43.

<sup>27</sup> *Id.* at 43–44.

<sup>28</sup> See NICOLE POPE & HUGH POPE, *TURKEY UNVEILED: A HISTORY OF MODERN TURKEY* 61–62, 67 (2011).

<sup>29</sup> Dokupil, *supra* note 12, at 65.

<sup>30</sup> *Id.* at 69, 70; see AHMET T. KURU, *SECULARISM AND STATE POLICIES TOWARD RELIGION: THE UNITED STATES, FRANCE, AND TURKEY* 168 (2009).

<sup>31</sup> See KINZER, *supra* note 19, at 43.

<sup>32</sup> See *id.* at 47; see also Dokupil, *supra* note 12, at 71.

<sup>33</sup> See Dokupil, *supra* note 12, at 71–72.

<sup>34</sup> See Ronnie Marguiles & Ergin Yildizoglu, *The Political Uses of Islam in Turkey*, MIDDLE EAST REP., Jul.–Aug. 1988, at 13–14.

<sup>35</sup> *Id.* at 13.

turn of the Arabic recitation of the *ezan*, the legalization of Qur'an recitations on the radio, and religious teaching in secondary schools.<sup>36</sup> Thus, under the rule of the DP, bans on religious expression were slowly lifted and the practice of religion was no longer frowned upon by the state.<sup>37</sup>

By the end of the DP's rule, Turkey faced a worsened economy, a political party sensitive to criticism, and a military disturbed by the abandonment of Kemalist values.<sup>38</sup> In 1960, a military coup overthrew the DP and a military tribunal executed the prime minister for treason.<sup>39</sup> This was the first of a pattern of military coups in Turkey.<sup>40</sup>

The ensuing decade brought a new set of parties to the political stage and with it new political drama.<sup>41</sup> Whereas the traditional political divide had been over religion and secularism, the new political split shifted to left-right politics.<sup>42</sup> Political demonstrations started to shake the country with violent and even deadly effects.<sup>43</sup> The government in control was unable to curb the violence erupting on the streets and on college campuses.<sup>44</sup> In 1971, the military intervened once again, this time using an ultimatum rather than military tanks.<sup>45</sup> The Chief of General Staff handed the prime minister a memorandum demanding the formation of a strong and credible government, which could end the "anarchy" and set reforms "in a Kemalist spirit."<sup>46</sup> In an effort to restore law and ensure socio-economic reforms, the government came under the control of technocrats outside the political establishment—ushered in with the support of the military.<sup>47</sup> Within two years, however, multiparty elections landed the country back into the hands of politicians and created a coalition government.<sup>48</sup>

<sup>36</sup> *Id.* at 13–14.

<sup>37</sup> *Id.* at 14.

<sup>38</sup> KINZER, *supra* note 19, at 61; Dokupil, *supra* note 12, at 76.

<sup>39</sup> KINZER, *supra* note 19, at 61.

<sup>40</sup> Dokupil, *supra* note 12, at 76.

<sup>41</sup> See POPE & POPE, *supra* note 28, at 98–102.

<sup>42</sup> *Id.* at 100–01. The "left-right" politics refers to the general political ideological scale. Whereas major political debates had been divided between religion and secularism, the political atmosphere shifted to focus on political parties and their socio-economic dimensions. To understand left-right ideology and positioning of parties in Turkey, however, it is still very much important to understand the religious-secular divide. See Abdullah Aydogan & Jonathan B. Slapin, *Left Right Reversed: Parties and Ideology in Modern Turkey* (forthcoming) (manuscript 2–3) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2165409](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165409), archived at <https://perma.cc/4SPL-BKGT?type=image>.

<sup>43</sup> See POPE & POPE, *supra* note 28, at 101–02.

<sup>44</sup> ERIK J. ZURCHER, *TURKEY: A MODERN HISTORY* 271 (1993).

<sup>45</sup> POPE & POPE, *supra* note 28, at 103; ZURCHER, *supra* note 44, at 271.

<sup>46</sup> ZURCHER, *supra* note 44, at 271.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 274.

The 1970s were a hard time for Turkey, politically and economically.<sup>49</sup> The National Salvation Party (MSP) was born, representing the conservative religious faction.<sup>50</sup> The party blamed the dominance of Western culture in the country for the loss of Turkish power and influence in global affairs.<sup>51</sup> They proposed a return to the Muslim heritage of the Ottoman Empire while committing to technological advancements.<sup>52</sup> Necmettin Erbakan, the founder and leader of the MSP, had an entirely different view of the role of secularism from the Kemalists.<sup>53</sup> He expressed admiration for Islamic states and argued that Turkey could adopt Western technology without bowing down to Western culture and losing its Islamic values.<sup>54</sup>

While the MSP was leading its anti-secular, anti-Western campaign, the country was in civil disarray.<sup>55</sup> Political and ethnic violence between left and right, Turk and Kurd, and Sunni and Alevi Muslim polarized the country.<sup>56</sup> Events outside of Turkey, specifically the Iranian Revolution, also threatened Turkey's internal affairs.<sup>57</sup> The military generals once again grew uneasy with the state of Turkish politics and plotted to intervene.<sup>58</sup>

In 1980, with the third military coup in Turkey's history, the military took control of the Turkish government.<sup>59</sup> The military said it was their duty to protect the Republic from what they believed would amount to a civil war.<sup>60</sup> This military coup differed from the previous two coups in a few ways.<sup>61</sup> First, unlike the first two coups, it had support from at least some segments of the public, who saw it as the only way to attain stability after a decade of civil unrest and political violence.<sup>62</sup> Second, this coup was much more extensive than those of 1960 and 1971.<sup>63</sup> General Kenan Evren dissolved parliament, suspended all political parties and professional organizations, and started legal proceedings against several party leaders.<sup>64</sup> Specifically, in relation to religious

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<sup>49</sup> POPE & POPE, *supra* note 28, at 124–26.

<sup>50</sup> Dokupil, *supra* note 12, at 81.

<sup>51</sup> *Id.* at 85.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 86, 88.

<sup>54</sup> *Id.* at 87, 88.

<sup>55</sup> *Id.* at 91.

<sup>56</sup> POPE & POPE, *supra* note 28, at 131; Dokupil, *supra* note 12, at 91.

<sup>57</sup> POPE & POPE, *supra* note 28, at 135; Dokupil, *supra* note 12, at 91.

<sup>58</sup> Dokupil, *supra* note 12, at 91; *see also* POPE & POPE, *supra* note 28, at 135–37.

<sup>59</sup> *See* POPE & POPE, *supra* note 28, at 138.

<sup>60</sup> *Id.* at 139–40.

<sup>61</sup> *See* Dokupil, *supra* note 12, at 93.

<sup>62</sup> *See* POPE & POPE, *supra* note 28, at 140; Dokupil, *supra* note 12, at 93.

<sup>63</sup> Dokupil, *supra* note 12, at 93.

<sup>64</sup> *Id.*

expression, the military enacted new dress by-laws that prohibited students and staff in schools from wearing any type of headscarf.<sup>65</sup>

General Evren and his fellow generals believed that the coups of the past had been too liberal; they would fix this by writing a new constitution.<sup>66</sup> Today, Turkey uses this 1982 Constitution as the basis of its governance.<sup>67</sup>

### C. The Constitution & Religious Freedom

The preamble of the Turkish Constitution states that the Constitution is “in line with the concept of nationalism introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, and his reforms and principles.”<sup>68</sup> Article 2 states, “The Republic of Turkey is a democratic, secular and social state governed by rule of law . . . loyal to the nationalism of Atatürk.”<sup>69</sup> These two statements demonstrate the lasting effect of Atatürk’s legacy in forming the constitutional ideology of the Republic.<sup>70</sup> For example, though secularism is never explicitly defined in the Constitution, the ruling elites have remained committed to Atatürk’s ideology to shape their interpretations—showing that commitment to Atatürk is paramount in constitutional interpretation.<sup>71</sup>

#### 1. Interpreting the Constitution in the Kemalist State

The formation of the Republic by Atatürk and the formation of the 1982 Constitution were both accomplished through a top-down approach by powerful state institutions, specifically the military.<sup>72</sup> In order to guard against challenges to the structure of the state by elected officials who may be swayed by democratic pressure from below, the state relies upon its permanent bureaucracy.<sup>73</sup> The permanent bureaucracy is composed of the judiciary (which includes prosecutors), the military, and certain parts of the policing apparatus.<sup>74</sup> It is these institutions, not elected officials, that are seen as the guardians of the founding ideological commitments of the state.<sup>75</sup> This explains how the mili-

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<sup>65</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195; Bleiberg, *supra* note 21, at 140.

<sup>66</sup> POPE & POPE, *supra* note 28, at 144.

<sup>67</sup> Adrien Katherine Wing & Ozan O. Varol, *Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example*, 42 TEX. INT’L L.J. 1, 21 (2006).

<sup>68</sup> 1982 CONST. pmbi.

<sup>69</sup> *Id.* art. 2.

<sup>70</sup> *Id.* pmbi., art. 2; *see also* Wing & Varol, *supra* note 67, at 22–23.

<sup>71</sup> *See* Bleiberg, *supra* note 21, at 138–42; Asli U. Bali, *The Perils of Judicial Independence: Constitutional Transition and the Turkish Example*, 52 VA. J. INT’L L. 235, 279 (2012).

<sup>72</sup> *Id.* at 270, 278.

<sup>73</sup> *Id.* at 277.

<sup>74</sup> *Id.* at 279.

<sup>75</sup> *Id.*

tary has been able to take control of past governments and punish politicians for what they viewed as threats to the Kemalist establishment.<sup>76</sup>

The Constitution requires that judges be independent in the “discharge of their duties” and that they give “judgment in accordance with the Constitution, [the] laws, and their personal conviction conforming with the law.”<sup>77</sup> The Constitution provides for several different courts, but the entity that examines the constitutionality of laws is the Constitutional Court.<sup>78</sup> The court has the authority to examine “the constitutionality, in respect of both form and substance, of laws, decrees having the force of law and . . . decide on individual applications [to the court].”<sup>79</sup> Until the constitutional amendments of 2010, the court reviewed appeals brought only by government officials.<sup>80</sup> By not allowing ordinary citizens to petition the court, the court has “served to protect state prerogatives rather than individual rights.”<sup>81</sup>

## 2. Religion in the Constitution

Though the extent of the demarcation of religious expression is unclear in practice, the Turkish Constitution includes important sections regarding religion and secularism.<sup>82</sup> Article 24 of the Constitution covers the freedom of religion and conscience.<sup>83</sup> It states, “[e]veryone has the freedom of conscience, religious belief and conviction.”<sup>84</sup> It continues, “[n]o one shall be . . . blamed or accused because of his religious beliefs and convictions.”<sup>85</sup> The Article is modified by the following statement:

[n]o one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any matter whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.<sup>86</sup>

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<sup>76</sup> See *id.* at 279–80. Indeed, the military is charged with protecting the nation from both external and internal threats. See Malcolm Cooper, *The Legacy of Atatürk: Turkish Political Structures and Policy-Making*, 78 INT’L AFF. 115, 120 (2002). The military has evaluated threats to the secular nature of the Republic to be internal threats against which it has a right to act. *Id.*

<sup>77</sup> 1982 CONST. art. 138.

<sup>78</sup> *Id.* art. 148.

<sup>79</sup> *Id.*

<sup>80</sup> Bali, *supra* note 71, at 310; see 1982 CONST. art. 148.

<sup>81</sup> Bali, *supra* note 71, at 310.

<sup>82</sup> See 1982 CONST. art. 14, 24; Bleiberg, *supra* note 21, at 138–40.

<sup>83</sup> 1982 CONST. art. 24.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

The terms “exploit or abuse religion” are not defined.<sup>87</sup> Moreover, Article 24 is limited by Article 14, which states,

[n]one of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights.<sup>88</sup>

Here, freedoms are limited by the potential threat they may cause to the structure of the state, specifically its secular nature.<sup>89</sup> The constitutional limitations on religious expression, however, are unclear because they are not explicitly defined.<sup>90</sup>

The preamble and the above Articles demonstrate that the complete separation of state and religion is crucial to the nature of the Republic as set forth in the Constitution.<sup>91</sup> Ironically, however, the Constitution in Article 136 creates an institutional body for religious affairs, the Presidency of Religious Affairs.<sup>92</sup> The institution continues the traditional role of the *Sheikh ul-Islam* in the Ottoman Empire.<sup>93</sup> The duties of the office include the administration of mosques, the appointment of imams, and the dissemination of the official interpretation of Islam for the public.<sup>94</sup> The existence of such an institutional body suggests that the state has been unable to break from its ties to religion completely and has resorted to controlling how religion is promoted through its own agency.<sup>95</sup>

### 3. Limitations on the Headscarf

One of the first limitations of the military government on religious dress was through a by-law, the By-Law Concerning the Dress of Students and Staff in Schools.<sup>96</sup> In 1984, the Supreme Administrative Court held that the by-law was constitutional because “[b]eyond being a mere innocent practice, wearing the headscarf is in the process of becoming the symbol of a vision that is con-

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<sup>87</sup> Bleiberg, *supra* note 21, at 139.

<sup>88</sup> 1982 CONST. art. 14.

<sup>89</sup> *Id.*

<sup>90</sup> Bleiberg, *supra* note 21, at 139.

<sup>91</sup> See 1982 CONST. pmbl., arts. 14, 24.

<sup>92</sup> See *id.* art. 136.

<sup>93</sup> Dokupil, *supra* note 12, at 69; *Kurulus ve Tarihi Gelisim*, Türkiye Cumhuriyet Basbakanlik Diyanet Baskanligi, <http://www.diyamet.gov.tr/tr/kategori/kurumsal/1> (last visited Apr. 7, 2015), archived at <https://perma.cc/L3U6-7T39?type=source>.

<sup>94</sup> Dokupil, *supra* note 12, at 128.

<sup>95</sup> Gunes Murat Tezcur, *Constitutionalism, Judiciary, and Democracy in Islamic Societies*, 39 POLITY 479, 488 (2007); see Dokupil, *supra* note 12, at 94–95.

<sup>96</sup> *Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 187 (2005).

trary to the freedoms of women and the fundamental principles of the Republic.”<sup>97</sup>

After civil politics returned, the by-laws were eased.<sup>98</sup> Section 16 of the Higher Education Act in 1988 allowed the wearing of “a veil or headscarf covering the neck and hair . . . out of religious conviction” in educational institutions.<sup>99</sup> This freedom, however, was short-lived when, only three months after its enactment, the Constitutional Court held the law to be unconstitutional for violating the secular principles of the country.<sup>100</sup> The court, in its opinion, stated that an individual’s religious expressions could be limited in the public sphere in order to protect the principle of secularism.<sup>101</sup> The court also stated that because Turkey is a Muslim-majority country, those not wearing a headscarf would “undoubtedly [be] regarded as opposed to religion or as non-religious.”<sup>102</sup> In the opinion of the court, reversal of the law was necessary to sustain a “tolerant and mutually supportive atmosphere without being deflected from that goal by signs of religious affirmation.”<sup>103</sup>

In 1990, the government once again tried to ease the restrictions on religious dress by enacting Section 17 of the Higher Education Act.<sup>104</sup> This law stated, “[c]hoice of dress shall be free in institutions of higher education, provided that it does not contravene the laws in force.”<sup>105</sup> The law was reviewed once again by the Constitutional Court.<sup>106</sup> This time the court upheld the law because of the conditional phrasing that the dress not contravene the laws in force.<sup>107</sup> The court stated, “[t]he judgment of the Constitutional Court establishes that covering one’s neck and hair with the headscarf is first and foremost contrary to the Constitution.”<sup>108</sup> Therefore, the law in question could not allow any dress that the law had already declared to be unlawful.<sup>109</sup>

In 1999, a Constitutional Court judgment declared that the legislative and executive branches are bound by the judgments of the court.<sup>110</sup> The court effectively stated that the legislature could not pass future legislation easing the ban

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<sup>97</sup> *Id.*

<sup>98</sup> See Bleiberg, *supra* note 21, at 141.

<sup>99</sup> *Sahin*, 2005-XI at 187.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 188.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 189.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 191.

on the headscarf because the court's past judgments explicitly stated that laws allowing headscarves were unlawful and unconstitutional.<sup>111</sup>

## II. DISCUSSION

### A. Leyla Sahin v. Turkey: *The ECtHR Evaluates the Headscarf Ban*

In 1993, Leyla Sahin enrolled at the Faculty of Medicine at Bursa University.<sup>112</sup> For the first four years of her time at the university, she wore a headscarf to school.<sup>113</sup> In her fifth year, Sahin transferred to the Cerrahpasa Faculty of Medicine at Istanbul University.<sup>114</sup> In 1998, the Vice-Chancellor of Istanbul University issued a circular declaring that, in accordance with the law, students wearing headscarves and students with beards would not be admitted to lectures, courses, or tutorials.<sup>115</sup> Thus, Sahin was denied access to enroll in classes and attend examinations.<sup>116</sup>

The university started disciplinary proceedings against Sahin for her refusal to comply with the new rules on dress.<sup>117</sup> These disciplinary measures started with warnings from the Dean of the Faculty and ended with Sahin's suspension from the university.<sup>118</sup> Sahin sued the university at the Istanbul Administrative Court for injunctive relief to quash the decision to suspend her.<sup>119</sup> The court dismissed her complaint, finding that the university's measure was not illegal.<sup>120</sup> Sahin abandoned her studies in Istanbul and enrolled in Vienna University.<sup>121</sup> She then filed an application to the European Court of Human Rights (ECtHR) alleging that the ban on wearing the Islamic headscarf in institutions of higher education violated her rights and freedoms under Articles 8, 9, 10 and 14 of the Convention on Human Rights and Fundamental Freedoms (Convention) and Article 2 of Protocol No. 1.<sup>122</sup>

The ECtHR upheld the Turkish headscarf ban and held that there had been no violations of the alleged Articles of the Convention.<sup>123</sup> The court first

<sup>111</sup> Bleiberg, *supra* note 21, at 142–43; *see also Sahin*, 2005-XI at 191–92.

<sup>112</sup> *Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 181 (2005).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 182.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 182–83.

<sup>120</sup> *Id.* at 183.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 179. Turkey is a signatory to the Convention on Human Rights and Fundamental Freedoms and the Turkish courts apply the provisions of the Convention. *See Ergun Ozsunay, The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Turkey*, 19 EMORY INT'L L. REV. 1087, 1090 (2005).

<sup>123</sup> *See Sahin*, 2005-XI at 217.

evaluated Sahin's Article 9 claim.<sup>124</sup> Article 9 protects an individual's freedom of thought, conscience, and religion, which includes, "freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance."<sup>125</sup> Article 9 is limited by the following clause:

[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>126</sup>

The court held that although the university's regulations interfered with Sahin's right to manifest her religion, the interference was prescribed by law and was legitimate and necessary in a democratic society.<sup>127</sup> The court pointed to the Turkish Constitutional Court's judgments declaring that students' covering of their neck and hair for religious reasons was contrary to the Turkish Constitution.<sup>128</sup> The ECtHR held that banning a student from attending a university with her headscarf was a necessary protection for other students, specifically those who do not wear the headscarf.<sup>129</sup> Thus, in the court's view, the ban was necessary in the pursuit of protecting the freedoms of others.<sup>130</sup>

The ECtHR found that the claims under Articles 8, 10, and 14 of the Convention raised the same questions as the Article 9 claim and held that there had been no violation.<sup>131</sup> Finding the right to education to be one of "fundamental importance," the court examined the Article 2 of Protocol No. 1 complaint separately.<sup>132</sup> Article 2 of Protocol No. 1 states:

[n]o person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.<sup>133</sup>

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<sup>124</sup> *Id.* at 195.

<sup>125</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222.

<sup>126</sup> *Id.*

<sup>127</sup> *Sahin*, 2005-XI at 201, 203, 206.

<sup>128</sup> *Id.* at 200.

<sup>129</sup> *See id.* at 204–05.

<sup>130</sup> *See id.* at 205.

<sup>131</sup> *Id.* at 209.

<sup>132</sup> *Id.*

<sup>133</sup> Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Mar. 20, 1952, E.T.S. No. 009.

Sahin only alleged the violation of the first sentence of the Article.<sup>134</sup> She claimed that the right to education applied to higher education and thus had implicated her rights.<sup>135</sup> The court held that the right applied to institutions of higher education as well as primary and secondary education.<sup>136</sup> The court, however, held that the right had not been violated by the university's restrictions.<sup>137</sup> In the opinion of the court, Sahin was aware of the regulations in place at Istanbul University and the risk of being refused access to lectures, and yet, she still continued to wear her headscarf.<sup>138</sup> The court stated, "[t]he obvious purpose of the restriction was to preserve the secular character of educational institutions."<sup>139</sup> Thus, the regulation did not deny the right to education, and the university acted "judiciously" by seeking a path "whereby they could avoid having to turn away students wearing the headscarf and at the same time honour their obligation to protect the rights of others and the interests of the education system."<sup>140</sup>

### *B. Merve Kavakci: Testing the Boundaries of the Headscarf Ban in Politics*

In 1999, Merve Kavakci, a computer engineer who studied and lived in the United States for many years, ran as one of the parliamentary candidates of the Virtue Party in Turkey.<sup>141</sup> She easily won the voters' support and was elected into office.<sup>142</sup> On the day she arrived in parliament to take the oath of office, however, the assembly ran her out of the building in protest.<sup>143</sup> The prime minister told the members of parliament to "put this woman in her place."<sup>144</sup> She had come to parliament wearing a headscarf.<sup>145</sup> Later, on the basis that Kavakci had not informed Turkish authorities of her American citizenship, the then-president stripped Kavakci of her Turkish citizenship on a legal technicality.<sup>146</sup> Kavakci was stripped of her citizenship a month after she was denied her place in office.<sup>147</sup>

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<sup>134</sup> *Sahin*, 2005-XI at 209.

<sup>135</sup> *Id.* at 210.

<sup>136</sup> *Id.* at 212.

<sup>137</sup> *Id.* at 216.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> POPE & POPE, *supra* note 28, at 313.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Asma Uddin, *A Victory for Headscarves—and Religious Freedom*, THE BECKET FUND FOR RELIGIOUS LIBERTY (Nov. 12, 2013), <http://www.becketfund.org/headscarves-and-religious-freedom/>, archived at <https://perma.cc/MA8Y-KCMF?type=source>.

<sup>145</sup> POPE & POPE, *supra* note 28, at 313.

<sup>146</sup> *Id.*; Nurhan Sural, *Islamic Outfits in the Workplace in Turkey, a Muslim Majority Country*, 30 COMP. LAB. L. & POL'Y J. 569, 585 (2009); *Headscarf Deputy Stripped of Turkish Citizenship*, BBC

The forced removal of Kavakci from parliament was based on a by-law from 1982, the years of General Evren's rule.<sup>148</sup> The by-law, titled "Kamu Kurum ve Kuruluslarinda Calisan Personelin Kilik ve Kiyafetine Dair Yonetmelik," or By-law Regarding the Dress of Personnel in Public Offices, declares that women must keep their hair uncovered.<sup>149</sup> The by-law has additional elements regarding women's dress, such as a ban on wearing pants, sleeveless shirts, and low-cut blouses.<sup>150</sup> The by-law has roots in the Kemalist formation of secularism, specifically that the public sphere is clear of religious expression.<sup>151</sup> The application of this by-law allows women to pursue their chosen profession freely only if they are willing to abandon their religious dress.<sup>152</sup>

### *C. Efforts to Lift the Ban in Educational Institutions*

In 2008, the governing party, the Justice and Development Party (AKP), with the support of other parties in parliament, moved to amend the Constitution to overcome the Constitutional Court's decisions on the headscarf.<sup>153</sup> The law sought to amend Articles 10 and 42 of the Constitution in order to lift the ban on the headscarf.<sup>154</sup> The change made to Article 10 was the addition of the statement, "[t]he state is to observe the equality principle in its provision of all public services."<sup>155</sup> The addition to Article 42 stated, "no one could be deprived of the right to a university education for a reason other than those explicitly stated in the laws."<sup>156</sup> The change was meant to allow students to wear

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(May 15, 1999), <http://news.bbc.co.uk/2/hi/europe/344787.stm>, archived at <https://perma.cc/PZ3Z-C7V6?type=source>.

<sup>147</sup> Stephen Kinzer, *Turkish President Strips a Muslim Parliamentarian of Citizenship*, N.Y.

TIMES, May 16, 1999, at 3.

<sup>148</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195; Dokupil, *supra* note 12, at 123; Bleiberg, *supra* note 21, at 140.

<sup>149</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195.

<sup>150</sup> *Id.*

<sup>151</sup> See Sural, *supra* note 146, at 584; Bleiberg, *supra* note 21, at 134.

<sup>152</sup> Sural, *supra* note 146, at 584.

<sup>153</sup> *Id.* at 582.

<sup>154</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 22, 2008, No. 27032, Decision No. 2008/116, translated in 05.06.2008, E.2008/16, K.2008/116, CONST. CT. REPUBLIC TURK. (June 5, 2008), <http://www.anayasa.gov.tr/en/content/detail/141/>, archived at <https://perma.cc/3LNS-AQYH?type=source>. Article 10, without amendments, states, "Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds." 1982 CONST. art. 10. Article 42, without amendments, in relevant part states,

No one shall be deprived of the right to education. The scope of the right to education shall be defined and regulated by law. Education shall be conducted along the lines of the principles and reforms of Atatürk . . . The freedom of education does not relieve the individual from loyalty to the Constitution.

*Id.* art. 42.

<sup>155</sup> Sural, *supra* note 146, at 582.

<sup>156</sup> *Id.*

headscarves in universities because there was no constitutional principle banning headscarves, only by-laws and the court's own judgments.<sup>157</sup> The bill was passed by a vote of 441 members of parliament in favor, out of 550 total members.<sup>158</sup>

The main opposition party, the Republic People's Party (CHP) applied to the Constitutional Court to rule on the constitutionality of the amendments.<sup>159</sup> They argued that the new amendments violated the principle of secularism enshrined in Article 2 of the Constitution.<sup>160</sup> The court in its review of the law stated that the aim of the amendments was clear: to lift the ban on wearing the headscarf at universities.<sup>161</sup> Relying on the ECtHR's decision in *Sahin*, the court held that the ban on the headscarf was a legitimate one in order "to protect the rights of others in a Muslim majority country."<sup>162</sup> Therefore, the lifting of the ban was unconstitutional, as it was contrary to the principle of secularism.<sup>163</sup>

#### *D. Deteriorating Kemalism & New Secularism*

##### 1. Justice and Development Party (AKP)

The AKP has been in power since 2002.<sup>164</sup> In the last parliamentary elections of 2011, the AKP received almost 50 percent of the votes.<sup>165</sup> One of the differentiating qualities of the AKP, in contrast to the many parties that have

<sup>157</sup> *See id.*

<sup>158</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 22, 2008, No. 27032, Decision No. 2008/116, translated in *05.06.2008, E.2008/16, K.2008/116*, CONST. CT. REPUBLIC TURK. (June 5, 2008), <http://www.anayasa.gov.tr/en/content/detail/141/>, archived at <https://perma.cc/3LNS-AQYH?type=source>. Article 2 states, "The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble." 1982 CONST. art. 2.

<sup>159</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 22, 2008, No. 27032, Decision No. 2008/116, translated in *05.06.2008, E.2008/16, K.2008/116*, CONST. CT. REPUBLIC TURK. (June 5, 2008), <http://www.anayasa.gov.tr/en/content/detail/141/>, archived at <https://perma.cc/3LNS-AQYH?type=source>; see Sural, *supra* note 146, at 579, 582.

<sup>160</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 22, 2008, No. 27032, Decision No. 2008/116, translated in *05.06.2008, E.2008/16, K.2008/116*, CONST. CT. REPUBLIC TURK. (June 5, 2008), <http://www.anayasa.gov.tr/en/content/detail/141/>, archived at <https://perma.cc/3LNS-AQYH?type=source>.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> See Omer Taspinar, *Third One Is the Charm: Will AKP's Victory Finally Lead to a New Constitution in Turkey?*, BROOKINGS INSTITUTION (June 16, 2011), <http://www.brookings.edu/research/papers/2011/06/16-turkey-taspinar>, archived at <https://perma.cc/SJP4-55VC?type=pdf>.

<sup>165</sup> *Id.*

held the Turkish political platform, is its interpretation of secularism.<sup>166</sup> The party states that it is loyal to the principle of secularism as “an assurance of the freedom of religion and conscience,” but rejects “the interpretation and distortion of secularism as an enmity against religion.”<sup>167</sup> The leader of the AKP, Recep Tayyip Erdogan, has emphasized his “desire to interpret Turkish secularism by analyzing the American model.”<sup>168</sup> Nevertheless, the AKP has been unable to change the application of secularism in Turkish laws because of limitations imposed by the CHP, the Constitutional Court, and other groups who favor a more Kemalist secularism.<sup>169</sup>

Although the Constitutional Court’s decision in 2008 put a brake on the AKP’s legal efforts to lift the ban, it did not reflect public opinion in Turkey.<sup>170</sup> Turkish society remains highly religious, even after years of state-imposed limitations on religion.<sup>171</sup> Public surveys indicate that only 16 percent of the population supports the ban on headscarves in universities.<sup>172</sup> Thus, given the lack of public opposition, the AKP’s failure to act more forcefully to lift the ban on headscarves could reflect its fear of retribution from the military and the courts, which have banned past political parties for interfering with Turkey’s secular nature.<sup>173</sup> Indeed, in 2008, the AKP was threatened when the opposition party, the CHP, petitioned the Constitutional Court to ban the party from politics for anti-secular activities.<sup>174</sup>

## 2. Democratization

One of the promised reforms of the AKP has been to amend the 1982 Constitution to reflect the public’s will as opposed to the military’s.<sup>175</sup> In 2010, the AKP introduced a major package of constitutional amendments that won the support of the public by a referendum.<sup>176</sup> One of the most important achievements of the reform package was the amendments to the judicial system.<sup>177</sup> The amendments increased the number of judges at the highest court

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<sup>166</sup> See Ahmet T. Kuru, *Reinterpretation of Secularism in Turkey: The Case of the Justice and Development Party*, in *THE EMERGENCE OF A NEW TURKEY: DEMOCRACY AND THE AK PARTI* 136, 141–42 (M. Hakan Yavuz ed., 2006).

<sup>167</sup> *Id.* at 142.

<sup>168</sup> *Id.* at 136, 142.

<sup>169</sup> *See id.* at 144.

<sup>170</sup> *Id.* at 148–49.

<sup>171</sup> *See id.* at 149.

<sup>172</sup> Kuru, *supra* note 167, at 149.

<sup>173</sup> *See id.* at 144, 149.

<sup>174</sup> *Turkey’s Erdogan Hails Constitutional Referendum Win*, CNN (Sept. 12, 2010), <http://www.cnn.com/2010/WORLD/europe/09/12/turkey.referendum/>, archived at <https://perma.cc/9RBD-AZR7?type=source>.

<sup>175</sup> *See id.*

<sup>176</sup> Bagis, *supra* note 6.

<sup>177</sup> *Turkey’s Erdogan Hails Constitutional Referendum Win*, *supra* note 174.

from eleven to seventeen, granted the parliament the authority to appoint several judges, and curbed the power of military courts.<sup>178</sup> Opponents of the reform package argue that the amendments undermine the secular foundations of the country and give the prime minister (the AKP leader) too much power over the judiciary.<sup>179</sup>

Riding on public support, as evidenced by the referendum, the ban on headscarves in universities was quietly lifted.<sup>180</sup> In a memorandum sent to Istanbul University, the Council of Higher Education (YÖK), the administrative body in charge of institutions of higher education, declared that students wearing headscarves should not be forced to leave classes under any circumstances.<sup>181</sup> This was a different route than the one attempted in 2008; whereas before the AKP had tried to create a law making it illegal to ban headscarves in universities, this time they used the power of the Council of Higher Education to effectively state that there was no legal ban in place.<sup>182</sup> The Council encouraged students across the country to file complaints to the Council about school officials that kept restrictions in place, promising that it would take the “necessary steps.”<sup>183</sup>

In September 30, 2013, the AKP released its new “democratization package.”<sup>184</sup> Among others, the reforms called for expansion of political rights, education in languages other than Turkish in private schools, and, finally, removal of the ban on the headscarf in public institutions.<sup>185</sup> There has been both great support and stringent criticism for the proposed changes.<sup>186</sup>

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* Four years after the reforms, after recently coming under several corruption probes, the leaders of the AKP have used the reformed judiciary system to enhance government control over the judiciary. *Erdogan Bringing Turkey to Brink of Collapse Amid Corruption Scandal*, TODAY'S ZAMAN (Mar. 16, 2014), [http://www.todayszaman.com/national\\_erdogan-bringing-turkey-to-brink-of-collapse-amid-corruption-scandal\\_342164.html](http://www.todayszaman.com/national_erdogan-bringing-turkey-to-brink-of-collapse-amid-corruption-scandal_342164.html), archived at <https://perma.cc/S87D-YUNT?type=source>.

<sup>180</sup> Jonathan Head, *Quiet End to Turkey's College Headscarf Ban*, BBC (Dec. 31, 2010), <http://www.bbc.co.uk/news/world-europe-11880622>, archived at <https://perma.cc/HD7F-K9CJ?type=source>.

<sup>181</sup> 1982 CONST. arts. 130, 131; Gozde Kazaz, *Turban Serbestisi YÖK'un Isi mi?*, DETAY, Mar. 2010, available at <http://detay.gsu.edu.tr/Dergi.aspx?Tip=Yazi&No=34>, archived at <https://perma.cc/84MC-BSHF?type=source>.

<sup>182</sup> See Bali, *supra* note 71, at 249; Head, *supra* note 180.

<sup>183</sup> *Scarf Ban Still in Place at Some Universities in Defiance of YÖK Move*, TODAY'S ZAMAN (Oct. 15, 2010), <http://www.todayszaman.com/tz-web/news-224391-100-scarf-ban-still-in-place-at-some-universities-in-defiance-of-yok-move.html>, archived at <https://perma.cc/F8U2-VDDR?type=image>.

<sup>184</sup> Bagis, *supra* note 6.

<sup>185</sup> *Democratization and Human Rights Package*, AK PARTI (Sept. 30, 2013), <http://www.akparti.org.tr/english/haberler/democratization-and-human-rights-package/52628>, archived at <https://perma.cc/Q2GW-TQDN?type=source>.

<sup>186</sup> Bagis, *supra* note 6; Huseyin Alptekin & Mine Tafolar, *Turkey's Democratization Package and the Kurdish Quandary*, HURRIYET DAILY NEWS (Oct. 21, 2013), <http://www.hurriyetdailynews>.

On October 8, 2013, the AKP lifted the ban on headscarves for women working in government offices.<sup>187</sup> The change came through a by-law, the same way the ban came into force.<sup>188</sup> The new by-law effectively removed the sentence of the 1982 by-law banning the wearing of the headscarf by public officials.<sup>189</sup> Instead, it limited the 1982 by-law's requirement of adherence to uniform dress in applicable public offices to include only those who work in the police force, the judiciary, which includes the prosecutor's office, and the military.<sup>190</sup> Therefore, although the ban on the headscarf has been lifted for women in public offices, it remains in effect for any woman in the police force, the judiciary, the prosecutor's office, and the military.<sup>191</sup>

### III. ANALYSIS

#### *A. The Headscarf Used as a Political Tool Sharpened by the State*

The headscarf debate has been one of the de facto battlegrounds of secularism in Turkey.<sup>192</sup> In fact, women's dress has been one of the attributes that the state has used to defend its place in European society and as proof that it has cut ties with its Ottoman-Islamic roots since the formation of the Republic.<sup>193</sup> From Atatürk to military generals to elected officials, the state enforced top-down measures in order to achieve this Western identity, specifically that of an unveiled woman.<sup>194</sup> While some segments of society conformed to the ideal image provided by the state, a larger segment refused to shed its identity

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com/turkeys-democratization-package-and-the-kurdish-quandary.aspx?pageID=449&nID=56523&NewsCatID=396, archived at <http://perma.cc/5EB5-NXAZ>.

<sup>187</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443.

<sup>188</sup> *Id.*; RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195.

<sup>189</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195.

<sup>190</sup> RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443.

<sup>191</sup> *Id.*; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>192</sup> See Ali Ulusoy, *The Islamic Headscarf Problem Before Secular Legal Systems: Factual and Legal Developments in Turkish, French and European Human Rights Laws*, 9 EUR. J. MIGRATION & L. 419, 419–21 (2007); Vojdik, *supra* note 25, at 661.

<sup>193</sup> Vojdik, *supra* note 25, at 677–78.

<sup>194</sup> Bali, *supra* note 71, at 270; see also Vojdik, *supra* note 25, at 677–78. According to Valorie Vojdik,

While Muslim societies such as the Ottoman Empire used the veil to construct gender relations, Western colonial and imperialist powers seized upon the veil to symbolize Islam and Muslims as inherently different, backward, and inferior. Colonialism began to construct the narrative of the veil as a means of oppression of women, a practice that the West decried as symbolizing the barbarism and backwardness of Muslim societies. [As one scholar explains] the peculiar practices of Islam with respect to women had always formed part of the Western narrative of the quintessential otherness and inferiority of Islam.

Vojdik, *supra* note 25, at 676 (internal quotations omitted).

and beliefs.<sup>195</sup> In fact, according to one survey, 77.2 percent of families include at least one woman who wears a headscarf and 64.2 percent of women eighteen-years-old and above wear headscarves.<sup>196</sup> The state has also been unable to convince the public of the “threat” of the headscarf to the Republic.<sup>197</sup> The majority of the Turkish public does not see the use of the headscarf as contrary to secularism or as a threat to the state’s secular structure.<sup>198</sup> Thus, the headscarf has emerged as a “threat” to secularism not by experience or democratic consensus, but artificially through the state apparatus.<sup>199</sup>

The headscarf has been taken out of its religious context and turned into a political tool by the state, not by headscarf-wearing women.<sup>200</sup> The Kemalist state views the headscarf as the emblem of backwardness, imposed by “radical” Islam.<sup>201</sup> Its use and existence has been viewed as an attack on secularism, even though the women who wear headscarves have not made such claims.<sup>202</sup> Kemalists take the position that the headscarf serves as a symbol of unequal division of labor between men and women and isolates women, effectively banning them from public life.<sup>203</sup> Ironically, it has been the headscarf-wearers who have sought entrance into public life but have been fenced off from participation by Kemalists.<sup>204</sup> The Kemalists take the position that headscarf-wearers are not seeking any citizenship rights, such as participating in social and economic life, but instead are acting as agents of political Islam to disturb the secular structure of the state.<sup>205</sup> In this debate, headscarf-wearing women effectively lose their voice.<sup>206</sup> Because they are not given a place in the debate, they are characterized as either being pawns of political Islamists or subordinate members of the family due to their outdated beliefs; i.e., Islamic values in comparison to Western values.<sup>207</sup> It seems unacceptable to creators of these caricatures, however, that an educated woman may simply be expressing her pure, apolitical religious beliefs and identity through her headscarf.<sup>208</sup>

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<sup>195</sup> See Vojdik, *supra* note 25, at 678; Metin Toprak & Nasuh Uslu, *The Headscarf Controversy in Turkey*, 11 J. ECON. & SOC. RES. 43, 44 n. 1 (2009).

<sup>196</sup> Toprak & Uslu, *supra* note 195, at 44 n.1.

<sup>197</sup> *See id.* at 48–49.

<sup>198</sup> *Id.* at 48.

<sup>199</sup> *See id.* at 49.

<sup>200</sup> *See Vojdik, supra* note 26, at 675–76.

<sup>201</sup> *See Toprak & Uslu, supra* note 196, at 52.

<sup>202</sup> *See Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 200, 223, 225 (Tulkens, J., dissenting) (2005); Toprak & Uslu, *supra* note 195, at 54.

<sup>203</sup> *See Toprak & Uslu, supra* note 195, at 52.

<sup>204</sup> *See id.* at 52, 54.

<sup>205</sup> *See id.* at 52; Vojdik, *supra* note 25, at 679.

<sup>206</sup> *See Vojdik, supra* note 25, at 671; Toprak & Uslu, *supra* note 195, at 52.

<sup>207</sup> *See Toprak & Uslu, supra* note 195, at 52.

<sup>208</sup> *See id.*

### B. Democracy Under Threat

When Merve Kavakci entered parliament for that brief moment in 1999, she felt that she was a representative for the “Anatolian women” who had been discriminated against for decades for their religious beliefs.<sup>209</sup> While she walked down the aisle of Parliament, thinking about the democratic role she had earned, she was greeted with the protests of her colleagues.<sup>210</sup> Suddenly, parliament was filled with the yelling of representatives who were chanting, “Get out! Get out!”<sup>211</sup> The prime minister then approached the podium and shouted,

[n]o one in Turkey can interfere with the dress code or the headscarf or the private life of a woman; however, this is not a private abode. This is the highest institution of the state. Those who work here have to abide by the laws and customs of the state. This is not a place to challenge the state. Please put this woman in her place!<sup>212</sup>

This was the state of politics in Turkey in 1999.<sup>213</sup> This moment signifies how democracy and its institutions are generally understood: Turkey is democratic because it is secular.<sup>214</sup> Indeed, this is the Kemalist doctrine that has been taught in schools for more than a half a century.<sup>215</sup> Based on this perspective, Turkish democracy depends on the survival of secularism.<sup>216</sup>

As essential as secularism is to the Republic, its democratic nature is just as important.<sup>217</sup> In fact, one of the core and irrevocable characteristics of the Republic is its democratic nature, as stated in Article 2 and Article 4.<sup>218</sup> It states, “[t]he Republic of Turkey is a *democratic*, secular and social state governed by the rule of law.”<sup>219</sup> There is no language in this Article to signify that democracy depends solely on secularism, or any indication about which characteristic is more important than another.<sup>220</sup> Moreover, Article 5 of the Constitution states that in protecting the “indivisibility of the country, the Republic and *democracy*,” the state must “strive for the removal of political, economic,

<sup>209</sup> See RICHARD PERES, *THE DAY TURKEY STOOD STILL: MERVE KAVAKCI’S WALK INTO THE TURKISH PARLIAMENT* 126–27 (2012).

<sup>210</sup> See *id.* at 126–28.

<sup>211</sup> *Id.* at 127–28.

<sup>212</sup> *Id.* at 130.

<sup>213</sup> See *id.* at 126–30.

<sup>214</sup> See *id.* at 249.

<sup>215</sup> PERES, *supra* note 209, at 249.

<sup>216</sup> See *id.*

<sup>217</sup> See 1982 CONST. arts. 2, 4. Article 2 states, in relevant part, “The Republic of Turkey is a democratic, secular . . . state . . . .” *Id.* art. 2. Article 4, states in relevant part, “[T]he characteristics of the Republic in Article 2 . . . shall not be amended, nor shall their amendment be proposed.” *Id.* art. 4.

<sup>218</sup> *Id.* arts. 2, 4.

<sup>219</sup> *Id.* art. 2 (emphasis added).

<sup>220</sup> See *id.*

and social obstacles which restrict the fundamental rights and freedoms of the individual.”<sup>221</sup> The importance of democracy and the state’s duty to uphold the democratic nature of the Republic in the face of various obstacles is underscored in these three Articles of the Constitution.<sup>222</sup>

For decades, however, the state’s exclusion of women from the public sphere was a form of punishment for their religious beliefs that defied the principles stated in the above Articles.<sup>223</sup> Secularism and the “right of society” trumped individual rights and democracy.<sup>224</sup> This was evidenced by the drama that unfolded through the lives of not only Merve Kavakci and Leyla Sahin, but thousands of women just like them, either in universities or the workforce.<sup>225</sup> There is a growing literature in Turkey about the victims of the headscarf ban.<sup>226</sup> People who have been affected by the ban can be divided into five different groups: (1) women expelled from their schools for wearing a headscarf; (2) women dismissed for nonattendance; (3) women who do not want to go to school, take exams, or enroll due to the headscarf ban; (4) spouses or family members fired from their jobs due to a headscarf-wearing woman in the family; (5) women unable to work in the public workforce.<sup>227</sup> Leyla and Merve represent individuals who were limited in their pursuits of education and public service by the ban, but new studies show that those affected by the ban were not only headscarf-wearers but also their family members, friends, and communities.<sup>228</sup>

In protecting secularism at the cost of women’s individual liberties, the state undercut the democratic nature of the Republic and created a mechanism for punishing not only women, but also whole communities for their religious beliefs.<sup>229</sup> Kemalists have gone so far as to state explicitly that concessions are necessary in the strict protection of secularism because the secular nature of the state protects democracy.<sup>230</sup> Accepting that secularism is a necessary element for the existence of not only the Turkish Republic, but all democracies,

<sup>221</sup> *Id.* art. 5 (emphasis added).

<sup>222</sup> *See id.* arts. 2, 4, 5.

<sup>223</sup> *See id.* art. 5; RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195; Bleiberg, *supra* note 21, at 163–64.

<sup>224</sup> *See* PERES, *supra* note 209, at 249.

<sup>225</sup> *See Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 205 (2005); PERES, *supra* note 209, at 130; Ali Bulac, Editorial, *Basortusu Magdurlari*, ZAMAN (May 14, 2005), [http://www.zaman.com.tr/ali-bulac/basortusu-magdurlari\\_172931.html](http://www.zaman.com.tr/ali-bulac/basortusu-magdurlari_172931.html), archived at <https://perma.cc/D29V-TNRS?type=source>; Peres, *supra* note 11, at 34.

<sup>226</sup> Bulac, *supra* note 225.

<sup>227</sup> *Id.*

<sup>228</sup> *See id.*; Sahin, 2005-XI at 217; Dokupil, *supra* note 12, at 123.

<sup>229</sup> *See* RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; RESMI GAZETE [OFFICIAL GAZETTE], Oct. 25, 1982, No. 17849, Decision No. 8/5195; Wing & Varol, *supra* note 67, at 53–54; Bulac, *supra* note 225.

<sup>230</sup> Wing & Varol, *supra* note 67, at 53–54.

proponents of the ban have still not provided any legitimate evidence for why Kemalist secularism is strictly necessary.<sup>231</sup> Instead, arguments for Kemalist secularism have been guided by a fear of religion and arbitrary threats that Turkey could slide into theocratic rule if not guarded by Kemalism.<sup>232</sup> Moreover, these arguments lack evidence to show that every woman, or even a majority of women, who wears a headscarf does so in order to subvert the secular nature of the state.<sup>233</sup> This form of secularism does not guard against actual threats, but instead allows for the continuation of authoritarian law-making based on an almost century-old modernization project.<sup>234</sup>

Secularism may be necessary for the protection of democracy in Turkey; religious freedom, however, is also a founding principle of democratic societies.<sup>235</sup> Under the application of secularism in Turkey, a citizen has the freedom to have a religion, “internal conviction,” but lacks the freedom to manifest her religion, “the expression of that conviction.”<sup>236</sup> Even assuming that the fear that Turkey may slip into theocratic rule may be a valid concern, what about the threat to democratic governance espoused in such bans?<sup>237</sup> Ironically, the secular republic behaves like the theocratic republic it fears by denying citizens the right to manifest their religion.<sup>238</sup>

### *C. The Ban Is Partially Lifted, the Ideology Supporting the Ban Remains*

The reform brought by the by-law of October 8, 2013 against this backdrop of Kemalist secularism is considerable, but incomplete.<sup>239</sup> The by-law supposedly lifted the ban on headscarves for women working in the public sector.<sup>240</sup> Women working in government offices can now wear a headscarf to work, if they wish to do so.<sup>241</sup> The new by-law, though applauded as correcting decades of discrimination, stopped short of granting women complete equality

<sup>231</sup> See *Sahin*, 2005-XI at 222 (Tulkens, J., dissenting); Wing & Varol, *supra* note 67, at 53–54.

<sup>232</sup> Murat Borovali, *Islamic Headscarves and Slippery Slopes*, 30 CARDOZO L. REV. 2593, 2606 (2009); Tezcur, *supra* note 95, at 493; see Wing & Varol, *supra* note 67, at 53–54.

<sup>233</sup> See Ulusoy, *supra* note 192, at 432; Toprak & Uslu, *supra* note 195, at 53–54.

<sup>234</sup> See KINZER, *supra* note 19, at 42; Toprak & Uslu, *supra* note 195, at 63.

<sup>235</sup> See *Sahin*, 2005-XI at 222 (Tulkens, J., dissenting).

<sup>236</sup> See *id.* at 222–25.

<sup>237</sup> See *id.* at 222; Borovali, *supra* note 232, at 2606; Tezcur, *supra* note 95, at 493.

<sup>238</sup> Tezcur, *supra* note 96, at 493; see *Sahin*, 2005-XI at 222 (Tulkens, J., dissenting).

<sup>239</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Wing & Varol, *supra* note 67, at 53–54; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>240</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>241</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9.

within all state offices.<sup>242</sup> Women are entitled to be treated equally everywhere except the judiciary, the military, and the police force.<sup>243</sup>

There is no explanation in the by-law or the official democratization package announced by the Justice and Development Party (AKP) officials for why such a ban remains in place.<sup>244</sup> Arguably, the reason why these three state offices are protected from headscarf-wearers is because they are seen as the guardians of the secular state.<sup>245</sup> The acceptance of these women would, in the eyes of Kemalists, lead to the eventual destruction of “fragile” secularism in Turkey.<sup>246</sup> The new by-law underscores the belief that headscarf-wearing women are unfit to serve in critical public offices because of their religious beliefs.<sup>247</sup> The AKP, for all its promises and statements that it believes women who wear headscarves should be treated equally by the state, has effectively solidified the Kemalist’s position that the headscarf remains a threat to core institutions that uphold secularism.<sup>248</sup> It is unclear how headscarf-wearing women can remain non-threatening to the Republic as they serve in parliament, hold key positions in other government agencies, teach in universities, but suddenly take on a fundamentalist, non-Western, anti-secular identity once in a courtroom, in the military, or in the police force.<sup>249</sup>

The AKP may be fearful that interference in the state’s most important institutionally secular agencies would cause the party to face harsh consequences, particularly a ban on its existence.<sup>250</sup> The Islamist parties of the past who advocated for reconciliation between the state and religion were faced with stiff opposition from the military and the secular elite, the custodians of Kemalist values.<sup>251</sup> In fact, the AKP’s own experience in 2008 is proof of this threat.<sup>252</sup> After passing constitutional amendments that would allow headscarf-

<sup>242</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Dombey, *supra* note 10.

<sup>243</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Dombey, *supra* note 10.

<sup>244</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; *Democratization and Human Rights Package*, *supra* note 185.

<sup>245</sup> See 1982 CONST. art. 2; Bali, *supra* note 71, at 279–80; Wing & Varol, *supra* note 67, at 48.

<sup>246</sup> See Wing & Varol, *supra* note 67, at 47–48, 53.

<sup>247</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Ulusoy, *supra* note 192, at 432; Bali, *supra* note 71, at 279–80.

<sup>248</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Kuru, *supra* note 166, at 149; Wing & Varol, *supra* note 67, at 53–54; Ulusoy, *supra* note 192, at 432; Arsu & Bilefsky, *supra* note 8, at A9; Ak Parti 81 II İcraatları, *Basortusu Yasagi Kalki Ak Parti İcraatları 2014 Reklam Filmi*, YOUTUBE (Mar. 4, 2014), <http://www.youtube.com/watch?v=Z4NL5j7S7-I>, archived at <https://perma.cc/5W3B-XSGW>?type=image [hereinafter *AKP Campaign Video*].

<sup>249</sup> See *Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 225 (Tulkens, J., dissenting) (2005); Ulusoy, *supra* note 192, at 432.

<sup>250</sup> See Wing & Varol, *supra* note 67, at 49–50.

<sup>251</sup> See Dokupil, *supra* note 12, at 117–18.

<sup>252</sup> See Bali, *supra* note 71, at 294.

wearing students to attend universities, the Constitutional Court not only ruled that the amendments were unconstitutional, but also found the AKP guilty of anti-secular political activities.<sup>253</sup> Though the constitutional amendments were invalidated, the AKP survived closure by only one vote.<sup>254</sup>

In 2013, however, after the by-law enabling headscarf-wearing women to work in government offices was enacted, the officials of the Republican People's Party (CHP), the stalwart of Kemalist secularism, had mixed reactions.<sup>255</sup> After the by-laws went into effect, four female AKP deputies declared that they would enter Parliament with their headscarves.<sup>256</sup> Whereas the CHP leader advised his fellow party members to show tolerance, some members threatened to take action.<sup>257</sup> The CHP's official reaction (or lack of reaction) is proof that the headscarf debate has lost its past fervor and that a reactionary stance could cause the CHP to lose votes.<sup>258</sup> Indeed, the days of Merve Kavakci are seen as bad memories that Turkey would prefer to forget.<sup>259</sup> The public debate surrounding the headscarf is now more tolerant and accepting of its inclusion in the public sphere.<sup>260</sup>

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<sup>253</sup> See *id.* at 250, 252, 294. Political party closures are not uncommon in Turkey. *Id.* at 250–51, n.50. The Constitutional Court has dissolved twenty-five political parties in the past—nineteen were decided after the adoption of the 1982 Constitution. *Id.* The Chief Public Prosecutor's indictment against the AKP is unique, however, because it was the first time that a prosecutor sought to dissolve the governing party. *Id.* For a more detailed account of the prosecutor's indictment, see generally Mehmet Cengiz Uzun, *The Protection of Laicism in Turkey and the Turkish Constitutional Court: the Example of the Prohibition on Use of the Islamic Veil in Higher Education*, 28 PENN ST. INT'L L. REV. 383.

<sup>254</sup> Bali, *supra* note 71, at 252. Six out of eleven judges voted in favor of closing the AKP, but dissolution requires seven votes. *Id.* at 252 n.54. Ten out of eleven judges, however, found that the AKP was guilty of anti-secular activities, and the court therefore punished the party by reducing the party's treasury funding. *Id.*

<sup>255</sup> See *CHP Undecided on Reaction to Headscarf*, WORLD BULL. (Oct. 30, 2013), <http://www.worldbulletin.net/?aType=haber&ArticleID=121837>, archived at <https://perma.cc/KD9Z-5333?type=source>; Ali Aslan Kilic, *CHP Vows to Prevent Deputies from Attending Parliament with Headscarf*, TODAY'S ZAMAN (Oct. 28, 2013), <http://www.todayszaman.com/news-329960-chp-vows-to-prevent-deputies-from-attending-parliament-with-headscarf.html>, archived at <https://perma.cc/F7PQ-WQ4P?type=source>.

<sup>256</sup> See *CHP Undecided on Reaction to Headscarf*, *supra* note 255.

<sup>257</sup> See *id.*; Kilic, *supra* note 255. The Deputy Chairman of CHP, Faruk Logoglu, declared, "We will not let this happen. We will protect Parliament. . . . Traditions have been observed in the Turkish Parliament for over 90 years, beyond internal regulations. Dress codes are among them. A headscarf is only a symbol of a mindset against secularism." Kilic, *supra* note 255.

<sup>258</sup> See Cafer Solgun, Editorial, *CHP, Where are You Headed?*, TODAY'S ZAMAN, (Nov. 4, 2013), [http://www.todayszaman.com/columnists/cafer-solgun\\_330573-chp-where-are-you-headed.html](http://www.todayszaman.com/columnists/cafer-solgun_330573-chp-where-are-you-headed.html), archived at <https://perma.cc/3BZ6-B99H?type=image>. Devlet Bahceli, the leader of the third largest political party in Turkey, declared, "Showing tolerance [towards the headscarf] would be to CHP's benefit. . . . Protesting against the headscarf is nothing but the job of incompetent politicians." *CHP Undecided on Reaction to Headscarf*, *supra* note 255.

<sup>259</sup> See PERES, *supra* note 209, at 247.

<sup>260</sup> See Ahmet Hakan, Editorial, *Türkiye Nasil Bu Hale Geldi?*, HÜRRIYET (Oct. 10, 2013), <http://www.hurriyet.com.tr/yazarlar/24890553.asp>, archived at <https://perma.cc/3REN-UJGG?type=source>.

The relative ease with which headscarf-wearing women can now enter universities and run for political office, compared to the past, has allowed politicians to claim there is no longer a headscarf “issue” in Turkey.<sup>261</sup> Unlike Leyla, who could not attend her classes, and Merve, who could not be sworn in to her elected position because of her headscarf, women can now attend universities and hold public office while wearing a headscarf.<sup>262</sup> But should Turkey so easily forget the remaining injustices in favor of claiming victory for recent gains in freedom?<sup>263</sup> Before the headscarf ban was lifted in universities, some scholars made the argument that though headscarf-wearing women were unable to attend universities, at least they were “free to wear religious clothing in private or communal premises, which includes homes, streets, grocery stores, movie theaters, malls.”<sup>264</sup> Moreover, threats about violence on university campuses were underscored, reminding Turks of their tortured past and the “unique context” of universities in Turkish life.<sup>265</sup> Yet, the predicted violence did not occur and universities remain intact.<sup>266</sup> It is now more common to find scholars arguing that a ban in universities contradicts the “notion of a *university*, which encourages a universal platform for free opinions.”<sup>267</sup> After the 2013 by-law, should Turks be satisfied by saying that *at least* women are free to serve in *most* public offices?<sup>268</sup> Should Turks believe the arguments that the ban is justified on the basis of maintaining “an appearance of neutrality” in key public offices?<sup>269</sup>

Without complete equality, where the judiciary, the military, and the police force are not carved out from the democratic space, women will continue

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<sup>261</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; *AKP Campaign Video*, *supra* note 248.

<sup>262</sup> See *Sahin v. Turk.*, 2005-XI Eur. Ct. H.R. 173, 181 (2005); PERES, *supra* note 209, at 1; Neslihan Tanis, *Univesitede Artik Turbana Engel Yok*, RADIKAL (Feb. 2, 2011), [http://www.radikal.com.tr/egitim/universitede\\_artik\\_turbana\\_engel\\_yok-1038728](http://www.radikal.com.tr/egitim/universitede_artik_turbana_engel_yok-1038728), archived at <https://perma.cc/XU4R-VZZQ?type=pdf>; *Lawmakers Wearing Headscarves Attend Session in Turkish Parliament for First Time*, HURRIYET DAILY NEWS (Oct. 30, 2013), <http://www.hurriyetdailynews.com/lawmakers-wearing-headscarves-attend-session-in-turkish-parliament-for-first-time.aspx?PageID=238&NID=57118&NewsCatID=338>, archived at <https://perma.cc/3XJB-DQ6T?type=pdf>.

<sup>263</sup> See PERES, *supra* note 209, at 247; Tanis, *supra* note 262.

<sup>264</sup> Wing & Varol, *supra* note 67, at 31–32.

<sup>265</sup> See *id.* at 32–33 (“Unlike universities in the United States, Turkish universities are political arenas, the breeding grounds for political extremism, and stages to violent confrontations between political groups . . . . Because of the unique context of Turkey and Turkish universities, allowing a conspicuous religious symbol in Turkish universities may lead to discrimination and violence.”)

<sup>266</sup> See Tanis, *supra* note 262; *Scarff Ban Still in Place at Some Universities in Defiance of YÖK Move*, *supra* note 183.

<sup>267</sup> Ulusoy, *supra* note 192, at 432.

<sup>268</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>269</sup> See Ulusoy, *supra* note 192, at 432.

to face arbitrary obstacles to the realization of their fundamental rights.<sup>270</sup> Two months after the by-law went into effect, a family court judge in Ankara refused to hear a divorce case because the attorney representing one of the parties came into the courtroom wearing a headscarf.<sup>271</sup> According to the measures imposed by the by-law, the woman was not barred from representing her case in court while wearing her headscarf because she is a private attorney and not part of the judiciary.<sup>272</sup> But the judge still postponed the case, stating that the headscarf is a strong religious and political symbol against secularism and therefore has no place in the courtroom.<sup>273</sup> The judge postponed the case in order to give the attorney's client time to find new representation.<sup>274</sup> This is one example of how enforcement of the by-law has been unclear.<sup>275</sup>

It may be the position of some that women have expanded freedoms in comparison to the past and therefore this episode should not be exaggerated—the limited rights of headscarf-wearing women are a necessary sacrifice for democracy and for secularism.<sup>276</sup> After all, in passing the by-law, the AKP has given headscarf-wearing women near equality with those who do not wear the headscarf.<sup>277</sup> By keeping the ban in place in crucial state institutions, however, headscarf-wearing women still do not have complete equality.<sup>278</sup> The inequalities that existed before the by-law continue to exist; the only difference is that the inequalities are now so strictly confined that it looks as if they have been eliminated altogether.<sup>279</sup> Among some circles, this has ended the debate about bans on the headscarf completely.<sup>280</sup> In fact, the AKP's current campaign platform claims that it eliminated the problem faced by headscarf-wearing women for decades.<sup>281</sup>

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<sup>270</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Peres, *supra* note 11.

<sup>271</sup> *Basortusu Nedeniyle Durusmaya Alinmadi*, T24 (Dec. 12, 2013), <http://t24.com.tr/haber/basortusu-nedeniyle-durusmaya-alinmadi/245931>, archived at <https://perma.cc/ZH5F-RHPA?type=pdf>.

<sup>272</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; *Basortusu Nedeniyle Durusmaya Alinmadi*, *supra* note 271.

<sup>273</sup> *Basortusu Nedeniyle Durusmaya Alinmadi*, *supra* note 271.

<sup>274</sup> *Id.*

<sup>275</sup> See *id.*

<sup>276</sup> See Wing & Varol, *supra* note 67, at 53–54.

<sup>277</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>278</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9.

<sup>279</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Arsu & Bilefsky, *supra* note 8, at A9; *AKP Campaign Video*, *supra* note 248.

<sup>280</sup> See Humeyra Pamuk, *Turkey Lifts Generations-Old Ban on Islamic Head Scarf*, REUTERS (Oct. 8, 2013), <http://www.reuters.com/article/2013/10/08/us-turkey-headscarf-ban-idUSBRE99708720131008>, archived at <https://perma.cc/AU9R-GACR?type=source>.

<sup>281</sup> *AKP Campaign Video*, *supra* note 248.

*D. A Different Perspective: “Not Enough, But Yes!”*

For the past decade, Turkey has been trying to break from its repressive patterns of rule and justice to democratize and transform state institutions to accommodate pluralism.<sup>282</sup> Many agree that Turkey needs a new constitution for democratic consolidation to take place, not piecemeal amendments to the 1982 military-era Constitution.<sup>283</sup> Thus far, however, the AKP has been unable to build consensus on how to accomplish this task.<sup>284</sup> Commentators and scholars, who support the democratization efforts of the AKP, but criticize their limitations, have taken up the slogan, “not enough, but yes.”<sup>285</sup>

The headscarf debate is very much a part of the project for democratic consolidation.<sup>286</sup> Freeing headscarf-wearing women of state-imposed barriers is a part of the project of unifying the interests of all Turks in forming a country capable of embracing diverse ethnic, cultural, and religious identities.<sup>287</sup> Currently, the headscarf bans have been removed gradually: first at educational institutions, then at government offices.<sup>288</sup> The new by-law is also an effect of this gradual approach.<sup>289</sup> The by-law, however, does not eradicate the existing inequalities completely, and it may even reinforce certain prejudices; but it still may not be correct to reject the reform outright.<sup>290</sup> This gradual process could allow for “public argument, deliberation, and negotiation over core commitments—whether legal, political, constitutional, or even religious,” and become a “learning process[ ] through which new meanings and political possibilities may be created in democratic public spheres.”<sup>291</sup> There is a risk, however, that this kind of process renews conflict and polarization with every new step towards change, producing repressive outcomes from those against reform.<sup>292</sup> Currently, it remains unclear whether the established state apparatuses would react more repressively toward gradual or abrupt change.<sup>293</sup>

<sup>282</sup> See Bali, *supra* note 71, at 314–15.

<sup>283</sup> *Id.* at 317.

<sup>284</sup> See *id.* at 317–18.

<sup>285</sup> See ‘*Yetmez Ama Evet*’ Kampanyasi, TARAF (July 2, 2010), <http://www.taraf.com.tr/haber-yetmez-ama-evet-kampanyasi-53021/>, archived at <https://perma.cc/GK5Y-C8WT?type=pdf>.

<sup>286</sup> See Bali, *supra* note 71, at 314–16.

<sup>287</sup> See *id.* at 316, 319.

<sup>288</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Head, *supra* note 180.

<sup>289</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Bali, *supra* note 71, at 319.

<sup>290</sup> See RESMI GAZETE [OFFICIAL GAZETTE], Oct. 8, 2013, No. 28789, Decision No. 2013/5443; Bali, *supra* note 71, at 319–20; ‘*Yetmez Ama Evet*’ Kampanyasi, *supra* note 285.

<sup>291</sup> Bali, *supra* note 71, at 319.

<sup>292</sup> See *id.* at 319–20; Kilic, *supra* note 255.

<sup>293</sup> See Bali, *supra* note 71, at 252; Kilic, *supra* note 255; Basortusu Nedeniyle Durusmaya Alinmadi, *supra* note 271.

## CONCLUSION

A historical review of Turkey's past with religion and politics illustrates the complicated back and forth between the religious public and the secular state. The word "secular" has become a cornerstone of the Republic, but its definition remains murky, unclear, and hotly contested. Though its place is unalterable in the Constitution, its practice has been stuck in a time far removed from the present and far different from current conditions.

The by-law of 2013, giving women the right to choose whether or not to wear a headscarf in government offices, does not lift the ban on headscarves nor does it end the almost century-old debate of secularism in Turkey. It allows women to be treated equally in certain parts of the public sphere, carving out those spaces that remain holy for the secular Republic. The by-law was both a reassuring gesture from the government that it has not forgotten its promise of democratization, but also a shock because it stopped short of complete equality when it was so close to accomplishing the task. Turkey needs brave and courageous reform if it is to correct decades of injustice and promise a better tomorrow. Until women are given equal rights of access to all positions in the public sphere, they will continue to be the sacrificial lambs in the continued fight over secularism.