REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 30 September 2011
Ref. No.: RK137/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 36/11

Applicant

Arjeta HALIMI

Constitutional Review of alleged non execution of Judgment of the District Court in Gjilan CN.nr.24/09 of 17 November 2009 and alleged violation of the Applicant's human rights

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Arjeta Halimi residing in the Village of Drobesh, Municipality of Vitia. She is now aged 19 years. The Applicant is represented before the Constitutional Court ("the Court") by the Centre for Legal Assistance and Regional Development ("CLARD"), with headquarters in Pristina.

Subject Matter

2. The Applicant requests an assessment of the constitutionality of the non-execution of District Court Judgment in Gjilan CN.nr. 24/09 of 17 November 2009. In that judgement the Applicant's claim was approved and the Respondent, the Municipal Education Directorate of Vitia was obliged "to grant to the claimant [i.e. the Applicant] all rights deriving from the status of a fulltime student at 'Kuvandi i Lezhes' Gymnasium in Vitia."
   By her referral the Applicant wants to ensure the above cited judgment issued by the District Court in Gjilan is executed by the Municipal Education Department in Vitia. The Applicant alleges that non-execution of the District Court Judgment in Gjilan CN.nr. 24/09 of 17 November 2009 deprives her of the right to education that is guaranteed by all national and international acts.

3. The Applicant alleges that following Articles of the Constitution have been violated: Article 24 (Equality before Law), Article 38 (Freedom of Belief, Conscience and Religion) and Article 47 (Right to Education).

4. The Applicant also argues that in accordance with Article 22 of the Constitution (Direct Applicability of International Agreements and Instruments) the following internationally recognized human rights have been violated: Article 2 of Protocol No 1 (Right to Education) to the European Convention on Human Rights as well as Article 9 (Freedom of Thought, Conscience and Religion) in conjunction with Article 14 (Prohibition of Discrimination) of the same Convention.

5. The Applicant further considers that there has been violation of Article 18 of International Covenant on Civil and Political Rights as well as Articles 2 and 26 of the Universal Declaration of Human Rights. Finally, as regard to the international instruments the Applicant also refers to Articles 14 and 28 of the UN Convention on the Rights of the Child.

6. The Applicant also alleges that in her case Articles 2, 4 and 9 of the Kosovo Antidiscrimination Law (2004/3) as well as Article 12 of the Law on Administrative Conflict (03/L-202) have been violated.

Legal Basis

7. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Articles 20 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law) and Rule 36 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: Rules of Procedure).

Proceedings before the Court

8. On 10 March 2011 the Applicant filed a Referral with the Court.

9. On 21 March 2011 the President of the Court appointed Judge Iliriana Islami as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani.

10. On 28 April 2011 the Court notified the Municipal Directorate of Education and Culture ("MDE") in the Municipality of Vitia of the Referral and invited MDE to submit a reply to the Referral pursuant to Article 22.2 of the Law.

11. On the same date the Court notified the District Court of Gjilan and the Ministry of Education, Science and Technology (MEST) of the making of the Referral.

12. On 4 May 2011 the District Court of Gjilan submitted a reply to the referral.

13. On 16 May 2011 MDE submitted a reply to the referral.

14. MEST did not submit a reply.

15. On 28 June 2011 the Court requested the Municipal Court in Vitia to be informed whether the Applicant has submitted a proposal for the execution of the final judgment CN. No. 24/09 rendered by the District Court.

16. On 5 July 2011 the Municipal Court in Vitia submitted their reply.

17. After having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

18. The full Court deliberated and voted on the Referral on 8 July 2011 and on 23 September 2011.

The facts of the case

19. Prior to 15 January 2009, the Applicant attended the secondary public school "Kuvendi i Lezhes" in the Municipality of Vitia.

20. The Applicant began wearing a headscarf to school during the first semester of 10th grade.

21. The Applicant alleges she was informed verbally by school management she would not be allowed to attend school any more unless she removed her headscarf. She alleges that the school notified the MDE who allegedly indicated to the school that wearing the headscarf in school is a violation of sub legal act relating to the school uniform.

22. The Applicant also alleges that certain officials within MDE exercised pressure on her requesting her to sign a statement indicating that she would agree to remove the headscarf.

23. The Applicant further alleges that since she refused to sign the above mentioned statement she was asked not to return to school any more.

24. According to the Applicant from 15 January 2009 she did not attend the secondary public school "Kuvendi i Lezhes" in Vitia.

25. The Applicant's parents, acting as her "legal representatives" as she was a juvenile, retained counsel from CLARD on 6 April 2009.

26. On 15 April 2009 the Applicant requested that the MDE in Vitia to provide her with official notification regarding her status of the Applicant and the grounds for her dismissal from school.

27. On 28 April 2009 the MDE replied in writing to the Applicant as follows:

" I. Please be informed that the management of the Secondary School "Kuvendi i Lezhes" in Vitia has not denied and prevented the right to education for Arjeta Halimi, student in the Xth grade in this school. The school management has given a verbal warning to this student regarding wearing the veil on head and suggested to this student not to wear this veil in school otherwise she will be denied access to school.

II. This student withdrew from the teaching process without any request or submission and she did not request any communication or request from the school management or the MED, but the MED was requested to enable her right to exams for the last grade of the school year; therefore, her right to education was not violated in any way.

III. According to the Law on Primary and Secondary Education, the Secondary Education is not mandatory but optional, and Section 22, item d of Regulation No.01-013/86 on Conduct and Discipline provides for that student should wear the same uniform and this student has breached this Regulation and the school rules. This school has students of different beliefs and religions and if suchclothing is allowed, the education process in our school would be hampered.

The Constitution of the Republic of Kosovo also defines Kosovo as a secular state in terms of religious beliefs."

28. On 6 May 2009 the Applicant filed an appeal to the Education Inspection Department in Gjilan alleging violations of, inter aliai, the Constitution and applicable law. The Applicant requested that the MDE of Vitia be obliged to permit her to attend "Kuvendi i Lezhes", and that sanctions be imposed on certain persons within the MDE of Vitia for violation of Anti-Discrimination Law.

29. On 28 August 2009 the Regional Education Inspection in Gjilan replied to the appeal stating that the Applicant's allegations with regard to the violation of law in her case were ungrounded and based on a wrong interpretation of the law.

30. On 18 September 2009 the Applicant filed a lawsuit concerning administrative conflict in the Supreme Court of Kosovo. The Applicant requested the Supreme Court to act and to view the substance of the Applicant's assertions and establish the legality and compliance in actions carried out by the Municipality of Vitia. The Applicant requested the Supreme Court to cancel all actions of the Municipality which violated her rights.

31. On 19 October 2009, the Supreme Court of Kosovo declared that it did not have jurisdiction in terms of the subject matter to adjudicate the Applicant's case. The Court referred to Article 9 of then applicable Law on Administrative Conflicts.

32. According to the ruling of the Supreme Court the Applicant's case related to protection due to an unlawful action. Therefore, the Supreme Court decided to forward all case files to the District Court in Gjilan as the Court which had the appropriate jurisdiction pursuant to then applicable Law on Regular Courts.

33. On 17 November 2009, the District Court of Gjilan issued Judgment Cn.nr.24/09 granting the Applicant's claim and obligating the Municipal Education Department of

Vitia to "to grant to the claimant [i.e. the Applicant] all rights deriving from the status of a fulltime student at 'Kuvandi i Lezhes' Gymnasium in Vitia."

34. The District Court found that ". . . the respondent [Municipality of Vitia] through an unlawful action based on a verbal reasoning dismissed the claimant [the Applicant] from school because she was wearing a headscarf in her head. Respondent's claims that the issue of wearing the uniform is regulated in a precise manner . . . are inconsistent."

35. On 23 November 2009, Applicant informed the MDE in Vitia of the District Court of Gjilan's judgment Cn.nr.24/09 and requested that the judgment be complied with.

36. On 25 January 2010, the Applicant wrote to the District Court of Gjilan informing the Court that Cn.Nr.24/09 had not yet been implemented by the MDE of Vitia and requesting that the Court take measures within its jurisdiction to implement the judgment.

37. To date the Applicant has not asked the Municipal Court in Vitia to execute the judgment of the District Court of Gjilan Cn.Nr. 24/09 of 17 November 2009.

Comments of the Opposing and/or Interested Parties

38. The District Court of Gjilan in their reply submitted to the Constitutional Court on 4 May 2011, stated that it was no longer competence to act in the matter since it had decided on the issue and the competent court for the execution of the Judgment was the Municipal Court in Vitia.

39. The MDE in their reply to the Constitutional Court of 16 May 2011 objected to the substance of the Applicant's complaint and stated that the Applicant's claims do not stand and her complaint addressed to the Constitutional Court was ungrounded and without argument.

40. The Municipal Court in Vitia in their reply of 5 July 2011 confirmed that the Applicant has never submitted a proposal for the execution of the final judgment CN. No. 24/09 rendered by the District Court.

Arguments presented by Parties

41. The Applicant states she has been denied her right to continue her education. According to her, notwithstanding that in Kosovo her education rights are recognized, for two years she has not been allowed to attend school. As stated earlier the Applicant alleges that following Articles of the Constitution have been violated: Article 24 (Equality before Law), Article 38 (Freedom of Belief, Conscience and Religion) and Article 47 (Right to Education).

42. In that respect the Applicant specified that "the abovementioned articles have been violated since [she] was denied the right to continue [her] education in accordance with [her] abilities, because the public institution denied [her] the right to attend the teaching process while wearing an Islamic headscarf, even though this act is called by the Constitution - discrimination on grounds of religion."

43. Finally the Applicant argues that the MDE in Vitia failed to implement the judgment of the District Court in Gjilan, which judgment is mandatory, and consequently the denial of her right to continue education was still persisting. She argues that there is no other

legal remedy she can pursue in order to ensure enforcement of the District Court Judgment.

44. The District Court essentially objects to the admissibility of the Referral, alleging that the Applicant has to exhaust available remedy, i.e. to request the execution of the judgment in the Municipal Court in Vitia.

45. MDA argues that the Applicant's Referral submitted to the Constitutional Court is ungrounded and without arguments. By this argument, MDE essentially alleges that the Applicant's referral is manifestly-ill-founded.

46. In support of their arguments, MDA in their reply to the Constitutional Court stated as follows: "We would like to inform you that nobody from the school management or MDE has banned and denied her right to education, but they have been issued verbal warnings by Management of "Kuvendi i Lezhes" Secondary school that they are prohibited to wear the black scarf at school. Following this warning, the abovementioned student left school - and school management issued no disciplinary measure against her and hoped that this former student would continue her classes."

47. MDE further states that "the school management and MDE only implemented the Regulation on Conduct and Discipline of the Municipal Assembly of Vitia NO.01-013/866, Article 22, para 9, which stipulates that the students' uniform shall be the same, as well as Administrative Instruction of MEST No 7/2009, Article 4, para 13, which stipulates that the wearing of religious uniforms is prohibited at school."

48. MDE in their written submission again emphasizes that "MDE has in no way denied this former student her right to education....it is pressure against the school in order to impair the education process and her purpose was to impose to MDE and the school such a wearing, since the students of different religions, Muslim and Catholics, attend classes of this school,...and that the wearing of the black scarf at school is in contradiction to applicable norms and it would open the possibility of wearing various uniforms and clothing from students of different religions, and it would be a huge risk in damaging the inter- religious relations in our municipality."

Relevant legal background

49. A number of legal provisions have been quoted by the Parties in their written submissions.

50. The Court notes that Section 6 of the 2002 Law on Primary and Secondary Education in Kosovo specifies that organisation of education programme in Kosovo shall consist of pre-primary, primary and secondary education. As such the following educational levels have been organized:

    (a) Level 0: Pre-primary Education (normally ages 3 to 6);

    (b) Level 1: Primary Education (first stage of basic education) for 5 years (normally ages 6 to 12);

    (c) Level 2: Lower Secondary education (second stage of basic education) for 4 years (normally ages 12 to 15); and

    (d) Level 3: Upper Secondary education for 3 years or 4 years depending on the curriculum settled by MEST (normally ages 15 to 19).

51. Section 8 of the same Law prescribes that "access to Level 3 (upper secondary education) shall be open to pupils on a voluntary basis".

52. Furthermore the MEST Code of Good Conduct and Disciplinary Measures for Students of Secondary Higher Schools, in Article 3 prescribes obligations of the student, inter alia, "to keep the school uniform during learning process and professional practice, if the school is determined that the student to have uniform."

53. Article 6 of the same Code describes disciplinary educational measures such as:

1. *verbal warning;*
2. *written warning;*
3. *temporary suspension from competition, excursions, visits, walks;*
4. *temporary suspension until 3 days;*
5. *temporary suspension until 1 month;*
6. *suspension for more than 1 (one) month.*

54. It is further prescribed that an oral warning is to be given to a student who has committed a minor violation of school rules.

55. Finally, Article 4 of the MEST Administrative instruction No 7/2009, insofar relevant reads, as follows

"Pupils are prohibited from:

...

13. wearing religious uniforms."

Assessment of the Admissibility of the Referral

56. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

57. In this connection, the Court refers to Article 113 (7) of the Constitution, which provides:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law";*

58. The admissible requirements are further elaborated in the Law (see e.g. Article 47[2] of the Law), and the Rules of Procedure.

59. Article 36 of the Rules of Procedure , insofar as it is relevant, reads as follows:

> *"Rule 36*
> ***Admissibility Criteria***
> *1. The Court may only deal with Referrals if:*
> *a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or*
> *b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or*
> *c) the Referral is not manifestly ill-founded.*

2. *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

a) *the Referral is not* prima facie *justified, or*

b) *when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*

c) *when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*

d) *when the Applicant does not sufficiently substantiate his claim";*

Admissibility criteria with regard to the non-execution of the District Court Judgment:

60. The Constitutional Court notes that the Applicant in her referral stated there is no other legal remedy she can pursue in order to ensure the execution of the District Court Judgment.

61. The District Court on the other hand refers to the admissibility requirements of the Referral, alleging that the Applicant has to exhaust available remedy, i.e. to request execution of its judgment from the Municipal Court in Vitia.

62. The Constitutional Court recalls that the Municipal Court in Vitia confirmed that the Applicant has never submitted a proposal for the execution of the final judgment CN. No. 24/09 rendered by the District Court

63. With regard to requirement of exhaustion of remedies the Court refers to its case -law (see. e.g. Judgment of the Court in case No 06/10 Valon Bislimi against Ministry of Internal Affairs, Kosovo Judicial Council And Ministry of Justice of 30 October 2010) as follows:

> *"50.The Constitutional Court recalls that a similar admissibility criterion is prescribed by Article 35 of the European Convention on Human Rights (the "Convention").*
>
> *51. According to the well established jurisprudence of the European Court on Human Rights, the Applicants are only required to exhaust domestic remedies that are available and effective. Furthermore, this rule must be applied with some degree of flexibility and without excessive formalism. The European Court on Human Rights further recognized that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is the essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the country concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants ...*

64. The Constitutional Court notes that at the time of the alleged violation, the 1977 Law on Administrative Disputes (Official Gazette No 4/77 SFRJ) was applicable. Chapter VI of that Law entitled "Special Provisions" defined this remedy and its enforcement.

65. The Constitutional Court also notes that at the moment when the Applicant submitted the referral and when the Court communicated the Referral to the other parties in the proceedings the Law on Administrative Dispute was not any more applicable. Indeed,

on 16 September 2010 the Assembly of Republic of Kosovo approved a new Law on Administrative Conflicts.

66. The Court further notes that executive procedure is prescribed by the Law on Executive Procedure from 2008. This Law prescribes the rules for executive court proceedings unless otherwise prescribed.

67. According to the Applicant's allegation and the documents in the case file it is clear that the Applicant has never submitted a request to the Municipal Court of Vitina for enforcement of the judgment of the District Court of 17 November 2009.

68. Therefore the Court finds the Court notes that the Applicant has not exhausted "all effective remedies that are available under the law" contrary to the Rule 36 1(a) of the Rules of Procedure.

Admissible criteria with regard to the Applicant's other complaints:

69. The Court recalls that the Applicant complains that she has been denied of her right to continue her education. According to her notwithstanding that in Kosovo her education rights are recognized, for two years she is not allowed to attend the teaching process. As it was stated earlier the Applicant alleges that following Articles of the Constitution have been violated: Article 24 (Equality before Law), Article 38 (Freedom of Belief, Conscience and Religion) and Article 47 (Right to Education). In that respect the Applicant specified that "the abovementioned articles have been violated since [she] was denied the right to continue [her] education in accordance with [her] abilities, because the public institution denied [her] the right to attend the teaching process while wearing an Islamic headscarf, even though this act is called by Constitution discrimination on grounds of religion."

70. The Court also notes, recalls and this is undisputed between Parties that the Applicant has never received any decision from the school she was attending (nor MDE) that she was banned from the school or suspended from continuing her education.

71. Moreover, the Applicant's petition was confirmed by the District Court Judgment of 17 November 2009.

72. Consequently, the Court is not convinced with the Applicant's argument that she has not been permitted to attend the school "Kuvendi i Lezhes". The Court notes that the Applicant stopped attending her school on 15 January 2009 based on a "verbal warning." Only three months after that, on 15 April 2009, she approached a relevant state body, MDE. Seven months later the Applicant received a Judgment that she complains has not been executed.

73. According to the Applicant's allegation and the documents in the case file, it seems that the Applicant has never tried to attend school after 15 January 2009.

74. The Court therefore notes that the Applicant "does not sufficiently substantiate her claim" contrary to Rule 36.1(d) of its Rules of Procedure.

75. For the same reasons that Court is of the view that that Applicant did not *prima facie* justify her referral (see above quoted Rule 36 [2]a). Indeed the facts of the case that are presented by the Applicant to the Constitutional Court "do not in any way justify the allegation of a violation of constitutional rights" contrary to Rule 36.2 (b) and (c) of the Rules.

76. In this respect, the Court is obliged, pursuant to Article 53 of the Constitution, to interpret human rights and fundamental freedoms consistent with the court decisions of the European Court on Human Rights (ECtHR). The Constitutional Court recalls the Judgment of the ECtHR, in the case of Dogru v. France (Application no 27058/05) of 4 December 2008 as follows:

> "61. *The Court reiterates that while religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. It does not, however, protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in a manner governed by a religious belief (see Leyla Sahin, cited above, §§ 105 and 212).*
>
> *62. The Court notes next that in a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see Leyla Sahin, cited above, § 106). It has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs and that it requires the State to ensure mutual tolerance between opposing groups (see Leyla Sahin, cited above, § 107). Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals which are justified in order to maintain and promote the ideals and values of a democratic society.*
>
> *63. Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, in respect of which the approaches taken in Europe are diverse. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order (see Leyla Sahin, cited above, §§ 108-09).*
>
> *64. The Court also reiterates that the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety (see Leyla Sahin, cited above, § 111, and Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 92, ECHR 2003-II). Accordingly, compelling a motorcyclist, who was a practising Sikh wearing a turban, to wear a helmet was a safety measure and any resulting interference with the exercise of his freedom of religion was justified on grounds of the protection of health (see X v. the United Kingdom, no. 7992/77, Commission decision of 12 July 1978, Decisions and Reports (DR) 14, p. 234). Likewise, security checks enforced at airports (see Phull v. France (dec.), no. 35753/03, ECHR 2005-I, 11 January 2005) or at the entrance to consulates (see El Morsli v. France (dec.),*

no. 15585/06, 4 March 2008, ECHR 2008-...) and consisting in ordering the removal of a turban or a veil in order to submit to such checks do not constitute disproportionate interferences with the exercise of the right to religious freedom. Nor does the regulation of student dress or the refusal to provide administrative services, such as issuing a diploma, constitute a disproportionate interference where the individual concerned fails to comply with the rules (in the case in point requiring a student wearing the Islamic headscarf to appear with her head uncovered on a passport photo), regard being had to the requirements of the secular university system (see Karaduman v. Turkey, 16278/90, Commission decision of 3 May 1993, DR 74, p. 93). In the case of Dahlab (cited above), the Court held that prohibiting a teacher from wearing her headscarf while teaching a class of young children was "necessary in a democratic society", having regard, among other things, to the fact that secularism, which presupposes denominational neutrality in schools, is a principle laid down in the Constitution of the canton of Geneva. The Court stressed the "powerful external symbol" represented by wearing the headscarf and also considered the proselytising effect that it might have seeing that it appeared to be imposed on women by a religious precept which was hard to square with the principle of gender equality.

65. In the cases of Leyla Sahin and Köse and Others in particular, the Court examined complaints similar to the one in the present case and concluded that there had been no appearance of a violation of Article 9 having regard, among other things, to the principle of secularism.

66. In the case of Leyla Sahin, *after analysing the Turkish context, the Court found that the Republic had been founded on the principle that the State should be secular, which had acquired constitutional value; that the constitutional system attached prime importance to the protection of women's rights; that the majority of the population of the country were Muslims; and that for those who favoured secularism the Islamic headscarf had become the symbol of a political Islam exercising a growing influence. It thus held that secularism was undoubtedly one of the fundamental principles of the State which were in harmony with the rule of law and respect for human rights and democracy. The Court thus noted that secularism in Turkey was the guarantor of democratic values and the principle that freedom of religion is inviolable and the principle that citizens are equal, that it also served to protect the individual not only against arbitrary interference by the State but also from external pressure from extremist movements and that freedom to manifest one's religion could be restricted in order to defend those values. It concluded that this notion of secularism was consistent with the values underpinning the Convention. Upholding that system could be considered necessary to protect the democratic system in Turkey (see* Leyla Sahin, *cited above, § 114).*

67. In the case of Köse and Others *(cited above), the Court also considered that the principles of secularism and neutrality at school and respect for the principle of pluralism were clear and entirely legitimate grounds justifying refusing pupils wearing the headscarf admission to classes when they refused – despite the relevant rules – to remove the Islamic headscarf while on the school premises.*

68. Applying those principles and the relevant case-law to the present case, the Court observes that the domestic authorities justified the ban on wearing the headscarf during physical education classes on grounds of compliance with the school rules on health, safety and assiduity which were applicable to all pupils

without distinction. The courts also observed that, by refusing to remove her headscarf, the applicant had overstepped the limits on the right to express and manifest religious beliefs on the school premises.

69. The Court also observes, more generally, that the purpose of that restriction on manifesting a religious conviction was to adhere to the requirements of secularism in state schools, as interpreted by the Conseil d'Etat *in its opinion of 27 November 1989 and its subsequent case-law and by the various ministerial circulars issued on the subject.*

70. The Court next notes that it transpires from these various sources that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have.

71. In that connection the Court refers to its earlier judgments in which it held that it was for the national authorities, in the exercise of their margin of appreciation, to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion (see Köse and Others, cited above). In the Court's view, that concern does indeed appear to have been answered by the French secular model.

*72. The Court also notes that in France, as in Turkey or Switzerland, secularism is a constitutional principle, and a founding principle of the Republic, to which the entire population adheres and the protection of which appears to be of prime importance, in particular in schools. The Court reiterates that an attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one's religion and will not enjoy the protection of Article 9 of the Convention (*see Refah Partisi (Prosperity Party) and Others, *cited above, § 93). Having regard to the margin of appreciation which must be left to the member States with regard to the establishment of the delicate relations between the Churches and the State, religious freedom thus recognised and restricted by the requirements of secularism appears legitimate in the light of the values underpinning the Convention."*

77. The Court recalls that Article 8 of the Constitution defines the Republic of Kosovo as a secular state. It reads as follows:

"The Republic of Kosovo is a secular state and is neutral in matters of religious beliefs."

78. Accordingly, based on the all above reasons the Applicant's referral should be declared as inadmissible pursuant to Rule 36 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47 of the Law, by majority:

DECIDES

I. TO REJECT the Referral as Inadmissible pursuant to Rule 36 of the Rules of Procedure.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr. Iliriana Islami Prof. Dr. Enver Hasani