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**Turkey Submission to the UN Universal Periodic Review  
8<sup>th</sup> session of the UPR Working Group (3 - 14 May 2010).**

***A. Executive Summary***

1. This report is limited to the discrimination that women who wear headscarves are subjected to—which is an important issue in terms of spread and content of the human rights violations in Turkey. Women who wear headscarves are banned from entering some public buildings and offices—universities being the most prevalent of such places. A woman who chooses to wear a scarf has no chance to get an education in private or public schools at any level of education. There is discrimination at work place, in the political arena, and in daily life. There is no question that, with all its consequences, the discrimination that women with headscarves are subjected to is a gross and systematic violation of their rights. Such discriminative treatment towards women inhibits the practice of basic rights that are guaranteed by the UN agreements.

2. In the following text, Section B provides background information of about the issue. Section C describes the practice of the agreement in the domestic laws and the ineffectiveness of the legal means in practice towards the violation of nondiscrimination principle. Section D delves on the freedom of thought, conscience and belief whereas Section E concentrates on political rights. In Section F, AKDER makes a number of recommendations regarding freedom of expression and religion for the government to take action.

***B. Background***

3. The basic principle in the practice of human rights is the freedom of the individual. For a person to cover or uncover his or her hair does not inhibit or limit the practice of freedom of others. In a just and democratic society, no law can be constituted regarding whether a woman should wear a scarf or not. In Turkey, the international human rights were signed by the government, and there is no law that prohibits wearing a scarf. No compulsion to be imposed upon women either to cover or to uncover their heads is acceptable in a democratic society, and indeed, no Turkish laws explicitly ban the use of the headscarf. Yet the state ideology has supported/imposed the image of the “modern-looking woman with uncovered head,” over and against the “traditional woman with a headscarf” since the very beginning of the republic era.

4. Women with scarves increased in number in the educational arena and became more apparent in urban areas in 1980s. The military administration imposed bans on women who wore scarves. Thus women were alienated from the society. During the period of democratic administrations that came to power after the military administration, women with scarves had

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\* Women's Rights Organization against Discrimination (AKDER ) is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

the opportunity to resume higher education and to hold positions in public offices.<sup>1</sup> During more politically liberal periods, women wearing the headscarf had a greater chance of entering higher education and finding employment in the public sphere.

5. There was “the post-modern” military intervention in 1997 which imposed pressure on women and led to social and political consequences. With the intervention, wearing the headscarf, a religious, social and cultural phenomenon, was banned in government offices and universities. As a result of the ban, more than one-hundred thousand students and ten thousand civil workers were forced to give up their education or positions. In the year 2002, “no scarf” rule was imposed for the university entrance exam. After that year, the gates of the universities are closed to women who choose to wear headscarves. Despite the majority of the public opinion against the ban, no positive developments have taken place within the last ten years.

6. As of year 2009, except for few schools that do not discriminate against the women who wear headscarves, it is not possible for a woman with a headscarf to enter the premises of higher education institutions regardless of her status.<sup>2</sup> **The Higher Education Council(YÖK), which controls all universities in Turkey, has issued circulars banning the wearing of wigs, berets and hats which some students used in order to avoid the ban.**<sup>3</sup>

7. The practices practically prevented women with headscarves from working for public offices and participating in political activities. This discrimination has been carried out by various offices of the state and supported by the military statements and court verdicts. This made the discrimination occur commonly. For instance, in October 2009, a Municipality in Denizli province denied issuing the marriage license for a woman who had submitted a headscarved photograph.<sup>4</sup> Likewise, a doctor refused to examine a 69 year-old female patient claiming that she did not look like the head-scarved photograph on the health insurance document.<sup>5</sup>

8. It is clear that Republic of Turkey fails the requirement of provisions for women to benefit from economic and social rights and opportunities. It also overlooks the recommendations by international organizations. The Committee requested the State party to monitor and assess the impact of the ban on wearing headscarves and to compile information on the number of women who had been excluded from schools and universities because of the ban.<sup>6</sup> CEDAW has made this request in the 32<sup>nd</sup> session, but Turkey did not conduct any statistical study exploring this issue. It is not even known how many students were wearing the headscarf when the ban began to be implemented in higher education in 1998 or how many of them left school because of the ban. However, considering that a single human rights organization

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<sup>1</sup> Supplementary Article 17 of the Higher Education Law states: “[Choice of] dress in higher education institutions is free, provided that that no current laws are infringed.” Official Gazette 28 October 1990, No: 20679. This provision was challenged at the Constitutional Court, but the Court ruled that it did not contravene the Constitution, and did not strike out the provision. The Court’s justification includes an interpretation that the headscarf cannot be included under freedom of dress, but the article of the law that provides this freedom is still on the statute book.” Therefore, from the time the law was put in place in 1991 up to the 1997 post-modern coup, students in higher education institutions were able to experience freedom in matters of dress as intended by the legislature, and students who wore the headscarf were not subject to discrimination. There has never been any incident that would justify the ban of the headscarf.

<sup>2</sup> YÖK Circular, No:B.30.O.Hkm.06.01.001-3699/20644, T.15.09. 2000.

<sup>3</sup> YÖK Circular, No: B.30.2.MAR.0.00.00.01/2959, 27 March 2002.

<sup>4</sup> “Boneli geline nikah yok,” *Zaman*, 6 October 2009.

<sup>5</sup> “Ninesi yaşındaki hastayı 'başörtülü' diye muayene etmedi,” *Zaman*, 12 October 2009.

<sup>6</sup> Committee on the Elimination of Discrimination against Women, 10-28 January 2005, Para.34.

received 26,669 applications about the ban in 1998 alone,<sup>7</sup> the number of women obliged to leave education between 1998 and 2009 must be in the tens of thousands. The State ignored the recommendation in the 2008 Report that was sent to CEDAW.<sup>8</sup>

9. The practice of the social and economic rights depends on the international cooperation. Hence, international organizations must recognize this discrimination against head-scarved women and take precautions. Overlooking this discrimination has allowed the discrimination to be widespread and dependent upon the personal judgment of the administrators.<sup>9</sup> This is not compatible with international human rights standards.

### ***C. Application of the Agreement to the Domestic Laws and the ineffectiveness of the legal means in practice towards the violation of nondiscrimination principle***

10. Surveys indicate that 62% of women in Turkey cover their heads.<sup>10</sup> In practice, it is not possible for these women to receive education, work in public offices, or participate in political activities. With this fact, the Republic of Turkey violates the first section of the second article of the The International Covenant on Civil and Political Rights which states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” States are responsible for establishing legal mechanisms which protect women’s rights on a basis of equality with men, and effectively to protect women against discrimination through the judicial process and by means of other public institutions and policies. But in Turkey the discriminative treatment to which women with headscarf are subjected to is actually inflicted by state institutions and the organs of justice.

11. In Turkey, individuals can take administrations to the court. Yet there is no practical validity of legal procedures for women with headscarves when it comes to practicing their rights granted by the Agreement. Courts deem the discriminative practices inflicted on women with headscarves to be lawful simply on the grounds that wearing a headscarf is contrary to contemporary forms of dress and secularism – despite the fact that there is no actual law against the headscarf.<sup>11</sup>

12. There is no mechanism or legal procedure such women can pursue to get justice in Turkey. It is ironic that there are even judges in courts who are subjected to disciplinary investigations just because their spouses wear headscarves.<sup>12</sup>

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<sup>7</sup> The number of women civil servants taken from their post, sacked or transferred was 1,052; the number of women subjected to investigation was 7,126 (Report on Human Rights Violations in Turkey in 1998, MAZLUMDER Istanbul Branch)

<sup>8</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N08/617/58/PDF/N0861758.pdf?OpenElement>

<sup>9</sup> Being forced to uncover the hair before entering school buildings or public offices leads to psychological traumas. Such traumas require professional treatments. As a matter of fact, 9.2 % of the participants of a study indicated that they had to receive medication as a part of the psychological treatment after being subjected to violation of rights.” <http://www.hazargrubu.org/panel/BasortuluGercek1-2007.pdf>

<sup>10</sup> “Değişen Türkiye’de Din, Toplum ve Siyaset,” TESEV, ÇARKOĞLU/TOPRAK, 2006:58, [http://www.tesev.org.tr/etkinlik/Final%20Rapordin\\_toplum.pdf](http://www.tesev.org.tr/etkinlik/Final%20Rapordin_toplum.pdf)

<sup>11</sup> The general comment of the Constitution Court regarding the matter is as follows: “Clothing is a tool that reflects the personality. The dress styles that contradict the modern views and the prediction of reform laws are not acceptable even if they are required by religious beliefs.” (E:1989/1, K:1989/2 , T:07.03.1989)

<sup>12</sup> T. 03. 10. 2000, Adalet Başmüfettişliği, N:152 ve 149. Savunma istem yazısı.

13. As it was predicted by the Human Rights Committee General Comment Number 31, the State party represents all branches of administration including the judicial system and courts.<sup>13</sup> When the private persons or establishments violate the rights stated in the Covenant and these persons or establishments are protected by the State, the State is held responsible for such violations. Since the State in Turkey fails to prevent such discriminations, punish the discriminators, establish appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic and carry out necessary measures to eliminate them, there is such a widespread violation of rights of women with head scarves.

14. The states in undersigned countries have the responsibility to take the responsible parties to the court of the law for the violations.<sup>14</sup> Turkey, too, must carry out its responsibilities and fight with the discrimination effectively.

#### ***D. Freedom of thought, conscience, and religion.***

15. States must respect all religious, political and other opinions and views without discrimination and protect the rights of individuals. The beneficiaries of the rights recognized by the Covenant are individuals. The freedom of religion and conscience cannot be actualized by only protecting the beliefs and conscientious judgments of individuals; the freedom of religion and conscience includes the practice of the beliefs in personal and social life, stating them and displaying them in public. The presence of such freedom means individuals can practice their beliefs and they are not treated differently due to their practices. Applications restricting individuals from accessing education, medical care, or employment are contrary to Article 18 (2) of the ICCPR which states: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

16. The headscarf, as an expression of religion and conscience, should be respected as respect for fundamental human rights and freedom requires. The covering of the head and neck is a manifestation of the practice of religion within the context of freedom of religion and belief.<sup>15</sup>

17. In fact the UN Human Rights Committee interprets the freedom of religion to include wearing special clothes and headcoverings: “The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.”<sup>16</sup> In this interpretation dated 20 July 1993, wearing special religious hats or scarves is considered as part of religious life which shall be protected. Limiting the right to education on grounds of clothing and interfering with expressions of religious belief are violation of the rights.<sup>17</sup>

18. The state has the responsibility to provide respect for the beliefs and to take precautions for the individuals to practice the freedom of belief. In Turkey while all dress types are allowed, the head-covering scarf is banned.

#### ***E. Freedom of political rights***

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<sup>13</sup> Human Rights Committee General Comment number 31, 29.03.2004, parag. 4.

<sup>14</sup> Human Rights Committee General Comment number 31, 29.03.2004, parag. 18.

<sup>15</sup> Memorandum to the Turkish Government on Human Rights Watch’s Concerns with Regard to Academic Freedom in Higher Education and Access to Higher Education for Women who Wear the Headscarf, <http://www.hrw.org/background/eca/turkey/2004>

<sup>16</sup> Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993).

<sup>17</sup> UN HRC, AUTHOR v Uzbekistan, Communication No. 931/2000, U.N. Doc. CCPR/C/82/D/931/2000.

19. The Turkish Constitution states the following: “Every Turkish citizen has the right to be in the public service. For the employment in public service, no discrimination is made other than the qualifications that the job requires.” (Article 70) Despite this article of the Constitution, there is no way for a woman who wears a headscarf to take part in any public service. After the headscarf was completely banned in public offices in 1982 until 2002, approximately 5,000 women was removed from their jobs while almost 10,000 women were forced to resign from their jobs. Women with headscarves are prevented from working at public offices as well as from working as attorney in law. They face serious discriminatory practices that prevent or limit their equal access to employment.

20. The same discriminatory treatment occurs when it comes to right to elect and to be elected for public office. A woman with a headscarf can vote only; she cannot take part in political life any further. A female mayor who was elected in 2009 was obliged to wear a wig.<sup>18</sup> Some female city council members were compelled to resign due to the headscarves they wear.<sup>19</sup> The Higher Election Committee issued a statement that headscarves shall not be worn by people who are on duty at polling stations.<sup>20</sup>

#### ***F. Recommendation:***

21. The discriminative treatment of women who wear headscarves violates the UN Human Rights Covenant. The report we submit for evaluation proves that Republic of Turkey fails to fulfill its obligations in protecting human rights for women. Turkey must modify its domestic regulations to comply with the statements of the UN Human Rights Committee.

22. The Women’s Rights Organization against Discrimination (AKDER) recommends that the negative discrimination against women who wear the headscarf in Turkey should be ended. The State party must take precautions to promote and protect human rights and to end the violations.<sup>21</sup>

23. The State party must reinforce its legislative framework and institutional mechanisms to exclude all discriminatory practices that prevent equal access to employment for all persons.

24. The State party must stop imposing dress styles that are not required by the profession itself in the workplace. The headscarf ban on public sector workers, government employees, and elected representatives should be lifted.

25. The State party must enact and enforce laws to remove any kind of discrimination against headscarved women in the workplace. It must also take effective measures against individuals who discriminate against women who wear scarves.

26. Court officials, judges and lawyers need to be trained in effective anti-discrimination practices that ensure that the spirit of anti-discrimination is consistent in judgments and cases, and that women are not excluded from work for their choice of dress.

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<sup>18</sup> Antep’te türbanlı belediye başkanı çareyi peruk takmakta buldu, *Showhaber*, 4 April 2009

<sup>19</sup> AKP’li Zeliha Peşte, türbanını çıkarmayı kabul etmeyip istifa etti, *Showhaber*, 08 May 2009.

<sup>20</sup> YSK, Circular no: 2009/8, 19 March 2009.

<sup>21</sup> The International Covenant on Civil and Political Rights, parag. 17.