

The securitization of the headscarf issue in Turkey: 'the good and bad daughters' of the republic

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Abstract

In Turkey women wearing headscarves have been banned from universities and public sector for the last two decades. The democratically elected governments passed several legislation to eliminate the ban on the headscarf in universities; however the ban could not have been abandoned due to the strict opposition of secularist establishments; mainly the judiciary and the military. In the last twenty years 'the headscarf has transformed from a religious symbol to a threat to the principle of secularism. This article is an attempt to explore the role of judiciary in this transformation by looking at the legal decisions made by the Constitutional Court and the Council of State between 1980 and 2008 regarding the headscarf issue. It is argued that the judiciary acted as a securitizing actor by making official the interpretation of secularism as 'a way of life' and by presenting the covered women demanding to enter the public sphere as a threat to this interpretation of secularism. The conclusion suggests that for the solution of the headscarf problem in Turkey, the official interpretation of secularism should be changed and secularism should be conceived as a constitutional principle rather than 'a way of life', which guarantees constitutional neutrality of the state towards all religions, prevents the legitimization of legislation, executive power and rule of law by religion and protects the right to be free from religion as much as the right to be religious.

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Introduction

For the last two decades, the ‘covered women’¹ of Turkey have been struggling to gain the right to study in universities and work in the public sector with their headscarves. The democratically elected governments have passed several legislation to eliminate the ban on headscarf in universities however the legislation were all annulled by the Constitutional Court on the basis that they were against the principle of secularism.

One of the extreme cases of the exclusion of covered women from the public sphere was the expulsion of Hatice Hasdemir, a covered woman who was a defendant in a case of corruption, from the courtroom on November 2003. When the judge asked Hatice Hasdemir to remove her headscarf in the court room during the hearing, she refused, stating that she was there as a defendant not as a judge or lawyer. After her refusal, the judge asked her to leave the hearing room. The expulsion of Hatice Hasdemir from the courtroom because of her headscarf was controversial since there was no provision or law banning the wearing of headscarf for defendants or witnesses in the courtrooms. However Eraslan Ozkaya, the Head of the Court of the Cassation, backed the judge’s decision to expel the defendant stating that the hearing room in the courts is public sphere. (Radikal 2003) The ‘public sphere’ is conceived as an area which should be protected from covered women. Accordingly, the covered women who are trying to enter the public sphere are perceived as a security threat.

The exclusion of covered women from the universities and public sector has become one of the most difficult issues in Turkey since it has been ‘securitized’ by the judiciary². This article is an attempt to explore the role of judiciary as a securitizing actor in the transformation of the headscarf from a religious symbol to a security threat. In the first part of this contribution, the historical context is introduced in order to explain why the narrative of ‘the emancipation of women

1. The most recent survey conducted by A&G (2008:7-8) in 18 different cities of Turkey on June 2008 showed that 60.3% of adult women in Turkey wear the headscarf. While the rate of covered women between the ages of 18 and 27 is 42.7%, it is 64.3% between the ages of 28 and 43. The highest rate is seen over the age of 44 which is 75%. Contrary to the common perception, the survey revealed that there has been a decrease in the number of women covering their heads in the last five years. According to the surveys conducted by the same company, the percentage of covered women decreased to 61.4 in September 2007 from 64.2 in May 2003. A different study Carkoglu and Toprak (2006: 24) also showed that there was a decrease in the rate of women wearing headscarf from 72.7% in 1999 to 63.5% in 2006.

2. In the securitization of the headscarf issue there are other significant securitizing actors such as military but this article will be limited to analysis of the role of judiciary.

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from the traditional backward religion' has a central place in the Kemalist modernization and how it was challenged by the rise of a new generation of educated covered women demanding to enter the public sphere in the 1980s.

In the second part, the role of the judiciary in the securitization of the headscarf issue is analyzed by looking at the legal decisions made by the Constitutional Court and the Council of State between 1980 and 2008 regarding the headscarf issue. It is argued that the judiciary acted as a securitizing actor through the Constitutional Court which referred to the opposition of political parties to the headscarf ban as evidence for their activities against secularism. Additionally, the judiciary securitized the issue through The Council of State which makes a distinction between 'good, unfortunate and bad daughters of the republic' and presenting 'bad daughters'– the educated covered women demanding to enter public sphere as a threat to secularism.

In the last part, the conception of secularism dominant in the judiciary is problematized and it is argued that the judiciary makes official the interpretation of the secularism as 'a way of life', rather than a constitutional principle. The conclusion suggests that for there to be a solution of the headscarf problem in Turkey, the judiciary's conception of secularism should be changed in such a way that secularism is conceived as a constitutional principle guarantying neutrality of the state towards all religions, preventing the influence of religion on the legislative, executive, and judiciary powers and protecting the right to be free from religion as much as the right to be religious. It is noted in the end that the difference between the current government's rhetoric and practice towards the individual liberties constitutes an obstacle in front of the solution of the problem.

Historical Context

In the end of 19th and beginning of 20th century, the Turkish state went through a major transformation from a multi-ethnic empire to a secular nation state. Following the Treaty of Lausanne³, The Republic of Turkey was proclaimed as Mustafa Kemal (Ataturk) its president in 1923 by the Grand National Assembly. The founders of the republic carried out radical reforms in order to establish a secular nation state and eliminate any alternative source of power. It is in this spirit that the Ottoman sultanate and the Caliphate were abolished in 1923 and 1924 respectively. Autonomous religious authorities were also toppled

3. The peace treaty signed between the *Entente powers* and the National Assembly at the end of the War of Independence.

and in 1925 religious fraternities and Sufi orders were declared illegal and disbanded. The secular character of the republic was constitutionally declared in 1937 with the addition in the Turkish Constitution of the sentence: 'the Turkish state is Republican, Nationalist, Populist, Statist, Laic and Reformist'. (Mardin 2006: 274)

It is significant to note that the modernizing reform movement did not start with the establishment of the republic; it was initiated at the end of 18th century by Ottoman reformers, especially after the loss of territory to the Western powers. By borrowing European military techniques and centralizing state power, the reformers tried to prevent the dismemberment of the empire. Atabaki and Zurcher (2000) points out that Ataturk had an important advantage over Reza Shah, the monarch who tried to implement a similar modernization project in Iran between 1921 and 1941, due to the fact that there had already been modern institutions such as a national standing army of conscripts, a national monetary system and a nationwide communication of network of railways and telegraph lines, all of which were achieved in the 19th and early 20th century in Ottoman Empire.

'The good daughters' of the republic.

A major rupture between the old empire and the new republic arose with the reforms which provided women with legal equality to men through their rights to education, work, voting and being candidates for elections. Legal equality in the public sphere was achieved as a result of several legal reforms. The Family law of 1924 abolished polygamy and made the sexes equal in rights to divorce. In 1934 women were accorded the right to vote in national elections. As such, a year later, women deputies were elected to the Turkish Parliament. In 1935, women formed 4.5% of the members of parliament, a rate that has never been achieved again. (Radikal 2007) It is significant to note that despite of the formal equality granted by the civil code, patriarchal norms continued to be practiced in private life. (Arat 1997, 2008; Kandiyoti 1997; Secor, 2002; Tekeli 1986; White 2003)

The discourse of the emancipation of Turkish women by Ataturk is dominant in the secularist consciousness. It is implied that by granting these rights to women, Ataturk, the father of the Republic, 'saved the daughters of the Republic' from the 'backwards', 'uncivilized' and traditional past and offered them a 'Westernized', 'modern' and free future. This 'hero victim binary', argues Cinar (1995: 54), is common in the discourses used by the state (or a political force

The securitization of the headscarf issue in Turkey: 'the good and bad daughters' of the republic seeking to have state power) for legitimizing the modernizing interventions. In the Turkish case, unveiling was the modernizing intervention on the bodies of women by the state during the Republican era (1923-1950). Although veiling has never been prohibited in Turkey as it was in Iran under the Shah Regime⁴ – unveiling was promoted by the state during this period. For instance, Atatürk appeared in public with his unveiled adopted daughters and waltzed with women dressed in nightgowns in ballrooms. The state distributed the photographs of unveiled women as pilots in military uniform, lawyers in courtrooms or teachers in classes not only in Turkey but also in Europe. This was to show how 'modern' Turkish women were.⁵ As Yegenoglu (1998: 132) explains:

The unveiling of women became a convenient instrument for signifying many issues at once, i.e. the construction of modern Turkish identity as opposed to backward Ottoman identity, the civilization and modernization of Turkey and the limitation of Islam to matters of belief and worship.

Unveiling was the symbol of the commitment of the 'good daughters of the republic' to Kemalist reforms. They also felt compelled to engage in professional life in order to show the success of the Kemalist modernization project. Achieving the mission became a source of pride for them. Hamide Topçuoğlu, a woman professional, recalled that being a professional 'was not "to earn one's living." It was to be of use, to fulfill a service, to show success. Atatürk liberated woman by making her responsible.' (Arat 1997: 57)

It is interesting to note that the discourse on Muslim women's emancipation has been also used by Western powers to justify their interventions in Muslim societies, either through colonialism in the 19th and 20th century or military interventions in recent years such as in Afghanistan and Iraq. Ahmed (1992: 154) showed how the veil as a symbol of a woman's subordination was

4. Reza Shah, the monarch of Iran between 1925 and 41, was in power during the same period with Atatürk and he attempted to implement a similar secular modernization in Iran. Nevertheless the extent of the intervention on the bodies of the women has always been more serious in Iran than in Turkey. Reza Shah, like Atatürk, tried to promote unveiling by appearing in public with his unveiled wife and daughters. However, unlike Atatürk he issued a decree in 1935 banning the public use of the chador (Persian veil). Veiled women were denied access to public transportation, and he even gave the order to the police force to remove the veil by force if necessary. Because of the fear of being forced to remove their chador, many Iranian women never left home. It is a twist of history that the same Iranian women were forced to veil following the Islamic revolution in Iran in 1979. For further discussion see Zahedi (2008).

5. Cinar argues that this was done mainly because the state targeted Europe as the ultimate referee that needed to be convinced of Turkey's new modern, Westernized identity. For further discussion see Cinar (2008).

instrumentalised by colonial powers to justify colonialism in Egypt between 1882 and 1920. Abu Lughod (2001: 789) also demonstrated the continuity between the discourse of Christian missionary women, who devoted themselves to 'save' their Muslim sisters during the 19th century and the liberal human rights discourse used by humanitarian agencies in 21st century. Both discourses construct Muslim women as in need of saving. She further underlines: 'projects of saving other women depend on and reinforce a sense of superiority by the Westerners, a form of arrogance that deserves to be challenged.' The discourse of emancipation of Muslim women from Muslim men through unveiling, argues Pasha (2006: 39), 'does not recognize the agency and identity of Muslim women'. He also raises a question that is very valid in the Turkish case. 'What if Muslim women themselves were to decide whether to veil or not to veil?'

The increasing public visibility of headscarf in the urban space

In the 1940s and 1950s the Republican elite considered the headscarf as a practice adopted by the uneducated rural woman who had neither 'the knowledge' nor 'the power' to remove it. It was accepted as a matter of education and underdevelopment (Saktanber, & Corbacioglu 2008) in the states discourse and it was believed that the headscarf would disappear as a result of education, urbanization and development which were the objectives of Kemalist modernization project. However, contrary to the expectations of the Republican elite, the public visibility of the headscarf increased in the urban space as a result of high levels of urbanization led by industrialization in the 1960s and 1970s. While less than 25 percent of Turkey's population had lived in urban centers with more than 5000 inhabitants in 1920, it increased to 44 percent by 1980. (Pamuk 2008: 267) Rural migrants brought their traditional habits, beliefs, and customs to the urban centers and the headscarf became more visible in the urban space. The rural migrants played a significant role in the rise of pro-Islamic parties in the 1990s and Islamic revivalism in the political sphere⁶. As a result of the increasing

6. Until the late 1990s, the major Islamist movement in Turkey was the National Outlook Movement, which was initiated by Necmettin Erbakan. Despite their Islamist rhetoric, Erbakan and his followers avoided direct criticism of secularism. They founded the National Order Party in 1970 and the National Salvation Party in 1972. Both parties were accused of being antiseccular and were disbanded following the military coup d'états of 1971 and 1980. In 1980, Erbakan founded the Welfare Party. In 1995 national elections the Welfare Party received 21.4 percent of the votes and became the leading party. Erbakan became Prime Minister in 1996 in a coalition government. The Welfare Party opposed to Turkish membership in the European Union

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public visibility of headscarf in the urban space, headscarf could no longer only be associated with the rural space.

The expectation of the Republican elite that the practice of veiling would decline with the economic development was not realized either. In the 1980s Turkish government changed its economic policy from import substitution to the liberalization.⁷ In order to attract foreign direct investment the basic social rights of the workers were eliminated in the constitution of 1982 (Odekun 2005) and real wages were decreased (Aricanli and Rodrick 1990). The purchasing power of the civil servants, a significant part of the Republican elite, also diminished. Ozyurek (2006: 17) argues that 'the state changed its priorities from supporting civil servants to supporting export oriented businesspeople by lowering tariffs, giving them tax breaks, and ignoring the illegal trade arrangements they made.' As a result, a conservative, new elite emerged in Anatolia called the 'Anatolian Bourgeoisie', as opposed to the Republican bureaucratic elite which started to lose its power under changing economic structures. The headscarf gained a higher social mobility with the covered women in this new emerging elite and for this reason it could also no longer be only associated with underdevelopment and poverty.

The rise of the 'bad daughters' of the republic

The most shocking development for the Republican elite was the popularity of the headscarf in a younger generation of women who were educated and urbanized. In the 1980s this younger generation began to adopt a new type of veiling which was quite different from their mother's way of covering. In this new type of veiling the hair and the neck is covered with the headscarf and usually worn with long dresses or overcoats.⁸ The rising popularity of the headscarf

and led the foundation of an international organization among eight Muslim countries, the Developing Eight (D8)

7. Due to the increasing oil prices in the 1970s and dependency on foreign technology and knowledge, Turkey got into a debt cycle. In order to get out of the debt cycle and attract foreign direct investment, economic liberalization policies were adopted by the state.

8. According to Carkoglu and Toprak's survey (2006) the rate of women covering their heads in the traditional way was 48.8% which was down from 53.4% in 1999. The rate of women wearing new type of veiling was 11.4% in 2006 which also decreased from 15.7% in 1999 and the women wearing veil covering their whole body constitutes 1.1% in 2006 (3.4% in 1999) The highest decrease in the rate of women wearing headscarves is seen in the age group between 18 and 24, which can be considered as an implication of the fact that women chose to remove their headscarves in order to continue their education.

within the younger generation of women gradually attracted scholarly attention in Turkey. Particularly in the early sociological and anthropological works, functionalist arguments were made in order to explain its popularity such as wearing a headscarf as a symbol of public assertion of Islamic difference (Gole 1996) or for confining femininity to the private realm (Ilyasoglu 1998). Similarly, multiple studies exploring the reasons for the popularity of this new type of veiling have been conducted in Egypt during the same period (El-Guindi 1981; MacLeod 1991). Mahmood (2001:209) argues that while some of these studies offer functionalist explanations such as making it easier for women to avoid sexual harassment or resisting the commodification of women's bodies in the popular media, they usually neglect the ideas of female modesty or piety.

The studies exploring the reasons and the meaning of veiling for covered women made significant contribution to the literature. However, as Cinar (2005) mentions it is very difficult to make a generalization about the reasons of veiling since it involves a very personal process. During the interviews conducted with five university students who had to remove their headscarves in order to continue their university education, all of the women claimed that they wore the headscarf because it was a religious obligation.⁹ They also emphasized that it was their decision to wear headscarves and there was no pressure on them from their families or their communities. It was mentioned repeatedly by the interviewees that wearing headscarf was not a restriction for them, and they were proud to wear it.¹⁰ For this reason, in this study it is assumed that women chose to wear headscarves in order to fulfill religious obligations.

Regarding the agency of women choosing to wear headscarves, in the literature a distinction has been made between the older generation of Muslim women, who usually passively adopted veiling for the sake of perpetuating traditions, and the new generation of 'Islamist' (Aktas 2004; Arat 1997; Gole 1996) or 'Muslim' (Kadioglu 1995) women who claim to Islamic knowledge and praxis and actively decide to wear a headscarf. The difference between the new generation and old generation of covered women regarding the former's passive adoption of Islamic life and the later's active re-appropriation of the Islamic way

9. Interviews have been conducted in Kocaeli Medical School in April 2009 with five students who had to remove their headscarves in order to have a university education. While three of them prefer wearing wigs in the classes in the medical faculty, the other two attend classes bareheaded. Four of the students were in their fourth years and one was in her fifth year.

10. Abu Lughod argues that when the moral standards are perceived as values rather than norms by the people, it becomes a source of pride to fulfill these standards. For further discussion see Abu Lughod (1986)

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of life, was also mentioned by three of the five interviewees. They talked about the disagreements they had with their parents, especially with their mothers, about Islamic issues. Three of the interviewees claim to Islamic knowledge and felt responsible to enlighten their parents who gained their Islamic knowledge from their families or environments. All of the interviewees emphasized that they had studied Islam from the original sources. One of the interviewees stated with pride that when she had disagreements with her family on Islamic issues, she showed the proof of her arguments in the Quran.

A more significant difference between the two generations of covered women is that the older generation employed a domestic and congregational role and refrained from the public sphere due to lack of opportunities or prevention by their families. Conversely, the new generation of covered women desires to have a higher education, professional career and a religious identity at the same time and in order to realize these aims they demand to enter public sphere. It is revealing to note that none of the mothers of interviewees had professional careers and they all wanted their daughters to have a profession. The parents all supported their daughters' decisions to study in medical school to the extent that some of the parents even asked their daughters to remove their headscarves in order to continue their education. The older generation of uneducated covered women who adopted the veil passively conformed with the expectations of secularists who assumed that since these women have not gone through the Kemalist education based on science and rationality, they could not have gained the knowledge and power to resist the veil. However the fact that their daughters, who have gone through Kemalist education, lived in urban space and demanded to be visible in the public sphere with their religious identity challenged the most celebrated discourse of Kemalist modernization which was the emancipation of women from 'the oppression of the backward religion' through education, science and rationality. Gole (2002:181) articulates the challenge of new generation of covered women as follows:

Instead of assimilating to the secular regime of women's emancipation, they press for their embodied difference (e.g., Islamic dress) and their public visibility (e.g., in schools, in parliament) and create disturbances in modern social imaginaries. Islamic women hurt the feelings of modern women and upset the status quo; they are playing with ambivalence, being both Muslim and modern without wanting to give up one for the other.

In the consciousness of secularists the new generation of covered women are the 'bad daughters of the republic' due to the fact that despite benefiting from the

opportunities provided by the Kemalist modernization, they resist to unveil which is considered a symbol of the commitment to Ataturk and his reforms. The intensely emotional loyalty felt by the 'good daughters of the republic' towards Ataturk in return for 'emancipating them from the traditional backward restrictive past' caused a very strict opposition of among contemporary secularist women towards the new generation of covered women.

The analysis of the securitization of the headscarf issue

The secularists who were powerful in the judiciary and military reacted to the new generation of covered women by excluding these women from the public sphere. The first dress code banning the use headscarf by public employees was introduced by the Council of Ministers in July 1981, following the military intervention of 1980¹¹. In 1982 the headscarf ban started to be implemented in some universities and caused protests of the covered students and their supporters, some of whom were Islamists. According to Buzan's spectrum for public issues, an issue is 'non-politicized' if the state does not deal with it or make it a public debate. However, an issue is politicized when it becomes part of the public policy and the government makes decisions on it. While 'nonpoliticized' issues are at one end of the spectrum, 'securitized' issues are at the other end. A public issue is securitized if it is presented as an existential threat to a referent object and is accepted as such by the audience. Security is defined as: 'a self-referential practice, because it is in this practice that the issue becomes a security issue- not necessarily because a real existential threat exists but because is presented as a threat'. (Buzan, Waever and Wilde 1998: 24)

The headscarf issue began to be politicized following the ban; it became part of public policy as different state institutions made decisions regarding its use. In order to ease tensions, the Higher Education Council allowed the 'turban' – a special way of covering which leaves the neck open – on the arguable grounds that it was more 'modern'. The permission to wear the 'turban' in universities however, created protests by secularist groups. The issue spurred public discussions and caused polarization between secularists and Islamists. The Higher Education Council

11. In Turkey there is a cyclical pattern of democracy and authoritarian rule since the 1950s. The military seized power by staging coups in 1960, 1971, 1980 and in 1997 military forced the government to resign without military intervention. The 1980 constitution which was promulgated under the military rule restricted the social rights of the workers to a large extent. Since none of the democratically elected governments after 1982 could manage to promulgate a civil constitution, the 1982 constitution still prevails.

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passed a decree in December 1986 in order to end the protests. The decree stated that it was mandatory for students to wear 'modern clothing' at all times on school premises. However, the Council did not provide a definition for the term 'modern', leaving such task for university administrations. As a result covered women were accepted in some universities, whereas in others they were not admitted on the basis that their attire wasn't considered 'modern'.

The government tried to pass legislation in order to end this double standard and the rising tensions between the two sides. The majority of the parliament passed a legislation that provided absolute freedom to wear any types of attire in universities, including headscarves. The President Kenan Evren¹², the retired general of the military intervention, vetoed the legislation arguing that such an absolute freedom of dress was against Ataturk's principles and reforms, modern thought, secularism and the principle of equality. In 1988 following the veto of the President, the parliament passed another bill stating that:

It is obligatory to have modern attire and appearance in higher education institutions, classes, laboratories, clinics and corridors. Covering the neck and hair with the headscarf or the turban for religious beliefs is permitted. [translated by the author]¹³

Since the president does not have the right to veto legislation more than once, he appealed to the Constitutional Court, which is entitled to review the constitutionality of the legislation passed through the parliament. In 1989 the Constitutional Court annulled the legislation stating that using religion as a reason for legal exemption is against the principle of secularism.¹⁴ The parliament passed legislation after the Court's annulment and the new legislation stated that 'Provided they do not violate existing laws, dress code is free at higher education institutions.'¹⁵ [translated by the author] This time around, it was the major opposition party that applied to the Constitutional Court. The Court could not annul the new legislation since there was no reference to religious belief and therefore, in 1991 rejected the application of the opposition party and declared the

12. General Kenan Evren assumed the office of the president on 7 November 1982 following the military coup of 1980.

13. Demokratik Hukukcular Dernegi. 2008. Universitelerde Basortusu. (Headscarf in Universities) <http://www.demokrathukukcular.com/mevzuat/basortu/basortuyasagi.doc> (accessed January 17, 2010)

14. Constitutional Court Decision 1989/12 <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/K1989/K1989-12.htm> (accessed January 17, 2010)

15. Constitutional Court Decision 1991/8 <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/K1991/K1991-08.htm> (accessed January 17, 2010)

law constitutional. The Court stated that the law should be interpreted as disallowing students from wearing headscarves in universities.¹⁶ Nevertheless this ruling was very controversial since the Court did not have jurisdiction to interpret legislation passed through the Parliament. At that time therefore, the headscarf issue leaned towards the securitization end of the spectrum

In addition to annulling the legislation which would abolish the headscarf ban in universities, the Constitutional Court acted as a securitizing actor by referring the opposition of political parties to the ban as evidence for their activities against secularism. The Constitutional Court closed the Welfare Party in 1998 and the Virtue Party in 2001 and the statements of the members of the two parties were used as proof of their activities against secularism.

The closure of the Welfare Party

Securitization of the headscarf issue had reached its highest level when the General Staff declared in a National Security Council (NSC)¹⁷ meeting on February 28, 1997 that Islamism was the greatest threat to the laicist order, democracy, and domestic security. In this meeting the General Staff identified the headscarf as one of the main indicators of an ‘Islamic threat’ and accused the government of not dealing with this threat in a sufficient manner. (Cinar 2008: 1) The Prime Minister who was the leader of the Welfare Party (WP), a pro-Islamic party that won the 1995 national elections, had to resign as a result of the pressures of the military and civilian component of secularist the establishment. The WP was dissolved by the Constitutional Court in January 1998 which stated that the party was a ‘center of activities contrary to the principle of secularism’

16. Ibid.

17. NSC was established in 1961 following the military coup of 1960. The formidable presence of the military in every realms of life was institutionalized with the establishment of NSC. NSC indeed provided the military with the mechanisms to create pressure on the governments. The members of the NSC were the President, Prime Minister, the ministers of national defense, internal affairs and foreign affairs, the chief of general staff, the commanders of the army, the navy, the air force and the gendarmerie. The Council convened under the chairmanship of the President. NSC used to have military representatives in the Council on Higher Education and the Supreme Board of Radio and Television but they were abolished as a result of the reforms made in the 7th Harmonization package within the EU accession. Additionally, the number of civilian members increased to a majority, and for the first time in Republic’s history a civilian was appointed as the secretary of NSC. For a critical analysis of civil military relations in Turkey see Cizre (1997, 2000, 2003, 2004).

The securitization of the headscarf issue in Turkey: 'the good and bad daughters' of the republic (1998/1).¹⁸ In fact, the Constitutional Court has dissolved eighteen political parties since 1980. While nine of these parties were dissolved on the basis of being against territorial integrity and political unity of the nation-state via accommodating Kurdish nationalist sentiments, four of the parties were dissolved on the basis of the activities against the principle of secularism. (Kogacioglu 2008:439)

After the NSC's identification of the headscarf as an indicator of an 'Islamic threat', the new head of Council of Higher Education and the presidents of the universities decided that the interpretation of the Constitutional Court in its 1990 decision should be seen as a ban on headscarves in all universities. The pressure on the covered students to remove their headscarf reached its highest level during this period. An unofficial body called 'persuasion room' was invented by the new administration of Istanbul University and later became prevalent in other universities. These rooms were dedicated to convincing covered women to take off their headscarves in order to enter the university.

The procedures that these women were subjected to remain unclear since the 'persuasion room' was not an official body. The deputy rector of Istanbul University at the time – who later was elected to the parliament as a deputy from the main opposition party – explained the function of the persuasion rooms as follows: 'We did not force anybody to take off their headscarves. We took them to the persuasion rooms; we talked to them; and they agreed to take off their headscarves. We have (video) records of the conversations in these rooms in case of objections or protest action against the headscarf ban.' (Nur Serter quoted by Bulac 2008) In order to continue their education some students chose to remove their headscarves while some students chose to wear wigs. However many covered women who did not remove their headscarves were refused entrance in their classes and faced disciplinary penalties and as such, had to leave university.

The election of the first covered women to the parliament and the closure of Virtue Party

April 1999 elections have a special significance in relation to the headscarf issue as for the first time in Republican history two covered women were elected as members of parliament; one from the Virtue Party (VP) and one from Nationalist Movement Party (NMP). On 2 May 1999 Nesrin Unal, the deputy of

18. Constitutional Court Decision 1989/1. <http://www.anayasa.gov.tr/eskisite/KARARLAR/SPK/K1998/K1998-01.htm> (accessed January 17, 2010)

NMP took off her headscarf before the opening ceremony of the parliament and entered the meeting hall of the National Assembly bareheaded. However Merve Kavakci, the deputy of VP did not take off her headscarf and entered the meeting hall with her headscarf which created immense reaction from the deputies of the Democratic Left Party (DLP), the most secularist party in the parliament at that time. They protested by clapping, bumping into their desks and chanting slogans such as 'Out! ,Out!' for 25 minutes. (Ozyurek 2001: 341) In order to ease the tension between the deputies of VP and DLP, the president of the parliament gave a lunch break. Merve Kavakci left the parliament following the break in order not to escalate the tension and she did not attempt to enter the parliament again. The President called Kavakci an 'agent provocateur' and she was accused of being an agent working for foreign powers such as Iran and Libya. By the decree of the President and Council of Ministers she was stripped of Turkish citizenship for holding another passport and officially not declaring it (Gole 2002: 179)

Following Merve Kavakci's attendance in the parliament with her headscarf, the chief prosecutor Vural Savas appealed to the Constitutional Court for the closure of Virtue Party on May 7 1999. In his indictment Merve Kavakci's election as a deputy was presented as a major piece of evidences of VP's activities against the principle of secularism. Two years later the Constitutional Court activated its power to close VP on the basis that it was carrying out anti-secular activities. Additionally Merve Kavakci was indefinitely banned from service in the parliament

A new dimension in the headscarf issue: covered wives of the members of the government

Following the closure of the Virtue Party, the reformists, led by Recep Tayyip Erdogan (the current Prime Minister), and his close associate Abdullah Gul (the current President) established the Justice and Development Party (JDP). This party was presented as being more moderate than the VP and the WP. Shifting away from these defunct parties' stands, the JDP proposed new approaches to democracy, human rights and relations with the West, notably with the EU membership. It adopted a liberal human rights discourse and emphasized the importance of secularism for the state. As a result of such changes in the political rhetoric, the JDP won the early general elections. Therefore on November 3, 2002, the party won 34.28 percent of the votes and gained enough seats in the National Assembly to form a majority government. This was also the result of a generalized

The securitization of the headscarf issue in Turkey: 'the good and bad daughters' of the republic dissatisfaction in the way the existing parties dealt with the 2001 economic crisis¹⁹. As such, the JDP's rhetoric of 'being new and clean' gained huge support from the public²⁰.

Prime Minister Erdogan, the leader of JDP, refrained from dealing with the headscarf issue in his first tenure and stated that the problem of veiled students in universities would not be the governments' priority. (quoted in Heper and Toktas 2003: 12) The JDP was nevertheless thrown in the middle of discussions on the headscarf due to the fact that most of the wives of the members of the government were covered women. Ironically, while covered women had been demanding the right for education and work for more than two decades, the headscarf entered the highest stratum of the state via marriage partnership.

The secularists reacted to this new dimension of the issue by extending the very definition of 'the public sphere'. During the presidency of Ahmet Necdet Sezer²¹, who was a staunch secularist, the covered wives of the members of the governing party were never invited to the official receptions in the Presidential Palace. He argued that: 'The Presidential Palace is part of the public sphere and the wearing of the headscarf is not allowed in such sphere' (quoted in Milliyet 2003). This exclusionary policy was abandoned under the next president, Abdullah Gul²² who was from JDP and has a covered wife. Changing the definition of the public sphere from Sezer to Gul resonates in the definition brought forth by the Asad, who argues that the public sphere is 'a space necessarily (not contingently) articulated by the power. And everyone who enters it must address the power's disposition of people and things, the dependence of some on goodwill of others.' (Asad 2003: 184) In Turkey, the definition of the

19. In 2001, the Turkish currency was devalued several times, the banking sector was devastated and the economy shrank by an historic 9.5 percent.

20. For a detailed analysis of the success of the JDP in the elections see Yavuz (2009).

21. He was the former president of the Constitutional Court.

22. During the presidential elections in 2007, the secularist establishments such as military and judiciary explicitly opposed to Abdullah Gul, the candidate of governing party for the presidency. One of the reasons for the opposition was the Abdullah Gul's wife who was a covered woman. Major public protests – the 'Republic Protests' – against the government took place in different cities at the time. The organizing committee of these protests was composed of some retired generals and the university professors who were actively involved in the headscarf hunt during 28 February Process in 1997. As a result of the rising tension between secularists and government, the JDP chose to go early elections in 2007 and it came to power with a landslide victory of 47 percent. Abdullah Gul, the candidate of JDP, whose wife wears the headscarf, was elected as the president.

public sphere²³ thus changes according to who holds the power and how secularism is interpreted.

The recent attempt to remove the headscarf ban: a closure case for the JDP

The headscarf issue became a priority for the JDP government when the Nationalist Movement Party, the second biggest opposition party, declared that it was ready to collaborate with the governing party in order to eliminate the ban on headscarf in universities. On 9th February 2008, constitutional amendments were made which stated that ‘everyone has the right to equal treatment from state institutions such as universities and that no one can be barred from education for reasons not clearly laid down by the law’²⁴. The Republican People’s Party, the main opposition party, applied to the Constitutional Court and on 5 June 2008, the Court declared that the two amendments were invalid as they were violating the principle of secularism enshrined in the constitution.

On March 14, 2008, the public prosecutor forwarded a 162 page indictment to the Constitutional Court, requesting the closure of the JDP. In the indictment, the speeches and statements of President Gul, Prime Minister Erdogan, and other JDP officials opposing the ban on headscarf in universities, are cited as evidence of the activities of the governing party against the principle of secularism. This time the Constitutional Court could not dissolve JDP due to the opposing votes of the members of the Court. However, its decisions to declare that the JDP had become the centre of activities against the principles of the democratic and laic republic and to cut the party’s state funding were highly controversial. It can thus be concluded that the Court had once again acted as a securitizing actor by accepting the governing party’s members’ opposition to the headscarf ban as against the principle of secularism.

The Council of State as a securitizing actor

23. The exclusion of covered women from the public sphere, argues Cinar (2008), shows that the concept of public sphere can also limit individual liberties thus Habermas’s conception of public sphere as a space for political participation has to be revised. For further discussion on public sphere see Cinar (2008) and Asad (2003).

24. Immigration and Refugee Board of Canada. 2008. Turkey: Situation of women who wear headscarves. <http://www.unhcr.org/refworld/docid/4885a91a8.html> (accessed January, 17 2010)

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In addition to the Constitutional Court, the Council of State, the highest administrative court, played a significant role in the securitization process. The Council of State which is charged with 'reviewing and taking decisions on appeals against the judgments of administrative courts'²⁵ made eighteen decisions with regard to the headscarf issue. These appeals were overwhelmingly motivated by the disciplinary penalties imposed on students entering the classes with headscarves by university administrations. The covered students were refused entry to lectures, courses and tutorials. They were stopped at security checkpoints and asked to remove their headscarves. If they insisted on entering the classes with their headscarves, disciplinary penalties were imposed on them. While the first penalty took the form of a faculty warning, if the disciplinary action was repeated, the student might be suspended from the university for a period ranging from one day to one month.

In most of the cases the Council of State found the disciplinary punishments given to the students or civil servants not to be contradictory to the law. The Council of State's decision (1994/1626) is illustrative of the extent reached by the disciplinary punishments. A university student, who was suspended from the university for a semester for stating that during the Republican period religious rules were violated and sacred duties were not fulfilled, appealed to the Council of State. The latter approved the suspension of the student on the basis that the statement of the student might create religious divisions between students.

The Council of State's decisions greatly contributed to the securitization of the headscarf issue. It did so by presenting the covered women as a threat to secularism via two main discourses. The first discourse suggests that there is a difference between educated and uneducated covered women. According to the Council of State, uneducated covered women have neither agency nor autonomy to resist the pressures of their environment and therefore are unable to reject the headscarf. While educated covered women are considered to have autonomy and agency, their decision to continue to wear the headscarf is perceived as an opposition to the secular republic. The following quotations are illustrative of the prevalence of the first discourse in the Council of State's decisions.

Council of State decision (1984/330) stated:

Some of our daughters who are not sufficiently educated wear headscarves under the influence of their social environments, customs and traditions without having any special thought about it. Yet it is known some of our daughters and

25. Republic of Turkey Presidency of Council of State. History and Missions. <http://www.danistay.gov.tr/eng/index.html> (accessed January,17 2010)

women who are educated enough to resist social environments and custom, wear headscarves for just opposing the principles of the secular republic and showing that they adopt the ideal of a religious state. For those people headscarf is no longer an innocent habit but a symbol of a world view that opposes women's liberty and fundamental principles of our republic. (Kuru 2006:147)

The patriarchal state discourse became obvious in this decision that the women are not identified as citizens but as 'daughters' of the state. This positions the state as the 'father' who has to protect the 'daughters' and makes the 'right' decisions for them. This implies that there are good daughters, unfortunate daughters and bad daughters for the state. As mentioned before the first discourse makes a clear differentiation between the three daughters; the 'good' ones resisted the veil as a result of the Kemalist modernization and felt loyal to Atatürk and his reforms. The 'unfortunate' daughters could not be emancipated by the republic because of their lack of education and underdevelopment. Finally, the 'bad daughters' despite of being emancipated through education still opposed their father by wearing the headscarf in the public sphere. Here, the headscarf is accepted as an innocent habit for the underprivileged women whom, because of a lack of education could not find a profession and gain the economic freedom to 'resist' veiling. However, the 'bad daughters' of the republic not only opposed their 'fathers' wishes, they also demanded to be visible in the public sphere with their headscarf.

In the second discourse used by the Council of State the reason for not resisting the headscarf by the educated covered women is articulated as opposing women's liberty and the principle of secularism which is regarded as the 'basis of the republic'. According to the Council of State, the headscarf of the educated covered women demanding to enter public sphere is the symbol of political Islam which aims to establish a state based on religious rule.

The Council of State's decision 1987/63 stated:

[...] it is known that in our universities some of the female students used the headscarf as a flag for their ideology, supporting the establishment of a state based on religious rule as against *laïcité*, the basic principle of the republic. However it is not possible to assume that every covered woman is endorsing such an ideology, since some of our uneducated women still could not get rid of the pressure of their environment. It is clear that the litigant who benefited from every opportunity provided by the republic in terms of equal rights and access to education at the university level, did not have such an innocent behavior and should have known how significant *laïcité* was for the republic (...) It is

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reasonable for the higher education institutions not to allow the abuse of sacred values (···) by making them masks of ideology. [translated by the author]

The discourses of the distinction between three daughters of the state and the real aim of the bad daughter are also apparent in the Council of State’s decision 1994/686 on appeal of a lawyer candidate who was expelled from the official internship program because of her headscarf. This decision is significant since it reflects the Court’s conception of the good daughters.

The real aim behind the attitude of the intern lawyer insisting on wearing headscarf is the idea of the establishment of a state based on religious rule and this kind of attitude is against the rules of requirements of the profession of advocacy··· It is seen that some of our daughters and women, despite gaining freedom and rights of education and citizenship as a result of the principles and reforms of the republic, espouse a worldview incompatible with the democracy and fundamental freedoms and wear headscarves as a symbol of this worldview. Our women who chose to do public service in the institutions of our laic and democratic society are supposed to be the ones who should protect the *laïcité* and Atatürk’s principles and reforms which symbolize the independence and freedom most.[translated by the author]

In the Council of State’s decisions, the main referent objects of security, the things that are portrayed to be existentially threatened are articulated as the principle of secularism and the freedom of women by these discourses. Covered women demanding to enter classes or work in public sector with their headscarves are positioned as the threat to the principle of secularism and freedom of women.

The principle of Secularism as ‘Referent Object’

It is repeatedly mentioned in the literature that the interpretation of secularism in Turkey neither fits the Anglo-American secularism nor French *laïcité* (Bilgin 2008, Hurd 2007, Yavuz 2009). The United States is the typical example for Anglo-American secularism which is implemented in a way that the existence of religion in the public sphere is not considered to be a threat for the people who do not have a place for religion in their lives. For this reason the use of religious symbols are allowed in schools and state institutions, the motto “In God we trust” can be seen on all coins and money bills, and the invocation ‘God save the United States and this honorable Court’ is chanted at the beginning of Supreme Court’s sessions. (Kuru 2006: 138)

France, on the other hand, is considered as the typical example of laic state which does not allow the public visibility of religious symbols in name of protecting unity and order of the public. There is a significant similarity between French *laïcité* and Turkish secularism with regard to the exclusion of religious symbols from the public sphere. The headscarf is also not allowed in public schools in France. In 2003, based on the recommendations of a report prepared by the Stasi Commission, a law prohibiting the wearing of any conspicuous religious symbols in public schools was passed. Although religious symbols such as Sikh turbans, large crosses or Jewish skullcaps were also prohibited, the main target of the ban was the headscarf. Like the secularists in Turkey, the majority of the French population saw the headscarf as the symbol of women's subordination. It is indeed revealing that Bernard Stasi, the head of the commission, bluntly stated that 'objectively speaking, the Islamic veil is a sign of the alienation of women'. (quoted in Gokarisel and Mitcell 2008: 156)

Although France and Turkey demonstrate significant resemblance with regard to the ban on headscarves in public schools, it is significant to note that the French haven't banned it in their universities. It is such a paradoxical situation that the headscarf is not allowed in universities in Turkey where the majority of the women wear headscarves whereas it has never been banned in universities even in France where the headscarf has been such a controversial issue for a long time.

The principle of secularism has been implemented with significant differences in each constitutionally secular state. The following table is from Kuru's (2007: 571) comparative study which demonstrates the difference between the United States, Turkey and France with regard to the implementation of secularism.

Comparative Analysis of Constitutionally Secular States (Table 1)

	Ban on student's religious symbols in public schools	Pledge referring to God recited	Ban on private religious education	Religious instruction in public schools	State funding of religious private schools	Ban on organized prayer in public schools
US	No	Yes	No	No	No	Yes
France	Yes	No	No	No	Yes	Yes
Turkey	No	No	Yes	Yes	No	Yes

Source: Kuru (2007: 571)

As the table clearly illustrates, such diversity in the interpretation and

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implementation of the principle of secularism in different constitutionally secular states makes a monolithic conceptualization of secularism impossible. While there is a significant diversity in the implementation of the secularism in different constitutionally secular states, there also exists a great variety of the conceptions of secularism within each country as well. For instance in Turkey the judiciary and military's conception of secularism differs from the interpretation of the center right parties in the power to a large extent. Yavuz (2009: 153-154) observes that in Turkey on the one hand within the judiciary and military there exists an extreme Kemalist version of militant secularism which aims to 'cleanse' the public sphere from religion. On the other hand, there is a conservative conception of secularism dominant in the center right parties in power. According to this conception of secularism, he argues the state seeks to control the religion through education, financing and organization of religious activity.

With regard to the securitization of the headscarf issue, the conception of secularism in the judiciary is the most significant since it enables the construction of covered women as a security threat. It is revealing to note that the Constitutional Court defines secularism as:

(...) a civilized way of life which tears down the dogmatism of the Middle Ages and constitutes the cornerstone of rationalism, science, improving the concept of freedom and of democracy (...). Secularism is the contemporary regulator of political, social and cultural life based on national sovereignty, democracy, freedom and science. (Yavuz 2009: 155)

The modernist (Kuru 2006: 145) and rationalistic interpretation of secularism is dominant in the judiciary's conception since it assumes that there is an evolution from the traditional, thus 'backward' societies based on religious dogmas, and the 'modern', developed and secular societies, which are based on science and reason. Secularism is considered both as the means which realized this evolution through the rise of science based on reason and also the end result of this evolution. As such, instead of considering secularism as a constitutional principle which guarantees against the intervention of religion within legislative, executive and judiciary processes, the judiciary is interpreting the idea of secularism as a way of life. Here the citizens of the republic are expected to be secularized and to confine their religious identity to the private sphere.

Conclusion

In this contribution, it was observed that within the judiciary's conception of

secularism, the 'modern' Turkish woman is seen as having been emancipated by the Kemalist modernization project from her 'backward, oppressive and traditional past' through the equal rights with men. She is thus expected to live her life according to the secular reason rather than religious codes and should be grateful to the Kemalist reforms and principle of secularism. As a result of these expectations, the judiciary sees an educated woman who refuses to take off her headscarf, the alleged symbol of her subordination, in a university or the public sector, the two landmarks of Kemalist modernization, as opposing the principle of secularism, which is the basis of the republic.

In this article it is argued that the judiciary securitized the headscarf issue through the Constitutional Court and the Council of State in the last twenty years. The Constitutional Court annulled all the legislation which would enable the covered women to enter universities on the basis that these laws are against the principle of secularism. Additionally the Court used the opposition of the members of WP, VP and JDP to the headscarf ban as evidence of their activities against secularism. The Council of State, on the other hand, contributed to the securitization of the issue by making a clear distinction between 'the good, bad and unfortunate daughters of the republic' in its decisions regarding the headscarf ban and claiming that the only reason for the educated covered women to demand to enter the public sphere with their headscarves can be opposing the secular state.

For the solution of the headscarf problem judiciary should abandon its modernist and rationalist conception of secularism which expects the decline of religious belief in the society as a result of education, industrialization and urbanization. Secularism should be considered by the judiciary as a constitutional principle, rather than a 'regulator of life'. As a constitutional principle, secularism guarantees the constitutional neutrality of the state towards all religions, prevents the legitimization of legislation, executive power and rule of law by the religion and protects the right to be free from religion as much as the right to be religious. When secularism is accepted as a constitutional principle but not as 'a civilized way of life', the public sphere will become a real space for political participation without excluding anyone.

It is significant to note in the end that although the JDP opposes the headscarf ban, some of its proposals such as criminalizing adultery (Sachs 2004), the banning alcohol in city centers and creating 'drinking zones' (Davies 2005)

The securitization of the headscarf issue in Turkey: ‘the good and bad daughters’ of the republic contribute to the securitization of the issue²⁶. JDP gave up both of the proposals because of the reaction of women’s groups and the European Union. However with regard to the securitization of headscarf issue, the proposals reflecting the intolerance towards different life choices especially the ones that are totally against Islamic way of life promotes the securitizing discourse that there is a hidden agenda behind demands for freedom for wearing the headscarf in the public sphere which is the establishment of a state based on Islamic rule.

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26. For a detailed analysis of the intolerance of JDP towards different interpretations of Islam see Bilgin(2009)

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