



Leyla Şahin v. Turkey, No. 44774/98, ECtHR (Grand Chamber), 10 November 2005

Date	10/11/2005
Type	Judgment
Case number	44774/98
Link	Judgment HUDOC

Abstract

The refusal of admission at university courses and exams to students wearing the Islamic headscarf does not breach art. 9 of the ECHR nor art. 2 of the first additional Protocol of the ECHR.

Normative references

Art. 9 ECHR

Art. 2 Prot. 1 ECHR

Ruling

1. In a democratic society, in which many religions coexist within the same population, it may be necessary to place restrictions on the freedom to manifest one's religion or belief in order to reconcile the interests of various groups and to ensure that everyone's beliefs are respected. This derives from both par. 2 of art. 9 and by the positive obligations imposed on the State pursuant to art. 1 of the Convention to guarantee each person subject to his jurisdiction the rights and freedoms defined in the Convention.

2. The expression "provided by law" to which Article 9 paragraph 2 of the ECHR refers, as a prerequisite for any limitation of the freedom of manifestation of one's religion, requires, first of all, that the contested measure has a basis in domestic law but it also concerns the quality of the law in question: this expression requires the accessibility of the law to the persons concerned and a formulation sufficiently precise to allow them - making use, if necessary, of technical opinions - to foresee the

consequences that a given action can imply and regulate their conduct. The term law must be interpreted in its material and non-formal meaning; it included both written law, which also includes texts of infra-legislative rank and regulatory acts adopted by a professional order, by delegation of the legislator, within its autonomous regulatory power, and unwritten law. In summary, the law is the provision in force, as interpreted by the competent courts.

3. The right to education, as governed by the first sentence of art. 2 of Protocol no. 1 of the ECHR, guarantees each person submitted to the jurisdiction of a Contracting State the right to access to the existing educational institutions at a given time; however, access to the latter constitutes only part of this fundamental right. In order for this right to produce useful effects, it is also necessary that the person who owns it has the opportunity to benefit from the teaching followed, that is, the right to obtain, in accordance with the laws in force in each State, and in one or another form, the official recognition of the studies completed.

4. Despite its importance, the right to education is not absolute; it can give rise to limitations since it requires, by its very nature, State regulation. In order to ensure that the restrictions imposed do not reduce the right in question to the point of jeopardising it in its essence and depriving it of its effectiveness, they must be foreseeable for the persons involved and pursue a legitimate aim. Furthermore, limitation are compatible with art. 2 of the first additional Protocol to the ECHR only if there is a reasonable proportionality relationship between the means used and the aim pursued.

Related

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Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium, Nos. 1474/62 and other 5, ECtHR (Plenary), 23 July 1968	Judgment
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