

JURISTRAS

Secularism in Europe, As Refracted through the Prism of the European Court of Human Rights: Comparative Analysis of State-Church Relations and the State Regulation of Religion

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I. Introduction

This report compares the evolution and the current state of state-church relations and the state regulation of religion in a number of countries in light of the cases brought before, and the rulings made by, the European Court of Human Rights (ECtHR). For the purposes of our project, the countries compared primarily include France, Turkey, Greece and Bulgaria. There are also secondary references to Austria, Germany and the UK. The selection of these particular cases from among the nine countries covered by the project (which includes, in addition to the above, Romania and Italy) partly originates from the pattern of cases brought before the Court, in relation to ECHR Article 9 on the “freedom of thought, conscience and religion,” but also partly from the specific character of state-church relations in them, where issues of religious freedom, particularly with regard to those of minorities, have frequently arisen and been a subject of both political and theoretical debate. In other words, they are those countries where state regulation of religion has been a matter of interest and a focus of attention, whether or not the ECtHR has found any or systematic violation of Article 9. Indeed, in some cases we see repeated judgments of violation of Art.9, in others we see none. Although our research project has not attempted to uncover the legal culture that dominates the deliberations and reasoning of the ECtHR, an analysis of ECtHR activity in relation to these countries also gives us an indication of how the Court perceives this problematic area. On the other hand, the absence of any judgments finding a violation of Art.9 in a given country does not mean that religious minorities are not mistreated or that freedom of religion is not curtailed, at least in the eyes of the believers of a given religion in that country. Often, the Court rules in favor of such claims, yet bases its judgment on other articles of the ECHR.

The four countries covered in this report offer two groups of cases that represent the two ends of a spectrum. With regard to their formal constitutional arrangements of state-religion relations, as we see below, France and Turkey are both defined as strictly secular, while Bulgaria is secular, but its constitution still identifies the traditional religion of the Republic, and Greece appears as a religious state. This range of cases gives us an interesting field for comparative analysis. Turkey is considered to have borrowed its variant of secularism from the French *laicite*; yet while the latter nation is predominantly Catholic, the former is predominantly Muslim. As I argue below, this difference proves to be crucial insofar as the prevailing assumption in both scholarly literature and popular political culture is concerned, with regard to the compatibility of Islam with secularism. Bulgaria and Greece, on the other hand, are both Orthodox Christian, with both the Byzantine and Ottoman tradition of state regulation of religion in their history, generating some resemblance with Turkey, which too shares the same historical tradition and yet diverges from them due to its emulation of French *laicite*. This field of comparative analysis raises a number of questions, as well as some tentative answers, all of which nonetheless defy the generally unquestioned assumption that secularism is a universal and inevitable concomitant of modernization and rationalization. It is clear, as recent literature has also observed, that, leaving aside the tremendous variety globally, Europe alone contains a range of experiences that makes it difficult to speak of the existence of a uniform model of state-church relations in modern society (see Davie, 2000; Madeley and Enyedi, 2003). Yet this comparative analysis also reveals something else: Despite the well known and oft-stated principle that neither the Convention nor the Court prescribes a normative model of secularism or state-church relations, there nonetheless appears to be an implicit pattern whereby the Court prefers some models to others.

II. Constitutional Norms

Article 1 of the Constitution of France defines the Republic as “secular,” but adds that all beliefs will be respected. Nowhere else in the constitution is there mention of religion or secularism. By contrast, although seemingly similar to the French version, Turkish secularism, as described by its constitution, is further protected by the Department of Religious Affairs, creating a seeming contradiction in terms. Thus, Article 2 of the Constitution of Turkey defines the Republic as “secular,” but, in addition, Article 136 specifies that the “Department of Religious Affairs, which is within the general administration, shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism.” It appears, therefore, that secularism in Turkey is specifically intent on the state regulation of religion, rather than a “neutral” separation of state and religion (although, as we shall see, the *neutrality* of any such separation is theoretically debatable). This notion of regulation is expressed more clearly in the preamble to the Constitution: “as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics.” The state, by contrast, is obligated by the Constitution to interfere in religious affairs. Finally, Article 24, which describes the “freedom of religion and conscience,” specifies among other things that “Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools.”

The Department of Religious Affairs in Turkey, inherited with some modification from the Office of the Seyhulislam in the Ottoman Empire (see Inalcik, 1989; Gerber, 1994; Gülalp, 2005), is an instrument of the state for regulating religion. It specifies a “correct” version of Islam, declares other interpretations of Islam heretical, and only serves the religious needs of (Sunni) Muslims. The affairs of the officially recognized non-Muslim religious minorities (Orthodox Greek, Armenian, and Jewish) are regulated by their own respective communities, under the supervision of the state. There is no room, however, for many of the basic needs of the adherents of other (non-recognized) beliefs – such as cemeteries, places for worship, and so on. These groups include, for example, Assyrians, Baha’is, Jehovah’s Witnesses, and others.

According to Alfred Stepan (2000), a basic condition for democracy is what he calls the “twin tolerations” between state and religion, rather than simply their separation, which might very well be hostile. For him, while the French model of secularism is as an instance of the twin tolerations, the Turkish model clearly diverges from it. He observes: “Leading Western scholars have ... [suggested] that the policies promoted by Turkey’s founder Kemal Ataturk were modeled on French secularism. In fact, however, the Ataturk tradition has been directed toward controlling religious expression so that it conforms with state goals.” (pp.51-52). This observation is certainly accurate as far as Turkey is concerned, but our analysis below will show that the French case is more complicated than the picture drawn by Stepan. Particularly insofar as Islam is concerned, as a minority religion in France, the state does not seem to hesitate in interfering in the affairs of its believers; but also more generally, a comparative analysis of the French and Turkish cases raises questions about the theoretical conception and meaning of secularism and *laicite*.

At the other end of our spectrum there is, first, Bulgaria, where the Constitution identifies Eastern Orthodox Christianity as the traditional religion in the Republic; but, like Turkey, and unlike Greece, it also stipulates that religion shall not be used to political ends. According to

Article 13 of the Constitution of Bulgaria, “(1) The practicing of any religion shall be unrestricted; (2) Religious institutions shall be separate from the State; (3) Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria; and (4) Religious institutions and communities, and religious beliefs shall not be used to political ends.” Article 37 of the Bulgarian Constitution further specifies that “(1) The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers. (2) The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.”

In Greece, by contrast, the Constitution is proclaimed “in the name of the Holy and Consubstantial and Indivisible Trinity” and Article 3 states that “The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.” Effie Fokas (2006, pp.47-48) notes that the wording of this provision is “problematic,” insofar as it leaves some ambiguity as to whether this is a factual or normative statement, but concludes, citing Alivizatos (1999), that “in practice the faith is treated as if it ought to prevail in Greece, thus granting the Orthodox Church of Greece privileges vis-à-vis the State and over other faiths represented in the country.” The Constitution also prohibits proselytism, while at the same time it allows for the freedom of religious conscience and worship, as if proselytism and the freedom of religion could be meaningfully separated. Thus, according to Article 13 of the Constitution of Greece, “All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited.”

Based on the formal constitutional arrangements of these four cases, one may safely predict that where the state explicitly identifies with a “prevailing” or “traditional” religion, there would be a greater potential for the violation of the religious rights of persons belonging to minority religions than where the state is formally “secular” or “*laic*.” Indeed, patterns of litigation with, and rulings of violation by, the ECtHR confirm this prediction. Both claims and judgments relating to ECHR Art.9 violations are most frequent in Greece and Bulgaria, while they are nearly non-existent in France and Turkey. But, as we shall further see when examining other cases, the situation is more complex than this preliminary hypothesis allows.

III. Patterns of Litigation and Violation

III.1. Greece and Bulgaria

Greece has been found in violation of Art.9 numerous times. In the words of Anagnostou and Psychogiopoulou (2008), “judgments against Greece have disclosed a variety of restrictions that operate systematically or incidentally upon freedom of religion, expression and association of minority and non-majoritarian individuals.” (p.3). So, for example, after Greece legislated the right to petition the ECtHR in 1985, Jehovah’s Witnesses (JW) were the first to file a number of cases with the Court, concerning the violation of Art.9. “JWs lodged a total of ten applications in the ECtHR over the next ten years, and succeeded in persuading the Court that found infringement of Convention rights in all of those cases.” Furthermore, “From the mid-1990s, a second set of petitions in the Strasbourg Court have been brought by individuals from the Turkish Muslim and Slav-speaking communities inhabiting the north of Greece.” (pp.3-4). The authors attribute this situation, where most of the initial cases brought to Strasbourg from Greece concerned Art.9, to the “legal-political frame that confirmed the

historically established position of dominance held by the Orthodox Church of Greece (OCG) [which] disadvantaged the rights of non-Orthodox communities.” (p.5). The cases won by applicants in Strasbourg have ranged from issues concerning the national legislation that makes “proselytism a criminal offence, administrative obstacles to the creation of non-Orthodox places of worship, [to] state interference with Muslims’ religious representation...” (p.9).

A landmark case was *Kokkinakis v. Greece* (14307/88, 25 May 1993), and not only because it was the first ever individual case originating from Greece, but also as the first ever case in which the ECtHR found a violation of Art.9 more generally (p.5). The applicant, a Jehovah’s Witness, was convicted for proselytizing during a visit, together with his wife, to the wife of the cantor of the local Orthodox Church. Upon the cantor’s hearing and then informing the police about the visit, Mr. Kokkinakis was arrested, prosecuted, convicted, and his conviction upheld by the higher courts in Greece. The judgment by the ECtHR on this case was that, while “improper” methods of proselytism may be unacceptable, in this instance, the applicant was doing nothing but exercising his freedom to manifest his belief.

In a later case, *Manoussakis and Others v. Greece* (18748/91, 26 September 1996), the Court held that the applicants, convicted for turning a rented space into a place of worship for Jehovah’s Witnesses without proper authorization of the Church and government, had their Art.9 rights violated. Citing the *Kokkinakis* case, the Court noted (paragraph 44), that “As a matter of case-law, the Court has consistently left the Contracting States a certain margin of appreciation in assessing the existence and extent of the necessity of an interference, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it. The Court’s task is to determine whether the measures taken at national level were justified in principle and proportionate. In delimiting the extent of the margin of appreciation in the present case the Court must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society.”

The Court has also “accepted allegations about discrimination on account of religious beliefs,” and in one recent case, *Alexandridis v. Greece* (19516/06, 21 February 2008), “the Court received positively the applicant’s claim about breach of the negative dimension of religious freedom, namely the right not to manifest one’s religious beliefs when taking an oath of office before a domestic court.” (Anagnostou and Psychogiopoulou, 2008, p.10). In this case, the applicant was forced to reveal to the national court that he was not an Orthodox Christian, in order to take the oath of office that is a precondition for anyone to practice as a lawyer. Despite the persistence of violations, such as in this recent case, Anagnostou and Psychogiopoulou (2008) also note that “since the late 1990s, religious freedom litigation against Greece has declined dramatically.” (p.5).

What could we attribute this progress to? What role has the ECtHR played in this? It is clear, according to the authors, that, *first*, thanks to the activism of the religious minorities and their associations, as well as the activism of the liberal and reform-minded lawyers, problems have been brought to the attention of the Court through strategic litigation, and, *second*, repeated judgments against Greece have put pressure on domestic actors and institutions to make improvements in the realm of implementation. In an interesting analysis, the authors distinguish between the reform-minded elites and the conservative mass of voters in Greece (pp.29-37). While the latter prevent politicians from actually legislating reforms, the former push the administration and the judiciary in the direction of implementing ECtHR decisions.

Thus, restrictive laws may still remain in place, but the administrative and judicial practices have changed in favor of granting rights and freedoms to the non-Orthodox. In terms of the domestic balance of forces, while the OCG may retain popularity among the masses, it seems to have lost much of its prestige because of these repeated ECtHR rulings.

This paradoxical situation is perhaps best captured in the episode, during 2000-2001, that surrounded the removal of religious affiliation from government-issued identity cards, an episode which also reveals the ways in which EU membership has challenged the centrality of religion and the power of the OCG in Greece (for a detailed discussion, see Fokas, 2006, pp.51-58; on the EU impact more generally, see also Anagnostou, 2001). When, in an effort to follow both Council of Europe and European Parliament directives, the PASOK government in 2000 declared their intention to remove the indication of religious affiliation from the national identity cards of citizens, the OCG raised vehement opposition. The conflict continued publicly over much of 2001. Staging a popular campaign, the OCG was able to gather literally millions of signatures opposing this act; but the government went ahead regardless. Subsequently, cases were brought before the ECtHR by Orthodox applicants claiming the violation of their freedom of religion; but the Court rejected them (Anagnostou and Psychogiopoulou, 2008, pp.36-37). In *Sofianopoulos and Others v. Greece* (1988/02, 1997/02, 1977/02), the Court ruled on 12 December 2002 and unanimously found the applications inadmissible. Today, while proselytism may still be legally banned in Greece, the rights of religious minorities are much better respected in practice.

In Bulgaria, a number of cases have been brought to the ECtHR by minority groups and won, including for the violation of Art.9. According to Grozev, Smilov and Dorosiev (2008), these cases mostly originated from “the attempts by successive governments to keep under political control the religious activities of the second largest religious group, that of the Bulgarian Muslims, [and] the efforts of governments to stop the spread of non-traditional religious groups, like evangelicals or Jehovah’s Witnesses ...” (p.5). The authors note that while no tangible legislative reforms have resulted from these ECtHR judgments, or a real change in public perceptions, “attitudes towards minority religious groups” have somewhat improved by the end of the 1990s and “hostility towards them has significantly decreased.” (p.5).

In the case of *Hasan and Chaush v. Bulgaria* (30985/06, 26 October 2000), the ECtHR ruled that the government’s non-recognition of Mr. Hasan as the Chief Mufti of Bulgarian Muslims, although he was elected by a national conference of Muslim believers, was an interference in the affairs of a religious community and the applicants’ participation in those affairs, and thus amounted to a violation of ECHR Art.9 for the applicants concerned. Interestingly enough, Mr. Hasan’s rival in this incident, Mr. Gendzhev, who complained of meddling by the government in the election process, also took his case to Strasbourg. In *Supreme Holy Council of the Muslim Community v. Bulgaria* (39023/97, 16 December 2004), he was able to secure a verdict for the violation of Art.9 because of government interference in the internal affairs of a religious community. These cases are very similar to those of *Serif v. Greece* (38178/97, 14 December 1999) and *Agga v. Greece* (50776/99 & 52992/00, 17 October 2002), and are noteworthy in that in both cases in Bulgaria, and the similar cases in Greece, the Court rulings make explicit reference to the rights of religious communities and the violations of the rights of these individuals as members of these communities. In addition to these kinds of cases, in the more recent case of *Ivanova v. Bulgaria* (52435/99, 12 April 2007), the Court ruled that the applicant’s Art.9 rights were violated, for she had been dismissed from her managerial job in a school because of her religious belief as a member of a Christian Evangelical Group.

III.2. Normative Secularism or Court Activism?

As already indicated, the French and Turkish experiences are clearly very different from the above. While nearly no cases claiming the violation of Art.9 have been brought before the Court from France, there have been numerous such cases from Turkey, but none has been successful. This situation seems to have led to an unfounded assumption about the Court on the part of observers of the French and Turkish cases. For example, Bertossi (2006, p.19) claims that the ECtHR “normally bases its judgments on national legal traditions. Hence, the French law on *laïcité* will not be assessed against a would-be European medium appreciation of the freedom of religion, but against the French legal tradition.” Echoes of this sentiment will also be easily found among Turkish observers of, and participants in, ECtHR litigation (see Kurban, Erözden and Güralp, 2008).

Indeed, the Court itself, in *Leyla Sahin v. Turkey* (44774/98, 29 June 2004; GC, 10 November 2005), the well-known controversial case about the headscarf-wearing student who was expelled from university for violating Turkey’s constitutional principle of secularism and who applied to the ECtHR for the protection of her rights granted under Art.9, states in its judgment of 29 June 2004 (para.101): “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...” (repeated in Grand Chamber judgment, para.109).

Likewise, a more general study that surveys the case-law on Art.9 argues that the Court has “generally given States a wide margin of appreciation in determining whether or not a restriction on the manifestation of religion or belief is necessary.” (Evans, 2001, p.134). She adds this has particularly been so in relation to Art.9 cases, in comparison to the others: “While in theory there is no difference between the margin of appreciation in relation to particular Articles, State respondents in Article 9 cases tend to be given a wide margin of appreciation.” (p.143).

The above examples, however, indicate that this commonly shared assessment may not be entirely accurate, for the Court has not refrained from finding violations of Art.9 in a variety of cases in Greece and Bulgaria. It is of course true that the Court also makes reference to this tendency for granting a margin of appreciation as a matter of principle, for example, in the *Kokkinakis* case; but, as we saw above, it then quickly adds that “this margin is subject to European supervision.” What, then, might be the reasons for this divergence? As a first approximation, based on the four cases mentioned so far, one may conjecture that the Court tends to favor the French and Turkish definition of secularism (*laïcité*) and condemn those countries where the state is either defined by reference to a specific church or formally favors a specific faith, and consequently intervenes in the affairs of religious minorities.

But this interpretation is complicated by a number of factors. First of all, it is not at all possible to say that members of minority religions (particularly Muslims) are, or have been, free from discrimination in a variety of Western European countries, including France. Second, as indicated earlier, while the Turkish State is nominally secular, it does formally favor a specific faith, and yet it is mostly from adherents of that faith (i.e., Sunni Muslims) that many of the Art.9 cases have originated. Third, a comparative analysis of the French and Turkish cases further reveals significant differences in the status of Muslims in each country, despite the seemingly identical concepts of secularism (*laïcité*) in these two countries.

A closer examination of these factors also challenges Evans' (2001) broader argument that the "bodies [the ECtHR and others] responsible for protecting freedom of religion and belief under the Convention have approached their task in an incoherent and inconsistent manner" (p.2) and that "The decisions in Article 9 cases reveal a narrow and often confused concept of religious freedom." (p.200). Although the Court's rulings on Art.9 applications may at first appear "incoherent and inconsistent," this closer examination reveals an implicit (that is, unstated), but consistent, logic. Part of this logic is actually hinted at, but not pursued, by Evans herself: "the Commission and Court have, at times, been accused of being unsympathetic to the claims of those from non-Christian traditions or religions without a long history in Europe." (2001, p.125). This observation, albeit tentatively expressed by Evans, is still incomplete and does not give us the full picture. The real question is not about the appearance of new or non-traditional religions on the European continent; it has rather to do with the historically held cultural assumptions about both Islam and Eastern Christianity.

III.3. Austria, Germany and the United Kingdom

A striking example of the tendency that Evans mentions can be found in the case of *Otto-Preminger-Institut v. Austria* (13470/87, 20 September 1994). In this case, the applicant was a non-profit association based in Innsbruck, which in 1985 was scheduled to publicly show in its cinema a film that showed Jesus Christ and Mary engaged in inappropriate activities and was considered to be blasphemous by the Innsbruck diocese of the Roman Catholic Church. Upon being informed of the situation by the Church, the public prosecutor charged the director of the institute for "disparaging religious doctrines." The showing of the film was interrupted and the film seized by order of the Innsbruck Court. An appeal against the seizure order was rejected by the Court of Appeals, based on the consideration that "artistic freedom was necessarily limited by the rights of others to freedom of religion." In a later judgment, the Innsbruck Court ordered the forfeiture of the film. Further appeals by the Institute were unsuccessful. They then took their case to the ECtHR for the violation of their Art.10 rights ("freedom of expression"). The Court, however, found that there was no such violation. The most important reason that the Court advanced for this judgment was that the State had a responsibility to protect the rights of citizens guaranteed under Art.9.

This judgment is all the more remarkable in that, making this argument, the Court cited (in para.47) its ruling in the *Kokkinakis v. Greece* case and stated that "freedom of thought, conscience and religion, which is safeguarded under Article 9 of the Convention, is one of the foundations of a 'democratic society' within the meaning of the Convention" and added that in the present case the "respect for the religious feelings of believers as guaranteed in Article 9 can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration."

But, in fact, the two cases are hardly comparable. In the *Kokkinakis* case it was the State that was violating the Art.9 rights of a citizen, while in the latter case an Institute in a local town was presumably violating the Art.9 rights of the majority of the citizens of Austria. As was stated in the dissenting opinion of three judges in this case, "The Convention does not, in terms, guarantee a right to protection of religious feelings. More particularly, such a right cannot be derived from the right to freedom of religion, which in effect includes a right to express views critical of the religious opinions of others." To be fair, the judges with the dissenting opinion go on to indicate that "Nevertheless, it must be accepted that it may be 'legitimate' for the purpose of Article 10 to protect the religious feelings of certain members of society against criticism and abuse to some extent; tolerance works both ways and the democratic character of a society will be affected if violent and abusive attacks on the

reputation of a religious group are allowed.” But they point out that “The need for repressive action amounting to complete prevention of the exercise of freedom of expression can only be accepted if the behaviour concerned reaches so high a level of abuse, and comes so close to a denial of the freedom of religion of others...” Indeed, actions by states and civil society actors that would be considered offensive and oppressive for the large populations of Muslims currently living in European countries, such as the Dutch cartoons, are widespread and a frequent source of complaint, and yet taking repressive measures against them has never been a serious option.

On the other hand, where minority religions are concerned, Austria is surprisingly tolerant toward them, compared to other Western European countries, although toward immigrants it is perhaps as discriminatory as any. This tolerance originates, paradoxically, not from a basic liberalism in attitudes toward the “other,” but from the history of close state-church relations in Austria (Gresch, et.al., 2008). There is an institutional structure that allows for cooperation between the state and religious associations. Islam is a recognized religion and hence officially represented in its dealings with the state. Consequently, problems encountered elsewhere in Western Europe, such as the public visibility of the Islamic headscarf, do not exist in Austria – at least not to the same extent or in the same way. Thus, for example, “Muslim girls and women are entitled to wear the headscarf in educational institutions and public offices as well as on photos for public documents if the face is clearly identifiable...” (Gresch, et.al., p.2); but, at the same time, there are “palpable racist attitudes within the Austrian population, restrictive immigration, integration policies, and right-wing parties that systematically foster sentiments against immigrants.” (p.3). Austria, in other words, is not immune to what has been called “Islamophobia,” which reveals itself particularly in the restrictive immigration and naturalization policies at the state level and discriminatory employment policies within the private sector. Consequently, although no Art.9 cases have been brought against Austria by Muslims (and none that has been successful more generally, i.e., including other religious groups), numerous cases concerning other convention rights have originated from foreigners and immigrants and have resulted in convictions or friendly settlements (Tretter, et.al., 2007; Tretter, e.al., 2008).

Germany is similar to Austria in that the state is neither secular, as in Turkey and France, nor religious, as in Greece and (to some extent) Bulgaria. But, while the Islamic headscarf may not have encountered any legal obstacles in Austria, it certainly has in Germany. In the well-covered case of Fereshta Ludin, the Muslim school teacher of Afghani origin who was a naturalized German citizen, the administrative court of her state, Baden-Württemberg, upheld in 1998 the school’s refusal of a permanent position to her because of her demand to wear the headscarf. At around the same time, however, a German-born woman, who had converted to Islam, was also refused a teaching position because of her headscarf, but in this case a lower court in her state, Niedersachsen, ruled in her favor (Ewing, 2000; Haussler, 2001). The Afghani-born woman was able to take her case to the Federal Constitutional Court (FCC), which ruled in 2003 that her religious freedom was violated. The FCC pointed out that there was no legal basis on which she could be denied the use of the headscarf. But the FCC also added that individual states, based on their need to balance the freedom of the teachers with the interests and preferences of the students and their parents, could pass such laws restricting the use of religious symbols. The lack of a legal foundation, in other words, implied the necessity to create one. Indeed, starting with Baden-Württemberg in 2004, nearly half of the sixteen states of Germany have now passed such laws (Rottman and Ferree, 2008). It might be noted that this was the same year in which the French government passed a law banning the

headscarf in public schools. Ludin's subsequent attempt to overturn the new law in her state's administrative court was likewise unsuccessful (see McGoldrick, 2006, pp.107-119).

The confusion and ambivalence here are evident, and their cultural and political (rather than legal) origins unmistakable. As Rottman and Ferree (2008) point out, "The view that the Muslim headscarf is oppressive to women has a long history in the West, and seeing Muslim men as oppressors of Muslim women offered colonizers a way to justify their power in the name of 'liberating' Muslim women." (p.485). They add that, in the case of Germany, "Banning the headscarf as a threat to democratic values fits in the framework by which specific 'anti-democratic' forms of expression, such as the Holocaust denial or Nazi regalia, can be restricted as threatening the constitution." (p.491). In public and political debate, the headscarf legislation passed by various German states has been accused of being based on double standards, for they deliberately aim at banning the headscarf for teachers and other public servants but do not touch the Jewish kippa or the Christian cross (McGoldrick, 2006, pp.115-119).

If we leave aside the centuries old confrontation between Islam and Christianity in the shaping of the European (and more generally Western) identity (see, e.g., Pagden, 2002), accounts of the Western perception of Islam as a political threat usually link it to the events of September 11, 2001. Perhaps, a more accurate beginning date would be the end of the 1980s and beginning of 1990s that marked the end of the Cold War and the electoral rise to power of the Islamists, first in Algeria in 1991, which was interrupted violently by the Algerian military in early 1992, and then in Turkey in 1995, which was also ended by the military in early 1997, though in a milder version of intervention. While in Turkey conflicts remained on a more political level, the military's intervention in the electoral process in Algeria was met with some ambivalence and confusion by France, and other Western powers, leading to a prolonged period of bloody clashes, causing deaths in the tens of thousands and portending danger in collective consciousness around the world (Bonora-Waisman, 2000). The first (yet unsuccessful) attack on the World Trade Center in New York took place in 1993.

It is well to remember that theories about the "clash of civilizations" also began to surface in this historical period and context (Lewis, 1990; Huntington, 1993). One might even consider the events that ensued in the following decades a form of "self-fulfilling prophecy" (Gülalp, 2007; see also Navaro-Yahsin, 2002, Ch.1). For, by the mid-1990s, NATO and other formal organizations representing the Western alliance had declared "Islamic fundamentalism" as the new security threat that had taken the place of "communism." Turkey, as a long-standing member of these alliances, despite its Muslim majority population, was a "centerpiece" in the eyes of the leaders of the Western world due to its *laicite*. For the Turkish government at the time, this was considered to be the most effective argument to convince the EU to agree to Turkey's membership (for details, see Gülalp, 1996). Hence it is impossible to understand the symbolic significance of the headscarf and the fear that it generates without understanding the political and historical context in which Islamic fundamentalism was identified and treated in France and Turkey.

Finally, we may look at the UK, which would constitute a test case for the assessment of the preliminary proposition stated earlier, that is, that the ECtHR is more likely to condemn a state for the violation of Art.9 if that state favors a particular religion. The UK does not have a written constitution, but may be considered a religious state, perhaps even more so than both Greece and Bulgaria, for the head of the state (i.e. the monarch) is also the head of the Church of England, appoints archbishops, bishops, and deans of cathedrals, many of whom in turn

serve in the Parliament. However, although many cases were filed by a number of religious minorities, including Druids, Sikhs, and Muslims, none has been successful (for the variety of these cases, see Evans, 2001, pp.134-135). Of course, it may very well be the case that the UK, despite the official position of the Anglican Church, is more liberal with regard religious freedom than the other countries with a state church. It may also be the case that those who took their cases to the ECtHR filed weak and unconvincing applications.

On the other hand, one might also point out, first, that there is evidence throughout Europe that many potentially successful cases on a variety of issues are not taken to the Court, for fear of prejudice and of foregone negative outcomes (which may or may not be justified); and, second, that it is impossible to claim that British laws and public and political culture are even-handed with regard to Muslim affairs. It was only in 1997 that the famous Runnymede Trust report was published, coining the term “Islamophobia,” generally defined as unfounded hostility toward Islam and therefore fear or dislike of all or most Muslims, and advising the government to take action to counter discrimination (Runnymede Trust, 1997). The Human Rights Act, which made the provisions of the European Convention on Human Rights domestic law was passed in 1998. But the anti-blasphemy law that protected Christianity, though not other religions, was not repealed until very recently. This issue was publicly debated particularly during the Rushdie affair, when the Muslim community demanded protection equal to the Christian via the extension of the blasphemy law to also include Islam (Parekh, 2000, pp.257-261). The government wisely chose a different path and abolished the blasphemy laws altogether; but it only did so in May 2008.

In this context, we may cite the case of *Wingrove v. the United Kingdom* (17419/90; 25 November 1996), which was very similar to *Otto-Preminger-Institut v. Austria*, discussed earlier. Mr. Wingrove had made a video that depicted St. Teresa in sexual ecstasy with the body of Christ, and the British Board of Film Classification refused to grant a certificate to it. After pursuing a domestic legal struggle unsuccessfully, Mr. Wingrove filed a complaint with the ECtHR for the violation of his Art.10 rights (freedom of expression). Among other arguments in defense, the government referred to the case of *Otto-Preminger-Institut*, where the European Court had weighed the Art.9 rights of the (religious?) people against the Art.10 rights of the individual (see above). Receiving this line of defense favorably (see paragraphs 46-48, 52), the Court concluded that no violation had taken place.

It appears, therefore, that one cannot explain the variation in the Court’s pattern of finding violation of Art.9 on the basis of whether the state is neutral with regard to religion or whether there is a state church or the state has a religious identity. Turkey, as already indicated, does interfere in the affairs of the faithful and is nowhere near the norm of “religious neutrality” (however defined). Yet, Turkey has never been convicted for violation of Art.9. This calls for an alternative explanation, which, I suggest, may be found in the role that such interference is believed to play in the case of a Muslim people. In other words, it appears that *laicite*, which has evolved into a non-negotiable national identity in both France and Turkey in recent years, is considered to be a *necessary* state policy in the face of a perceived Islamist threat. Although Turkey is supposed to have originally borrowed the notion of “*laicite*” from France, today one can observe a two-way relationship between the two nations. In fact, France has begun to rely on the Turkish experience to bolster its own *laicite*.

More critically for our purposes, however, the ECtHR has played a central role in this process. This role, moreover, is not limited to France, which shares with Turkey the presumably same model of *laicite*. In the non-secular UK, too, particularly with regard to the

question of regulating Islamic dress in schools and public service, the *Leyla Sahin* case has become a frequent point of reference (McGoldrick, 2006, pp.191-192). The traditional tolerance toward the headscarf in schools has begun to give way to expressions of anxiety since September 11, 2001 and especially after the bombings in London on July 7, 2005 (Marshall, 2008, p.634). It seems that the Turkish model of dealing with Islam by driving it out of the public sphere has begun to acquire normative status in Europe.

IV. Laicite and the Fear of Islam

IV.1. Turkey

IV.1.A. Islamic Headscarf

As indicated above, the struggle between headscarf wearing schoolgirls (and public servants) and their respective states first began in Turkey and France, and subsequently spread to the rest of the continent, in the same time frame as the Cold War wound down and “Islamism” rose to take the place of “communism” as the new security threat. The so-called “*l’affaire du foulard*” broke out in France at the end of 1989, escalated throughout the 1990s and finally led to the passing of the controversial law in 2004 that bans the use of the Islamic headscarf in French schools. In Turkey, the ban was already in place at that time. Unlike the French ban, however, the Turkish ban also included students at the university level, although it was not consistently enforced. Yet the problem heated up in the same time frame as indicated above. The first complaint on this matter from Turkey came to the European Commission on Human Rights in 1990 and was concluded in 1993 with a decision of inadmissibility (*Karaduman v. Turkey*). Throughout this period in Turkey, France and elsewhere, the struggles over the headscarf have been perceived and portrayed by the winning side as a symbolic war between the two clashing civilizations: Islamic fundamentalism versus Western liberalism (Bowen, 2004; Gokariksel and Mitchell, 2005; Laborde, 2005; Wiltse, 2008). But there are problems with this perception, because the losing side, i.e., schoolgirls with the headscarf, also argue their case in terms of liberal values and yet find that their arguments remain unheard.

In *Karaduman v. Turkey* (16278/90, 3 May 1993), the applicant was a female student who had graduated from university but could not receive her degree certificate because of her photo wearing a headscarf. The European Commission on Human Rights declared the application inadmissible, and the case could not even find its way into the Court. The Commission’s decision cited the prevalence of “certain religious fundamentalist currents,” implying that the applicant’s use of the headscarf was related to them, and stated that having chosen to pursue an education in a “secular university,” the applicant had agreed to submit to its rules. The Commission added that the degree certificate was not the place to manifest one’s religious belief and concluded that no Art.9 rights were violated (for further details and discussion, see McGoldrick, 2006, pp.137-140 and Vakulenko, 2007, pp.187-188).

In a critique of the Commission’s reasoning, Vakulenko (2007) notes the conflation of the perceived political threat with the applicant’s headscarf, which may very well have been due to her personal choice, but which in any case should be left out of the judgment. She also points to the lack of a “discussion of whether the applicant had a realistic option of obtaining the same kind of education at a private university” (p.187). In fact, for the applicant, there was no alternative to what was described as “secular university” and to whose rules students were forced to submit. All universities in Turkey, public or private, are bound by the same rules, including those that regulate headscarves. Moreover, although in the *Karaduman* case it is not clear whether or not the student was wearing a headscarf during her university education,

since the legal matter pertained to the issuance of the degree certificate after graduation, one of the points raised by the Commission in rejecting the admissibility of the application was that her manifestation of her religion might constitute pressure on others. But there could be no evidence to support that supposition, since presumably the student had already completed her studies without any incidents that would indicate such a problem.

Despite these flaws, the *Karaduman* case was cited by the ECtHR to support the ruling in the later case of *Sahin v. Turkey*, which constituted a landmark in the Court's case-law on the matter of the headscarf and set the norm for not only the Turkish practice of *laicite*, but also for France and beyond. In the *Sahin* case, the initial admissibility decision opened a prolonged process of litigation, appeal, and the writing of dissenting opinion, thus offering much material for analysis, which will be reviewed below. The rejection of this applicant's claims, first in a Chamber judgment in 2004 and subsequently by the Grand Chamber in 2005, closed the doors on dozens of similar applications from Turkey, which were automatically deemed inadmissible, without considering the circumstances of individual applicants (Kurban, Erözden and Gülalp, 2008, p.20). Two recent cases out of France having to do with headscarves, also to be discussed below, likewise resulted in the rejection of the applicants' claims, with the Court making extensive references in its judgments to the *Sahin* case.

In this context, we might also briefly cite the case of *Dahlab v. Switzerland* (42393/98, 15 February 2001), which contributed to the development of the headscarf case-law. The case concerned a primary school teacher, a Swiss national, who had been Catholic but converted to Islam and began wearing a headscarf, from which she was prohibited while on duty. The novelty of this case was that, in a long and detailed statement that declared the application inadmissible, the Court for the first time put "secularism" as a principle against the public manifestation of religion, and argued that the right to the latter may very well be restricted in a democratic society in the name of protecting the former. The institution of this hierarchy of principles by the Court then constituted the foundation on which subsequent claims related to the use of the headscarf were rejected. The Court also developed an interpretation of the headscarf as an indication of gender inequality, which, it pointed out, was unacceptable in a democratic society.

But this ruling also contained flaws similar to the *Karaduman* ruling. For example, it was noted by the Court in the *Dahlab* case that there was no evidence of any complaint by pupils or parents of the teacher's behavior. The applicant noted in her submission that "the secular nature of State schools meant that teaching should be independent of all religious faiths, but did not prevent teachers from holding beliefs or from wearing any religious symbols whatever." Moreover, the authorities had been in "full knowledge of the facts in endorsing, until June 1996, the applicant's right to wear a headscarf. Only then, without stating any reasons, had the authorities required her to stop wearing the headscarf." This, she pointed out should be "sufficient proof that the beliefs of others were respected." The Court's response to this objection was as follows: "The Court accepts that it is very difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children. The applicant's pupils were aged between four and eight, an age at which children wonder about many things and are also more easily influenced than older pupils. In those circumstances, it cannot be denied outright that the wearing of a headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which, as the Federal Court noted, is hard to square with the principle of gender equality." (*Dahlab v. Switzerland*).

Thus mixing apples and oranges, and even admitting that the reasoning is rather weak, the Court concluded as follows: “In the light of the above considerations and those set out by the Federal Court in its judgment of 12 November 1997, the Court is of the opinion that the impugned measure may be considered justified in principle and proportionate to the stated aim of protecting the rights and freedoms of others, public order and public safety. The Court accordingly considers that the measure prohibiting the applicant from wearing a headscarf while teaching was ‘necessary in a democratic society’.” (*Dahlab v. Switzerland*). As, for example, Vakulenko (2007, p.188) observes, the Court simply assumed that the headscarf was a “powerful religious symbol” and consequently a threat to secularism, and by also linking it with assumptions about gender inequality, ignored the point of view of the applicant, who obviously was not an oppressed person, but a perfectly autonomous individual, a professional making an effort to demand her rights in an European institution (see also Marshall, 2008).

IV.1.B. The Leyla Sahin Case

In the *Leyla Sahin* case, which was about the female student dismissed from university for violating university regulations by insisting on wearing a headscarf (for the background and details of the case, see McGoldrick, 2006, Ch.5), the *political* nature of the Court’s reasoning was particularly glaring. This also had to do with the specific legal reasoning in the nature of the case. The assessment of the circumstances of the case was based not on para.1 of Art.9, which lays out the right to the right to freedom of conscience and religion, but on para.2, which specifies the limitations “as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of the rights and freedoms of others.”

There were, for example, frequent references to the “pressure” that wearing a headscarf would put on non-Muslims and non-practicing Muslims and constitute a “proselytising effect.” This argument had a precedent in the *Dahlab* cases, but it made for a striking contrast with the reasoning in the *Otto-Preminger-Institut* and *Wingrove* cases, where the religious feelings of the majority of the people were considered to require protection against an unchecked freedom of expression. One might very well have argued that in a Muslim-majority nation, it is perfectly normal to go along with Muslim practice. But it also contrasted with the *Kokkinakis* case, where not only outward expressions, such as a particular form of dress, but actual proselytizing was considered to be an inseparable aspect of the freedom to manifest one’s religion. This is doubly interesting because, as already indicated above, the *Kokkinakis* and *Otto-Preminger-Institut* cases also contrasted with each other. Although the former had been used as a source for the judgment in the latter, the origins of the two cases were completely different. While in the latter case the freedom of religion of the *majority* was protected, in the former case (one might say, more appropriately) it was the freedom of religion of a *minority* that had been protected. In that case the Court had reminded the Greek government that the margin of appreciation was “subject to European supervision.” In the *Sahin* case, however, as Judge Tulkens, the lone dissenting judge, stated in her dissenting opinion to the Grand Chamber judgment, “other than in connection with Turkey’s specific historical background, European supervision seems quite simply to be absent from the judgment.” Adding that the issue at hand concerns all member states, she argued, “European supervision cannot, therefore, be escaped simply by invoking the margin of appreciation.”

What might be “Turkey’s specific historical background” other than that it is a member state with a Muslim majority? In other words, it is clearly the religion of Islam that makes the Turkish case unique. This becomes evident in the Court’s assessment of the significance of the principle of secularism in dealing with Islam. What had been first stated in the *Dahlab*

case was turned into a general rule in the *Sahin* judgment: “it is the principle of secularism, as elucidated by the Constitutional Court [of Turkey]..., which is the paramount consideration underlying the ban on the wearing of religious symbols in universities.” (GC, 2005, para.116). This kind of political assessment may very well be beyond the Court’s mandate. Again, Judge Tulkens responds: “In a democratic society, I believe that it is necessary to seek to harmonise the principles of secularism, equality and liberty, not to weigh one against the other. As regards, firstly, *secularism*, I would reiterate that I consider it an essential principle and one which, as the Constitutional Court stated in its judgment of 7 March 1989, is undoubtedly necessary for the protection of the democratic system in Turkey. Religious freedom is, however, also a founding principle of democratic societies.” She goes on to point out that “Only indisputable facts and reasons whose legitimacy is beyond doubt – not mere worries or fears – are capable of satisfying that requirement and justifying interference with a right guaranteed by the Convention.”

But this is precisely where the political dimension of the Court’s judgment becomes evident. For, Turkey’s line of defense in the *Sahin* case was nearly identical to the way that various Turkish governments have negotiated with the EU for membership – i.e., by holding up the Islamist threat that would most certainly take over the country if Turkey were rejected by the West. This can be seen in the following paragraphs of the Chamber judgment (2004):

“The Government said that the principle of secularism was a preliminary requisite for a liberal, pluralist democracy and that there were factors peculiar to Turkey that meant that the principle of secularism had assumed particular importance there compared to the other democracies. In their submission, the fact that Turkey was the only Muslim country to have adopted a liberal democracy as that expression was understood in the western hemisphere was explained by the fact that it had strictly applied the principle of secularism.” (para.91).

“The situation in Turkey and the reasoning of the Turkish courts showed that the Islamic headscarf had become a sign that was regularly appropriated by religious fundamentalist movements for political ends and constituted a threat to the rights of women.” (para.93).

“In the Government’s submission, the request for judicial recognition of the right to wear the Islamic headscarf in public institutions was tantamount to claiming a privilege for a religion that would entail in its wake a plurality of legal statuses, a situation that was regarded by the Court as being contrary to the Convention (*Refah Partisi and Others*, cited above § 119). In that connection, they stressed that the provisions of the Sharia concerning, among other matters, criminal law, torture as punishment for crime, and the status of women were wholly incompatible with the principle of secularism and the Convention.” (para.94).

The Court accepted the Government’s definition of secularism:

“In its judgment of 7 March 1989, the Constitutional Court stated that secularism in Turkey was, among other things, the guarantor of democratic values, ... Secularism also protected the individual from external pressure. It added that restrictions could be placed on freedom to manifest one’s religion in order to defend those values and principles.” (para.105).

“This notion of secularism appears to the Court to be consistent with the values underpinning the Convention and it accepts that upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey.” (para.106).

“The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts (see paragraphs 32 and 33 above). It has previously said that each Contracting State may, in accordance with the Convention provisions, take a stance against such political movements, based on its historical experience (*Refah Partisi and Others*, cited above, § 124).” (para.109).

The Grand Chamber judgment (2005) repeated this political assessment (para.115), before concluding that its paramount consideration was the principle of secularism (para.116).

This aspect of the *Sahin* judgment has been widely criticized (see Saktanber and Corbacioglu, 2008, p.530, for references). Jill Marshall (2008), for example, suggests that, not only in the *Sahin* case, but in all cases related to the headscarf, there was no evidence showing that “wearing the headscarf was anything other than the woman’s choice.” (p.633). According to her, the ECtHR ignored the women’s personal autonomy and basically told them “how to behave.” (p.642). Altiparmak and Karahanogullari (2006) observe that “the Court did not judge Sahin’s claims but rather the challenge of the Islamic movements to the secular system.” (p.272) They add: “In the *Sahin* case, the applicant asked the Court whether the respondent state had violated her right to religion by preventing her entry to the University. The Court, however, preferred to discuss religious radicalism in Turkey rather than the particulars of Ms. Sahin’s case.” (p.277).

If it is true that the Court pursued a *political* approach, the problem is that the path pursued may actually be unwise and counterproductive. It is safe to surmise that one of the sources of the Islamic movement in recent years has been its opposition to authoritarian regimes in Muslim-majority countries, and the ban on headscarves is often perceived as an authoritarian instrument of superficial top-down modernization bent on purging the “urban public space of signs of ‘backwardness’” (Lyon and Spini, 2004, p.342; see also Marshall, 2008, p.650). The headscarf has also been a symbol of resistance to colonial regimes with a “modernizing” mission, such as in Algeria against the French (El Guindi, 1999, pp.169-173). Hence, for example, the headscarf ban legislated in 2004 brings back unpleasant memories to the French Muslim population of North African origin. Muslim men and women perceive these bans as instruments of authoritarian modernism and oppose them from the point of view of human rights and freedoms, whether in Turkey, against their own government, or elsewhere, against the state that has taken them as immigrants.

IV.1.C. Turkey’s European Identity

It is true that Turkey is in a sense unique, but that is not because it is the only secular nation in the Muslim world, as is often but incorrectly claimed, or even because it is the only liberal democracy, which it is not. Turkey is unique because it is the only Muslim-majority nation which aspires to, and has to a certain extent achieved, European identity. As has already been suggested above, this particular combination, Muslim and European, is usually perceived as a contradiction in terms, not only in the West, but also among the modernizing political elites of Turkey, who have generally internalized the tendency to treat the religious people of Turkey as traditional and ignorant masses (see Robins, 1996). This has been the outcome of a paradoxical historical process. Turkey was never colonized, but it did something more thorough-going than what European colonizers tried but failed to achieve in the colonies. Completing what had already begun during the Ottoman Empire, the nationalist leaders of modern Turkey willingly chose as their frame of reference the civilization that Europe had

claimed as its own. They did so without any qualms and even took it too far, to the point of rejecting cultural traditions within which the people of Turkey had defined their own identity.

Historically speaking, Turkey (and the Ottoman Empire before it) has been a member of most of the institutions that one could identify as constituting the European (and more generally, Western) civilization, including, the Concert of Europe in the nineteenth century, and the Council of Europe, OECD, NATO, and others, in the twentieth, without ever being fully accepted and assimilated, as can be witnessed, for example, in the never-ending process of Turkey's accession to EU membership. Consequently, Turkey, has always suffered from an "image" problem in its relations, not only with Europe, but also with the rest of the world, for desiring to be European also meant turning back on the rest of the Muslim world. But, already during the Ottoman Empire, having moved from the status of a European power in the sixteenth century to the status of a semi-periphery in the nineteenth, how the country and the people were perceived in the West had become a central concern (on Ottoman image-making, see Deringil, 1998). Therefore, the headscarf, as an "ostentatious" symbol, an outward sign of what civilization the nation belongs to, occupies a central place in the image, in the same way that in an earlier period, the "fez," and then the "hat," occupied a central place. One might also note, however, that it is because the universal norms of human rights and freedoms have been internalized that the right is demanded to dress as one pleases, whether as a matter of personal choice or as a manifestation of religious belief.

Although the Ottoman Empire had a stable and peaceful regime of regulating the affairs of its distinct religious communities, Muslim and non-Muslim, by incorporating communal representation into the state structure, Western Europe was torn for centuries by religious wars, built on a tradition of what might be called "religious cleansing." In the early modern period, "the confessional state was the norm." (Madeley, 2003, p.36; see also Marx, 2003; Klausen, 2005). The continent had been mostly purged of Muslims since the "reconquista" (although the Ottomans had not yet left), but was still divided, first, between Western and Eastern Christianity, the latter generally considered to be outside of the realm of European civilization proper, and, later, between Catholic and Protestant Christianity. The solution to religious wars was finally found in the creation of territorial states. But there was also the Roman Church to reckon with, which had remained as a source of moral authority and legitimation throughout the continent, but without any political and military power that could effectively unify it. Hence, the establishment of territorial states in most cases also involved a confrontation with the Catholic Church. The modern nation-state in Western Europe either became secular or founded its own national church.

This was not really a part of Turkey's own history. Turkey never experienced the state-church conflicts of Western Europe, nor its religious wars until they were cultivated within the Empire by the European powers in the nineteenth century. Yet, inevitably influenced by the European political culture and traditions, combined with their own zeal to catch up, the founders of the Turkish Republic borrowed the French notion of *laïcité* and interpreted it through their own tradition of state regulation of religion. Modernization meant rationality, enlightenment, secularization, a move away from religion. If these trends did not grow organically, through social and economic change, or until they did so, when Turkey became more developed, they had to be forced by state fiat (Gülalp, 2005). The belief that Muslim society is not conducive to secularization and that Islam is an obstacle to modernization and Westernization, came to the founding elite from the West. If, the argument still goes, Islam is an inherently political religion that cannot be secularized, then the best way to deal with it is through repression, regulation, and exclusion. In Ernest Gellner's memorable but implausible

characterization, Islam is the exception among world religions, and Turkey is “the exception within the exception” (Gellner, 1997, p.236). This idea, however unfounded, is still widely shared and expressed in the West (for detailed critique, see Gülalp, 2007, 2009).

Interestingly, the idea that Islam had to be regulated was expressed more or less explicitly while Art.9 of the European Convention on Human Rights was being drafted in 1950. Attempting to limit the scope of the freedom of religion by reference to “reasons of history” and “measures required for ensuring security and public order,” the Turkish delegate argued: “It must, however, be pointed out that in the course of our history a number of attempts at reform and modernization have been frustrated by stubborn resistance on the part of certain groups of persons who wished to keep the population in ignorance for their own ends.” (quoted in M. Evans, 1997, p.269). The reservations proposed by the Turkish delegation did not completely find their way into the Convention, for that would have turned an exception into a rule for all; but the quoted statement perfectly sums up the Turkish perspective on the matter. It was the same perspective that, decades later, found its way into the Constitution of 1982 in Article 24 (see above, Section II). Kalaycioglu (2005) suggests that the formulation of this article resulted from the belief “that religious extremism and political Islam emerges out of ignorance and ill instruction of religious beliefs and dogma. If they could be instructed in an ‘enlightened manner’,” pupils would not be swayed by religious extremists (pp.130-131).

Paradoxically, though, it is also because of this mode of state regulation of religion that Turkey’s religious minorities, including the non-Sunni sects of Islam, such as the Alevi, have suffered from discrimination. In the same way that European nation-states were based on a history of ethnic and religious purification, Turkey too in the course of its own nation-building process tried to purify its population by expelling the Christians that were remnants of the Ottoman Empire (see Hirschon, 2003; Akcam, 2004). Those that remained, other than the small pockets of Greeks, Armenians and Jews, protected by the Lausanne Treaty, were unilaterally declared Muslim, which in the Turkish context meant the Sunni sect of Islam. From the creation of the Republic on, Sunni Islam has been a central component of Turkish national identity (Kirisci, 2000; Cagaptay, 2006). Therefore the Alevis, despite their significant size (an estimated 15 million), were formally considered non-existent, but still placed in an inherently paradoxical and precarious situation. Persecuted during the Ottoman times as a heretic sect, the Alevis were now considered to be natural supporters of Kemalist secularism, which was bent on driving (Sunni) Islam out of the public sphere, although they were still officially unrecognized (see Goner, 2005).

In the recent case of *Hasan and Eylem Zengin v. Turkey* (1448/04, 9 October 2007), Eylem Zengin, a high-school pupil, and her father Hasan Zengin maintained in their application to the Court that, as an Alevi family, their right to education (Art.2 of Protocol.1) and freedom of religion (Art.9) were violated because of the way in which the compulsory lessons in religious culture and ethics were taught in schools. Article 2 of Protocol 1 states: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.” (European Convention on Human Rights). The complaint was that the lessons on religion were one-sided, in favor of Sunni Islam. Examining the evidence, the Court found that Art.2 of Protocol 1 was indeed violated, but that no separate issue arose under Art.9 (see Akbulut and Usal, 2008, for further discussion).

Discriminatory practices against non-Muslims continue, even though a subset of them are protected by the Lausanne Treaty (see above, Section II). Thus, in recent years, after the right to petition the ECtHR was granted in 1987, several cases have been filed by non-Muslim foundations complaining of unlawful confiscation by the government of their properties inherited from the Ottoman period. In none of these cases were Art.9 rights claimed. They all claimed the violation of Art.1 of Protocol 1 (the right to property) and Art.14 (enjoyment of rights without discrimination) of the Convention; and the Court ruled only on the basis of the former article. These cases have either been successful or resulted in friendly settlements (Kurban, Erözden and Gülalp, 2008, p.17).

Finally, we may briefly consider the case of *Ulke v. Turkey* (39437/98, 24 January 2006). The applicant refused to perform his mandatory military service by invoking his pacifist beliefs and publicly demonstrated his opposition at a press conference, as a result of which he was arrested and subsequently convicted for desertion and for inciting conscripts to evade military service. His appeals in domestic courts, on grounds of Art.9 and Art.10, claiming that he was a conscientious objector, were rejected. After his release from prison, he again refused to serve and was again convicted for “persistent disobedience.” This process went on for years, during which time the applicant served a total of over 700 days in detention. Finally, he took his case to the ECtHR, claiming the violation of his rights under Articles 3, 5, 8, 9 of the Convention. The Court ruled that despite the repeated convictions of the applicant, “the punishment has not exempted him from the obligation to perform his military service” (para.60) and that the applicant runs “the risk of an interminable series of prosecutions and criminal convictions” (para.61). Consequently, the Court ruled that the applicant’s Art.3 rights (prohibition of torture and inhuman treatment) were violated, and that it was not necessary to separately consider the alleged violation of other articles.

IV.2. France

Like Turkey, France has been free of judgments of Art.9 violations. Also, like Turkey, France has refused to sign the “Framework Convention for the Protection of National Minorities,” citing its assertion that, due to its territorial definition of citizenship (*jus soli*) as opposed to the blood-linked (*jus sanguinis*), France has no minorities. This does not mean, however, that minorities do not exist and do not experience discrimination. Bribosia, Rorive and Ubeda de Torres (2008) report that the absence of cases filed with the ECtHR should not be an indication of what happens in reality. In France, they observe, there is an “important void concerning litigation, either domestic or international, on behalf of religious or ethnic minorities” (p.14), but add that the rejection of the concept of “minority” has not prevented the existence of racial hatred against Muslims, Jews, and other minorities, even though they may be French citizens. Thus many “domestic discriminatory practices” have *not* been brought before the Court. They add that “Regarding *religious minorities*, very few cases have been brought to Strasbourg under article 9 of the Convention.” These cases have concerned Jews and Jehovah’s Witnesses, and been unsuccessful. Indeed, “France has never been condemned under article 9 in combination with article 14.” (p.15). More curious is the fact that minorities, particularly Muslims, do not tend take their cases to the ECtHR. Despite a documented history of discrimination against them, the authors report, “*Muslims* are absent in litigation at Strasbourg.” (p.17).

Despite the principle of *laicite*, the history of discrimination against members of minority religions in France is especially clear in its laws and practices regarding citizenship. Scholars have pointed out that although France is supposed to embody the territorial principle of citizenship, historically speaking, Catholicism has been a central element of French national

identity (Marx, 2003; Kastoryano, 2004; Weil, 2005). Currently, an estimated 80 percent of the population is Roman Catholic, although most are non-practicing, and roughly 10 percent claim no religion. Protestants and Jews make up about 3 percent. Islam is currently the second largest religion, with about 5 percent. The French nation was originally built on the expulsion of the (Protestant) Huguenots, and it currently continues to exclude Muslims in a variety of ways. The Muslim population in France, most of whom come from the former colonies in North Africa, “suffers direct and indirect discrimination in education, jobs and housing.” (McGoldrick, 2006, p.55; see also Klausen, 2005). Although the public sphere is supposed to be free of religious signs and institutions, the cultural identity of the French nation is historically (and inevitably) shaped by Catholicism, as is evident in official holidays, state support for Catholic schools and the maintenance of churches that are still owned by the state, and so on. Some scholars have gone so far as to suggest that the French practice ought to be called “*catholaicite*” (see Balibar, 2004). It is also against this background that the 2004 law banning the headscarf in state schools ought to be considered. For the Muslim population of France, this ban was reminiscent of the French efforts to remove the headscarves of Algerian women in the 1950s.

The events that led up to the legislation of the ban are well known, and will only be covered in summary here (for details, see Freedman, 2004; McGoldrick, 2006, pp.64-96). In 1989, with the eruption of the so-called “*l’affaire du foulard*,” when three girls were expelled from school for wearing headscarves, the government created the High Council for Integration (*Haute Conseil à l’integration*), which recommended that students with headscarves should not be prohibited from attending classes. A national debate ensued, where the Christian and Jewish religious authorities supported the right to wear the headscarf and the Minister of Education (Lionel Jospin, at the time) adopted a rather tolerant attitude. But the government also sought the opinion of the *Conseil d’Etat*, the highest state administrative authority, which stated that although the headscarf was not inherently incompatible with *laicite*, if such wearing involved an element of political protest and proselytism, it was not appropriate. Hence, “ostentatious” signs of religiosity must be prohibited. It is interesting to note that it was on the basis of this idea that eventually the banning of the headscarf became the law of the land. In the *Kokkinakis* case, by contrast, the ECtHR had ruled that proselytism and manifestation of religion were inseparable, as long as proselytism did not involve “inappropriate” pressure on the proselytized.

At any rate, the *Conseil* left it to individual school administrations to determine the circumstances of each instance, thus leading to inconsistency in implementation. In the following years, the cases brought to the *Conseil d’Etat* generally resulted in favor of the students wearing the headscarf, unless it involved acts that were deemed disruptive of education. But it was with the circular in 1994 of the then Minister of Education, Francois Bayrou, that the debate was rekindled. Although it did not have the force of law, the circular that was sent to schools affirmed that overt religious symbols should be banned. Bayrou explained that he had originally defended the right of schoolgirls to wear the headscarf, but then changed his mind because of the perceived political threat of Islamic fundamentalism (Freedman, 2004, pp.14-15).

The problem heated up again after September 11, 2001, and the newly elected right-wing government in 2002 promised to introduce legislation that would finally solve the problem. The famous Stasi Commission was formed to study the problem. The Commission reported its findings and recommendations to the government in December 2003. The report included numerous proposals including economic measures to end discrimination, recognizing non-

Christian holy days as holidays in the national calendar, appointing Imams to hospitals, schools, and so on, in order to cater to the spiritual needs of the Muslim population, and many others. Among these proposals, only the one that recommended banning in state schools the display of “ostentatious” symbols of religiosity, implying primarily the Islamic headscarf, but also including the Jewish kippa, the Sikh turban, and the large cross, was passed as law at the beginning of 2004. Pupils who insisted on wearing the headscarf could go to private religious (Catholic) schools, where there was no such ban (see also Lyon and Spini, p.336). Indeed, perhaps paradoxically, many Muslim families have now begun to send their daughters to Catholic schools (see *The New York Times*, 30 September 2008).

It has been reported that during the public hearings of the Stasi Commission, the vice-president of the ECtHR “indicated that a law banning religious signs in schools would not in itself be contrary to the European Convention on Human Rights.” (McGoldrick, 2006, p.98). The *Leyla Sahin* case had not yet been concluded at that time. Today, though, one might say that the 2004 law has already passed the test of ECtHR, for in two recently concluded cases, which actually originated before the passage of the law and which had to do with the refusal of the pupils to remove their headscarves for the physical education class, the Court found that no Art.9 rights were violated.

In the identical cases of litigation by Turkish immigrant girls against France, *Dogru v. France* (27058/05, 4 December 2008) and *Kervanci v. France* (31645/04, 4 December 2008), what was at issue was whether the interference in the freedom of religion was justified under the provision of Art.9, para.2, as was in the *Leyla Sahin* case:

“The Government acknowledged that the restrictions imposed on the applicant regarding wearing the Islamic headscarf at school amounted to an interference with the exercise of her right to manifest her religion. They submitted, however, that as in the case of *Leyla Sahin v. Turkey* ([GC], no. 44774/98, ECHR 2005-XI) the requirements of legality, legitimacy and proportionality stipulated in paragraph 2 of Article 9 of the Convention were satisfied.” (*Dogru v France*, para. 34).

In its ruling, the Court makes extensive references to the *Leyla Sahin* case and lays out its reasoning in the following key paragraphs:

“... 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 ... In the Court’s view, that concern does indeed appear to have been answered by the French secular model. (para. 71).

“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). ...” (para. 72).

According to the Court, in other words, freedom of religion could be restricted in the name of secularism. But was not the principle of secularism (or *laicite*) a principle of neutrality, designed precisely in order to protect the freedom of religion and guarantee its separation from the affairs of the state?

IV.3. Laïcité: A Principle of Neutrality?

The challenge of religious movements in general, and Islamism in particular, has led to a renewed questioning of secularism and religion and the place of each in European identity (Casanova, 1994; Davie, 2000; Madeley and Enyedi, 2003; Klausen, 2005). The concept of “secularism” (or *laïcité*, in the French and Turkish cases) has accordingly been subjected to criticism and deconstruction. No longer seen as a normative form of “neutrality,” its political origins and anti-democratic potential have begun to be revealed. Etienne Balibar (2004), for instance, observes that “there is no natural distinction between the political and the religious, but a historical one resulting from decisions that are themselves political.” (p.355). It is essentially the same point that Talal Asad (2006) develops in his critique of the French ban on headscarves: “since the legal distinction between public and private spaces is itself a construction of the state, the scope and content of ‘public space’ is primarily a function of the Republic’s power.” (p.500). The implication is obvious: If the modern nation-state shapes religion and religiosity by its actions, then it contradicts its own self-definition as secular, meaning “neutral.” In his survey of the headscarf debate in Europe, McGoldrick (2006) notes that *laïcité* in France “is not value neutral.” Rather, it rests on assumptions of cultural republicanism, meaning: “Schools are meant to be religiously neutral but not necessarily politically neutral.” (p.79). In other words, political power determines the place of religion in social life.

The public debate on the use of headscarves in France has revealed that the principle of *laïcité* is often interpreted as a foundation stone of the identity of the republican regime (Silverstein, 2004; Duchesne, 2005). We have reviewed abundant evidence in the pages above about how, to quote McGoldrick (2006), the headscarf “has come to encapsulate increasing fears of Islamic fundamentalism and terrorism” (p.288), and is seen “as a political and religious symbol that challenges national identity.” (p.289). Secularism in this sense is necessarily authoritarian, because national identity cannot be negotiated. One either belongs or one doesn’t. Secularism in this sense is also statist, because the political determination of the proper place of religion and religious behavior can only be enforced through state power. This is true for Turkey as well as France. In her ethnographic study of the culture of secularism in Turkey, Yael Navaro-Yashin (2002) observes: “Secularism is not a neutral paradigm, but a state ideology as well as a hegemonic public discourse in contemporary Turkey.” (p.6). She notes that secularism is implicated in “militarism, authoritarianism, and the culture of the state.” (p.6). At the moment, moreover, “Secularism in Turkey is the discourse of state power employed by the army.” (p.202).

Some analysts have taken this point further to indicate the totalitarian elements of secularism in this sense. Esra Özyürek (2006), in her own ethnographic study of secularism in Turkey, observes that as Islam began to occupy the public space, where it did not properly belong according to secular norms, Kemalism (Turkish ideology of *laïcité*) began to move into the private sphere without actually leaving the public. This tendency for a political ideology to occupy both the public and private spheres makes it an all-encompassing force that regulates all aspects of social and personal life. The same may be said to be true for French *laïcité* as well. As Talal Asad (2006) notes, the work of the Stasi Commission consisted of an “inquiry [which] sought to bring ‘private’ concerns, commitment, and sentiments into ‘public’ scrutiny in order to assess their validity for a secular Republic.” (p.504). The report made assumptions about the *intentions* of the wearers of the headscarf. But this was already in the nature of the project of state secularism. While the secular republic aimed to withdraw from the realm of religion, it also aimed to form secular citizens. The following statement Asad quotes from the

Stasi report illustrates this point: “‘The state’s vocation,’ declares the Stasi report, ‘is to consolidate the common values on which the social bond in our country is based’.” (p.516).

These observations suggest a revision of Alfred Stepan’s argument, mentioned earlier, regarding the “twin tolerations” between state and religion (see Section II, above). It appears that *laicite* in France does not really conform to the principle of the twin tolerations any more than in Turkey, as Stepan assumes. *Laicite*, then, is not as *neutral* as it seems. As Asad (2006) points out, the state has the right to take “decisions that affect religion, although religion may never intervene in matters of state.” He adds: “This asymmetry is, I suggest, a measure of sovereign power.” (pp.504-505). So, it was this particular arrangement that the ECtHR has been protecting in its judgments.

There is still a difference between Turkey and France, but it should be sought elsewhere. While Muslims in France constitute a minority, in Turkey they are not only the majority, but also, as indicated above, Sunni Islam is a central component of Turkish national identity. So, the French state, though secular, may still be partial to Catholicism, the traditional religion of the nation, and discriminatory toward Islam, a minority religion and the religion of the former colonies and of immigrants. But if we were to call this “*catholaicite*,” what are we to call the Turkish *laicite*, when not only non-Muslims and non-Sunnis but also Sunni Muslims complain from state practices of discrimination? For instance, even though both the French and Turkish versions of *laicite* do not allow students to wear the Islamic headscarf in state schools, it is still possible for students in France to attend any of the thousands of Roman Catholic and even several Muslim schools operating legally in France, where they can dress in the Islamic fashion. But this is a notion that would be unthinkable in Turkey. Can we consider one or the other a “normative” model for *laicite*? Why does the ECtHR not lead Turkey in the relatively more tolerant direction of the French version in the way that it leads Greece and Bulgaria, for example? Or, is this situation an outcome of the perceived peculiarity of Islam as religion, in the sense that it is considered to be better tamed through oppression and exclusion than through inclusion? It seems that it was this assumption that the ECtHR was endorsing in its judgments.

V. Conclusion

This report has examined the variety of state-church relations and the place of Islam in Europe through the case-law of the European Court of Human Rights. This examination reveals both the patterns of litigation, hence the diversity in national political cultures, and the dominant normative assumptions about religion and secularism in Europe more generally, which are implicit in the Court’s reasoning. Although the Convention does not specify a standard model of secularism and the Court therefore grants a “margin of appreciation” to individual states, the margin itself seems to vary according to those implicit normative preferences. In this sense, the ECtHR has actually been instrumental in shaping the meaning and normative content of secularism. Particularly in the *Leyla Sahin* case, Muslim litigants in Turkey have attempted to use the Court to push for a revision of the Turkish concept of *laicite* in the direction of their own conception, which is closer to Stepan’s ideal-typical notion of “the twin tolerations.” But this strategy has failed. The strict definition has now been more firmly entrenched.

Paradoxically, though, Turkey has strong state-religion ties. But this seems to be tolerated, possibly because the state is regulating a Muslim nation. It is not necessarily true that the

ECtHR respects the “margin of appreciation” in all cases, for it has not refrained from finding violations of Art.9 in a variety of cases in Greece and Bulgaria. Complicating matters even further, in those cases the Court was protecting the rights of the Muslim communities. Does this not indicate that the Court can be perfectly sympathetic to the plight of Muslims? It might. But it might also indicate the existence of normative assumptions about Eastern Christianity. Reviewing cases, such as *Otto-Preminger v. Austria*, and others, Carolyn Evans (2001) laments that the tendency of the Court to go along with the State’s actions when majority religions are concerned “will tend to benefit majority religions that are prepared to respond to criticism or mockery with intolerance or outrage.” (p.71). She adds that the “State is given so much discretion under the current case law that that minority groups suffering from more serious attacks may have difficulty invoking a positive obligation of religious freedom to ensure protection by the State.” (p.72). It is true, of course, that in Western European nations, Muslim minorities have had difficulty in suing their states or have been unsuccessful when they did so. But that has not been the case in the Eastern European nations of Orthodox Christianity. There, the Court has reminded the states of “European supervision.”

The existence of cultural assumptions must not be taken lightly. For instance, in the dissenting opinion of the Greek judge, Judge Valticos, in the *Kokkinakis* case, the language is striking:

Freedom of religion “means freedom to practise and manifest it, but not to attempt persistently to combat and alter the religion of others, to influence minds by active and often unreasonable propaganda. ... Someone who proselytises seeks to convert others; he does not confine himself to affirming his faith but seeks to change that of others to his own. ... [The] rape of the beliefs of others cannot in any way be regarded as contrary to Article 9 (art. 9) of the Convention. On the contrary, it is such as to protect individuals’ freedom of religious belief.”

“Let us look now at the facts of the case. On the one hand, we have a militant Jehovah’s Witness, a hardbitten adept of proselytism, a specialist in conversion, a martyr of the criminal courts whose earlier convictions have served only to harden him in his militancy, and, on the other hand, the ideal victim, a naïve woman, the wife of a cantor in the Orthodox Church (if he manages to convert her, what a triumph!). He swoops on her, trumpets that he has good news for her (the play on words is obvious, but no doubt not to her), manages to get himself let in and, as an experienced commercial traveller and cunning purveyor of a faith he wants to spread, expounds to her his intellectual wares cunningly wrapped up in a mantle of universal peace and radiant happiness. Who, indeed, would not like peace and happiness? But is this the mere exposition of Mr Kokkinakis’s beliefs or is it not rather an attempt to beguile the simple soul of the cantor’s wife? Does the Convention afford its protection to such undertakings? Certainly not.”

“One further detail must be provided. The Greek Law does not in any way restrict the concept of proselytism to attempts at the intellectual corruption of Orthodox Christians but applies irrespective of the religion concerned. Admittedly, the Government’s representative was not able to give concrete examples concerning other religions, but that is not surprising since the Orthodox religion is the religion of nearly the whole population and sects are going to fish for followers in the best-stocked waters.”

The Greek judge seems to be blinded by his own cultural assumptions. He does not seem to understand that the circumstances that he describes already places the Orthodox Church in a monopolistic position that is neither challengeable nor even questionable.

But Evans' concern that adherents of majority religions will unfairly enjoy an advantage does not seem to apply in the Turkish case. There, the "European supervision" held up against Greece and Bulgaria seems to give way to a large "margin of appreciation." There is also another difference. In the case of Muslims who successfully sued the Greek and Bulgarian governments, the Art.9 violations had to do with the unjustified interference of the state in the internal affairs of a community. In the headscarf cases, however, the Turkish state has argued that the headscarf symbolizes a political threat, that it represents the rejection of the secular republic and indicates a call for the institution of an Islamic regime. The European Court seems to have accepted this argument without much questioning.

It is well known that, despite the claim to secularity, European culture and identity is closely tied to Christianity. This became especially clear in the face of the challenge presented by the growing Muslim presence in Western European nations (Pagden, 2002; Madeley, 2003; Klausen, 2005). Carolyn Evans (2001) somewhat vaguely observes that "The Commission and Court have been more protective of traditional Christian practices ...". But she hastens to add that "This is not to say that the Commission or Court is deliberately engaging in bias against non-Christian applicants..." (p.196). The argument of this paper, however, at once self-evident and difficult to prove, is that the historically ingrained cultural assumptions about not only the division between Christianity and Islam but also between Western and Eastern Christianity have played a part in the reasoning of the judges of the ECtHR. One could never prove this definitively, although it goes without saying that people normally behave according to received and dominant cultural knowledge. What appears as incoherence to Carolyn Evans, this paper argues, can be made sensible if this knowledge is taken into account. Alfred Stepan, in his article on the "twin tolerations," critically quotes Samuel Huntington: "He asks rhetorically, 'Where does Europe end?' and answers, 'Where Western Christianity ends and Islam and Orthodoxy begin'." (2000, p.38). Huntington's assessment may be wrong from a social scientific point of view, but there is little question that he voices a widely shared belief.

CASES CITED

- Agga v. Greece* (50776/99 & 52992/00, 17 October 2002),
- Alexandridis v. Greece* (19516/06, 21 February 2008)
- Dahlab v. Switzerland* (42393/98, 15 February 2001)
- Dogru v. France* (27058/05, 4 December 2008)
- Hasan and Chaush v. Bulgaria* (30985/06, 26 October 2000)
- Hasan and Eylem Zengin v. Turkey* (1448/04, 9 October 2007).
- Ivanova v. Bulgaria* (52435/99, 12 April 2007)
- Karaduman v. Turkey* (16278/90, 3 May 1993)
- Kervanci v. France* (31645/04, 4 December 2008)
- Kokkinakis v. Greece* (14307/88, 25 May 1993)
- Leyla Sahin v. Turkey* (44774/98, 29 June 2004; GC, 10 November 2005)
- Manoussakis and Others v. Greece* (18748/91, 26 September 1996)
- Otto-Preminger-Institut v. Austria* (13470/87, 20 September 1994)
- Serif v. Greece* (38178/97, 14 December 1999)
- Sofianopoulos and Others v. Greece* (1988/02, 1997/02, 1977/02, 12 December 2002)
- Supreme Holy Council of the Muslim Community v. Bulgaria* (39023/97, 16 December 2004)
- Ulke v. Turkey* (39437/98, 24 January 2006).
- Wingrove v. the United Kingdom* (17419/90; 25 November 1996)

REFERENCES

- Akbulut, Olgun and Zeynep Oya Usal (2008), "Parental Religious Rights vs. Compulsory Religious Education in Turkey," *International Journal on Minority and Group Rights*, 15.
- Akcam, Taner (2004), *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*, London: Zed Books.
- Alivizatos, Nikos (1999), "A New Role for the Greek Church?," *Journal of Modern Greek Studies*, Vol.17.

- Altıparmak, Kerem and Onur Karahanogullari (2006), "After *Sahin*: The Debate on Headscarves is not Over," *European Constitutional Law Review*, 2.
- Anagnostou, Dia (2001), "Breaking the Cycle of Nationalism: The EU, Regional Policy and the Minority of Western Thrace, Greece," *South European Society and Politics*, 6(1).
- Anagnostou, Dia and Evangelia Psychogiopoulou (2008), "JURISTRAS Case Study Report: Greece."
- Asad, Talal (2006), "Trying to Understand French Secularism," in Hent de Vries and Lawrence E. Sullivan, eds, *Political Theologies: Public religions in a Post-Secular World*, NY: Fordham University Press.
- Balibar, Etienne (2004), "Dissonances within Laicite," *Constellations*, 11(3).
- Bertossi, Christophe (2002), "How Does the French Republic Deal with Ethno-Cultural and Religious Diversity?," *Working Paper Series at the American University of Paris*, No.38.
- Bonora-Waisman, Camille (2000), *France and the Algerian Conflict*, Ashgate Publishing.
- Bowen, John (2004), "Muslims and Citizens: France's Headscarf Controversy," *Boston Review*, February/March.
- Bribosia, Emmanuelle, Isabelle Rorive and Amaya Ubeda de Torres (2008), "JURISTRAS Case Study Report: A Case Study of France."
- Cagaptay, Soner (2006), "Passage to Turkishness: Immigration and Religion in Modern Turkey," in Haldun Gülalp (ed.), *Citizenship and Ethnic Conflict: Challenging the Nation-State*, London: Routledge.
- Casanova, Jose (1994), *Public Religions in the Modern World*, Chicago University Press.
- Davie, Grace (2000), *Religion in Europe: A Memory Mutates*, Oxford University Press.
- Deringil, Selim (1998), *The Well-Protected Domains: Ideology and Legitimation of Power in the Ottoman Empire, 1876-1909*, London: I.B.Tauris.
- Duchesne, Sophie (2005), "Identities, Nationalism, Citizenship and Republican Ideology," in A.Cole, P.LeGales & J.Levy (eds), *Development in French Politics*, 3, New York: Palgrave.
- El Guindi, Fadwa (1999), *Veil: Modesty, Privacy and Resistance*, Oxford: Berg.
- Evans, Carolyn (2001), *Freedom of Religion Under the European Convention on Human Rights*, Oxford University Press.
- Evans, Malcolm (1997), *Religious Liberty and International Law in Europe*, Cambridge University Press.

- Ewing, Katherine Pratt (2000), "Legislating Religious Freedom: Muslim Challenges to the Relationship between 'Church' and 'State' in Germany and France," *Daedalus* 129 (4).
- Fokas, Effie (2006), "Greece: Religion, Nation and Membership in the European Union," in Haldun Gülalp, ed., *Citizenship and Ethnic Conflict: Challenging the Nation-State*, London: Routledge.
- Freedman, Jane (2004), "Secularism as a Barrier to Integration? The French Dilemma," *International Migration*, 42(3).
- Gellner, Ernest (1997), "The Turkish Option in Comparative Perspective," in Sibel Bozdoğan and Reşat Kasaba, eds, *Rethinking Modernity and National Identity in Turkey*, Seattle: University of Washington Press.
- Gerber, Haim (1994), *State, Society and Law in Islam: Ottoman Law in Comparative Perspective*, Albany: State University of New York Press.
- Gokariksel, Banu and Katharyne Mitchell (2005), "Veiling, Secularism, and the Neoliberal Subject: National Narratives and Supranational Desires in Turkey and France," *Global Networks*, 5(2).
- Goner, Ozlem (2005), "The Transformation of the Alevi Collective Identity," *Cultural Dynamics*, 17(2).
- Gülalp, Haldun (1996), "Islamism and Kurdish Nationalism: Rival Adversaries of Kemalism in Turkey," in Tamara Sonn, ed., *Islamism and the Question of Minorities*, Atlanta: Scholars Press.
- Gülalp, Haldun (2005), "Enlightenment by Fiat: Secularization and Democracy in Turkey," *Middle Eastern Studies*, 41(3).
- Gülalp, Haldun (2007), "Are Muslims Really That Special?," *Contemporary Sociology*, 36(6).
- Gülalp, Haldun (2009), "Islam and Democracy: Is Turkey an Exception or a Role Model?" in Akbar Ahmed and Tamara Sonn, eds, *The Handbook of Islamic Studies*, London: Sage.
- Gresch, Nora, Leila Hadj-Abdou, Sieglinde Rosenberger, Birgit Sauer (2008), "Tu felix Austria? The Headscarf and the Politics of 'Non-issues'," *Social Politics: International Studies in Gender, State and Society*, 15(4).
- Haussler, Ulf (2001), "Muslim Dress-codes in German State Schools," *European Journal of Migration and Law*, 3.
- Hirschon, Renee, ed. (2003), *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey*, Oxford: Berghahn Books.
- Huntington, Samuel (1993), "The Clash of Civilizations?" *Foreign Affairs*, Summer.
- Inalcık, Halil (1989), *The Ottoman Empire: The Classical Age*, New Rochelle, NY: Orpheus Publishing.

- Kalaycioglu, Ersin (2005), *Turkish Dynamics*, New York: Palgrave Macmillan.
- Kastoryano, Riva (2004), "Religion and Incorporation: Islam in France and Germany," *International Migration Review*, 38(3).
- Kirişçi, Kemal (2000), "Disaggregating Turkish Citizenship and Immigration Practices," *Middle Eastern Studies*, 36(3).
- Klausen, Jytte (2005), *The Islamic Challenge: Politics and Religion in Western Europe*, Oxford University Press.
- Kurban, Dilek, Ozan Erözden, Haldun Güralp (2008), "JURISTRAS Case Study Report: Turkey."
- Laborde, Cecile (2005), "Secular Philosophy and the Muslim Headscarves in Schools," *The Journal of Political Philosophy*, 13(3).
- Lewis, Bernard (1990), "The Roots of Muslim Rage," *The Atlantic Monthly*, 266(3).
- Lyon, Dawn and Debora Spini (2004), "Unveiling the Headscarf Debate," *Feminist Legal Studies*, 12.
- Madeley, John T.S. (2003), "A Framework for the Comparative Analysis of Church-State Relations in Europe," in John T.S. Madeley and Zsolt Enyedi, eds., (2003), *Church and State in Contemporary Europe*, London: Frank Cass.
- Madeley, John T.S. and Zsolt Enyedi, eds., (2003), *Church and State in Contemporary Europe*, London: Frank Cass.
- Marshall, Jill (2008), "Conditions for Freedom? European Human Rights Law and the Islamic Headscarf Debate," *Human Rights Quarterly*, 30.
- Marx, Anthony (2003), *Faith in Nation: Exclusionary Origins of Nationalism*, Oxford University Press.
- McGoldrick, Dominic (2006), *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, Oxford: Hart Publishing.
- Navaro-Yashin, Yael (2002), *Faces of the State: Secularism and Public Life in Turkey*, Princeton University Press.
- Özyürek, Esra (2006), *Nostalgia for the Modern: State Secularism and Everyday Politics in Turkey*, Duke University Press.
- Pagden, Anthony, ed. (2002), *The Idea of Europe: From Antiquity to the European Union*, Cambridge University Press.
- Parekh, Bhikhu (2000), *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Harvard University Press.

Robins, Kevin (1996), "Interrupting Identities: Turkey/Europe," in Stuart Hall and Paul du Gay, eds, *Questions of Cultural Identity*, London: Sage.

Rottmann, Susan B. and Myra Marx Ferree (2008), "Citizenship and Intersectionality: German Feminist Debates about Headscarf and Antidiscrimination Laws," *Social Politics: International Studies in Gender, State and Society*, 15(4).

Runnymede Trust (1997), *Islamophobia: A Challenge for Us All*, London.

Saktanber, Ayse and Gul Corbacioglu (2008), "Veiling and Headscarf-Skepticism in Turkey," *Social Politics: International Studies in Gender, State and Society*, 15(4).

Saunders, Clare, Christopher Rootes and Susan Milnes (2008), "JURISTRAS Case Study Report: The United Kingdom."

Silverstein, Paul (2004), "Headscarves and the French Tricolor," *Middle East Report, Online*, January 30.

Stepan, Alfred (2000), "Religion, Democracy, and the 'Twin Tolerations'," *Journal of Democracy*, 11(4).

Tretter, Hannes, Barbara Liegl, Kerstin Buchinger, Astrid Steinkellner (2007), "Strasbourg Court Jurisprudence and Human Rights in Austria: An Overview of Litigation, Implementation and Domestic Reform."

Tretter, Hannes, Barbara Liegl, Kerstin Buchinger, Astrid Steinkellner (2008), "JURISTRAS Case Study Report: Austria."

Vakulenko, Anastasia (2007), "'Islamic Headscarves' and The European Convention on Human Rights: An Intersectional Perspective," *Social and Legal Studies*, 16(2).

Weil, Patrick (2005), "The History and Memory of Discrimination in the Domain of French Nationality: The Case of Jews and Algerian Muslims," *HAGAR: International Social Science Review*, 6(1).

Wiltse, Evren Celik (2008), "The Gordian Knot of Turkish Politics: Regulating Headscarf Use in Public," *South European Society and Politics*, 13(2).