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TURKEY: The new Constitution and the headscarf – a selective freedom?

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There has been much discussion in Turkey of under the new Constitution making it possible for female public servants to wear headscarves, Forum 18 News Service notes. But there has not been much discussion of the wider issues this move raises. These wider issues include other restrictions based on freedom of religion or belief imposed on those within the public service, and the impact of the change on possible interferences by public servants in the rights of others - for example parents and school pupils. Similarly, there has been little discussion of the right of all people to manifest their religion or belief in different ways, rather than the right of some people to manifest one religion or belief by wearing one symbol. Relatively little attention has also been paid to the contradiction of men wanting women to be able to wear the headscarf, and the same men also not taking steps to further women's participation in society and the public service. It is of the utmost importance to ensure that steps taken to advance freedoms in Turkey are not selective, picking and choosing which parts of freedoms are to be advanced and ignoring other aspects of human rights. Protecting freedom of religion or belief and related freedoms must embrace the protection of everyone's freedoms.

There has been much discussion in Turkey of allowing public servants to wear headscarves, Forum 18 News Service notes. But the discussion has been narrowly focussed on this particular issue, without discussion of the other wider issues affecting civil servants, freedom of religion and belief and other related human rights. There has been little or no public discussion of restrictions based on freedom of religion or belief imposed on those within the public service, and the impact of the change on possible interferences by public servants in the rights of others - for example parents and school pupils. Relatively little attention has also been paid to the contradiction of men wanting women to be able to wear the headscarf and the same men also not taking steps to further women's participation in society and the public service.

The ruling Justice and Development Party (AKP) and the opposition Peace and Democracy Party (BDP) on the Constitutional Reconciliation Commission (AUK) have agreed on a provision for the new Constitution regulating the public service. This provision has been interpreted by many to mean that civil servants will be allowed under the new Constitution to wear headscarves. It reads: "For entry into public service the fundamental principle will be suitability (merit)". This does not explicitly mention headscarves, or a prohibition on discrimination based on religion or belief. Indeed, HaberTurk reported on 1 March an interview with Prime Minister Recep Tayyip Erdogan in which he stated that a Constitutional amendment is not necessary to allow public servants to wear headscarves, and that a change in regulations will suffice.

(The AUK is charged with drafting the new Constitution – see F18News 22 August 2012
http://www.forum18.org/Archive.php?article_id=1734.)

Reflecting the same position as the Prime Minister, a 13 February report submitted by the Minister of European Union Relations, Egemen Bagis, to the Committee of Ministers concludes that there is no need for legislative change to allow civil servants to wear the headscarf. According to the report, the current regulations on the dress of public servants are solely based on regulations that have been put in place following the first elections after the 1980 military intervention. So the report asserts that changing the regulations would enable civil servants to wear the headscarf.

The report also highlights the effects of the ban on women, stating that "the ban isolated women from society and entraps her in a narrow sphere". This is because the ban excludes women who wish to wear a headscarf from employment in education, and from politics. The report maintains that this leads to serious inequality for women who wear the headscarf.

Public servants to end ban?

Meanwhile, a campaign has been organised by numerous trade unions to collect 10 million signatures to demand the abolition of the current headscarf ban. In a statement made on February 21, the Head of the Memur-Sen (the Confederation of Public Servants' Trade Unions), Ahmet Gündoğdu, said that the campaign has reached a total of 12.3 million signatures and that they have asked for an appointment to deliver the signatures to the Government. He added that "now it is the Government's and the Grand National Assembly's turn" to solve the problem. He had earlier stated that, if the ban is not abolished within a month, public servants will go

to their work places wearing the headscarf after 15 March. He hoped that this would de facto end the ban.

Headscarf discussion indicates selective understanding

It appears that the Government may take steps to allow public servants to wear the headscarf, however many issues raised by such a move are not being considered.

The AUK's lack of consensus has also affected other parts of the Constitution affecting civil servants. For example, the BDP and the main opposition party, the Republican People's Party (CHP), have agreed on a provision stating that "in the formation of administrative organs the principle of gender equality will be observed". But this attempt to ensure gender equality in public sector employment has been opposed by the ruling AKP and the opposition Nationalist Movement Party (MHP). The AKP's opposition to this provision leads some to question whether the AKP's move to allow the use of the headscarf is motivated by a commitment to abolish all forms of discrimination affecting women.

Public debate on freedom of religion and belief, gender equality and the public service has been focussed on civil servant's freedom (or at present lack of freedom) to wear the headscarf. The mainstream mass media focus also appears to be solely on the headscarf. This may mean that the headscarf is no longer a polarising issue in Turkey. The headscarf ban for university students ended in 2010, when the Turkish Higher Educational Council (YÖK), announced that lecturers in universities could no longer take action against students wearing the headscarf.

But the fact that public discussions on freedom of religion and belief and the civil service are limited to the headscarf, as opposed to addressing other related important human rights issues reflects a rather selective understanding of protecting human rights. This is even though a recent Turkish Economic and Social Studies Foundation (TESEV) survey indicates that society seems to be to some degree ahead of the AKP government in its willingness to implement human rights obligations (see F18News 4 December 2012 http://www.forum18.org/Archive.php?article_id=1775).

According to the TESEV survey, 70 per cent of people want the state to observe neutrality in relation to matters such as "the headscarf and sexual orientation". Neutrality in this context was taken to mean support for allowing the wearing of the headscarf. 92 per cent support the statement that "the state has the obligation to protect its citizens against discrimination and attacks that may result from these preferences". This means that they expect the state to undertake measures to ensure that individuals are not discriminated because of these matters. 52 per cent of the Alevi (who may make up one third of Turkey's population) would allow civil servants to wear a headscarf, but 35 per cent of the Alevi oppose this. 48 per cent of CHP supporters do not oppose the headscarf in the public sector. It is thought that these results have followed from there being no problems occurring following the 2010 de facto lifting of the ban on university students wearing headscarves.

But there has been no public discussion of lifting the almost total ban on clergy wearing religious clothing in public. Nor has there been discussion of the de facto impossibility of people from non-Muslim backgrounds being in high-level civil servant positions, or being in senior ranks in the military (see Forum 18's 2009 Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379).

Lack of open discussion of relevant human rights issues

The lack of a meaningful, researched-based and open discussion on all the relevant issues raised by manifestations of religion or belief of public servants – not just the headscarf – is striking. NGOs whose work centres on law, human rights and education have not been prominent participants in this debate. Yet the human rights implications need to be closely considered. There are many questions to be asked. For example:

Will this "freedom" extend only to the headscarf? If so, this will be discriminatory unless this different treatment can be justified with objective criteria. Indeed, public discussion in Turkey of the headscarf alone can take attention away from the vitally important matter on which attention should be focused: the right of all people to manifest their religion or belief, rather than the right of some people to wear one symbol of one religion or belief.

Will there be any guiding principles for public institutions that can be used in regulating this new freedom? The European Court of Human Rights has often stressed that states have an obligation to observe neutrality and impartiality in regulating matters related to religion or belief (see eg. F18News 27 June 2011 http://www.forum18.org/Archive.php?article_id=1585).

What about the rights of those who public servants – in education and the judiciary for example – are supposed to serve? The area of education is a particularly difficult one. The obligation on the part of the state to observe neutrality, the right of the teacher and child to freedom of religion or belief, and the rights of parents to raise their children in line with their religious or philosophical beliefs must all be respected. And in Turkey there are serious questions concerning these obligations and rights. (see F18News 23 August 2011 http://www.forum18.org/Archive.php?article_id=1603).

Headscarf equality with exceptions?

The AKP Women's Group organised a workshop on "New Civilian Constitution from Women's Perspective" in May 2012. Yet they proposed that "judges, teachers and those working in the security forces" could be exceptions to a lifting of the headscarf ban. The underlying reason for this exception has been to overcome the concern expressed over whether in these sectors the requirement of neutrality could be undermined by the use of a headscarf.

This stance has been criticised by a number of groups including Vahap Coskun of Dicle University's Law Faculty. He argued, in a May 2012 commentary for Today's Zaman, that this would create equality with exceptions.

Constitutional law professor and CHP member of Parliament Suheyl Batum said on February 13, in an interview with the T24 news website, that he opposed the wearing of headscarves by public servant. "It is not possible to change the order of a state because the people want it". He added that he had never had a problem with allowing students who wear the headscarf in the universities he has lectured at.

Others who oppose the headscarf in the public sector do not seem to be vocal about their positions. Some parts of society support the freedom of civil servants to wear the headscarf, but with the exception of judges, teachers, police, and the military. For example the Turkish Industry and Business Association (TÜSIAD) proposed that the new Constitution should allow the wearing of headscarves by public servants, including the members of the Grand National Assembly. But TÜSIAD also maintained that neutrality could be compromised if judges, teachers and the security forces were allowed to wear religious symbols. They did not, however, specify what kind of religious symbols they had in mind or whether they only referred to the headscarf.

It is also notable that members of religious minorities have not publicly noted the contradictions between lifting the headscarf ban yet not addressing other areas of discrimination related to the public service. It is unknown whether the proposed civil service provision in the Constitution will help correct this situation.

Women's rights organisations divided

Women's rights organisations seem to be divided on the issue. The Turkish Business Women's Association (TIKAD) supports the freedom to wear the headscarf in the public sector. But the Kadın Adayları Destekleme Derneği (Association for the Support and Training of Women Candidates - KA.DER) opposed any religious symbols in the public sector whether it is the headscarf or any other symbols.

TIKAD also commented to Time Turk in November 2012 that some men who support freedom for the headscarf oppose the participation of women in employment. This contradiction has also been noted by others. In a commentary for Evrensel newspaper on 5 February, Sevda Karaca drew attention to the male factor behind the "freedom for the headscarf" struggles. She noted that some men accuse anyone who questions these demands or maintains that "the headscarf does not free women" of "being anti-democratic and against freedoms". She questioned the AKP's sincerity in both wanting women to have the freedom to wear the headscarf, and also wanting to limit the place of women in society, recalling that the AKP has called for women to bear three children and keep family unity, and to dress more modestly.

The background

The Regulation Pertaining to the Attire of Personnel Employed at Public Institutions of October 1982 was based on a law and decrees of 1925 and 1934 on the Clothing of Various Public Servants. Law Professor Semih Gemalmaz has suggested in his book *The Turkish Dress Code and the Headscarf* (Türk Kiyafet Hukuku ve Türban, İstanbul 2005) that the military regime "remembered" the 1925 Decree, that was almost completely forgotten, and used it as a legal basis for the new regulation. The 1925 Decree did not regulate the details of the clothing of public servants but only made references to "contemporary clothing", that "the head would be uncovered" and the "hat" would be used as headgear. These rules were not in any legal way connected with disciplinary measures based on a law, which has led to their legality being questioned.

The purpose of the 1982 Regulation was to ensure that public servants have uniformity in terms of clothing, and wear "modest" and "contemporary" clothes that are in line with the reforms and principles of the Republic's founder, Mustafa Kemal Atatürk. These were also enshrined in the current 1982 Constitution. It is not possible to find a definition in any positive law of what these terms mean or imply for clothing. Despite this, the Regulations are very detailed, covering the length and form of hair, moustaches, beards, shirts, ties, how much a shirt or blouse can reveal, how loose or tight trousers can be, heels of shoes, nails, make-up, etc. Both male and female personnel have to work bareheaded, and the only public servants excluded are those with their own clothing regulations such as the military and police forces.

According to Professor Gemalmaz, these Regulations aimed to create a "civil uniform" for public servants, and were motivated by a desire to prohibit any piece of clothing to which those in political power could attribute a political meaning.

According to the 1982 Regulations, those who act contrary to it are subject to the Law on Public Servants No. 657, which stipulates punishments up to and including long-term suspension. But Law No. 657 did not originally contain any disciplinary measures

connected to clothing. Through a 1982 amendment, actions contrary to the "determined provisions" related to clothing became subject to disciplinary measures.

These Regulations have been implemented by the Turkish judiciary fairly harshly. Turkish secularism (laiklik) has been interpreted so as to exclude not only the headscarf, but also "persons with certain religious affiliations" (dinci) from public employment. This was done by attributing to manifestations of religion or belief, in particular the headscarf, a meaning and significance that is ideologically incompatible with secularism.

Turkish secularism (laiklik) is strongly protected in the current 1982 Constitution, and in Turkish practice means close state supervision of religious activity, and less autonomy of religious communities than in many other countries (see F18News 30 November 2011 http://www.forum18.org/Archive.php?article_id=1641).

Heavy penalties were imposed on persons who use these symbols. Many cases coincide with the period, generally referred to as the post-28 February period, following the 1997 National Security Council Memorandum calling in particular for the strict implementation of codes on clothing and the prevention of infiltration of reactionary groups into the educational system and bureaucracy. The MGK is chaired ex officio by the President and also comprises the Chief of the General Staff, the commanders of all the branches of the Turkish Armed Forces and several government ministers.

Conclusion

It seems likely that public servants will be allowed to wear the headscarf, although possibly not those employed as judges, teachers, police, or in the military. Although it is right for employment in the public sector to be based on merit, not on whether or not they wear a headscarf, the wearing of religious symbols by public servants raises many questions in the Turkish context.

For example, will anything be done to eliminate discrimination based on religion or belief when decisions are made on who to employ? Will discrimination based on religion or belief by public servants – for example in education and the judiciary – be eliminated? Will gender equality be implemented in the public service?

It is of the utmost importance to ensure that steps taken to advance freedoms in Turkey are not selective, picking and choosing which parts of freedoms are to be advanced and ignoring other aspects of human rights. Instead a holistic approach must be taken to ensure the protection of freedom of religion or belief and related freedoms for all. (END)

For more background, see Forum 18's Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379.

More analyses and commentaries on freedom of thought, conscience and belief in Turkey can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=68>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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