EXECUTION OF the JUDGMENT of
HASAN VE EYLEM ZENGIN/TURKEY
(Application No and Judgment Date: 1448/04- 9 October 2007)
MONITORING REPORT

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EXECUTION OF HASAN AND EYLEM ZENGIN/TURKEY JUDGMENT – MONITORING REPORT

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Hasan and Eylem Zengin /Turkey

(Application no. 1448/04, 9 October 2007)

Monitoring Report

Facts of the Case
The applicant Hasan Zengin, stating that he was of the Alevi faith, submitted a request to the Provincial Directorate for National Education in Istanbul, seeking to have his daughter exempted from the compulsory religious culture and ethics classes in school. This demand on the part of the applicant was rejected on the grounds of Article 24 of the Constitution, which states ‘Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools’ and Article 12 of the State Education Act. The applicant applied to the Istanbul Administrative Court for judicial review. The Administrative Court dismissed the applicant’s request and its judgment was upheld by the Council of State (the Supreme Administrative Court) on 14.4.2003.

Judgment of the ECtHR
Alleged violation of Article 2/2 of Protocol 1
The applicants alleged that the classes in religious culture and ethics were not conducted in an objective, critical or pluralist manner. They claimed that the lessons were taught from a Sunni interpretation of the Islamic faith and tradition. The government rejected the claims...
stating that in the classes on religious culture and ethics, no specific instruction was provided on the doctrine and rituals of a particular religion and that only general information was given about various religions.

In the judgment of Zengin, the ECtHR noted the general principles. It is of utmost importance to find solutions in line with these general principles to ensure the execution of the judgment. The Court held that the second sentence of Article 2 of Protocol No. 1 does not prevent the States from disseminating in State schools, by means of the teaching given, objective information or knowledge of a directly or indirectly religious or philosophical kind. It seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The second sentence of Article 2 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind with regard to religion. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions.

In order to examine the disputed legislation under Article 2 of the Protocol, interpreted as above, one must, while avoiding any evaluation of the legislation’s expediency, have regard to the material situation that it sought and still seeks to meet. The same must be done to examine whether the judgment is being executed.

In the light of these general principles, the ECtHR drew the following concrete conclusions in the case of Zengin:

Although according to the syllabus for “religious culture and ethics” classes, the subject is to be taught in compliance with respect for the principles of secularism and freedom of thought, religion and conscience, and is intended to “foster a culture of peace and a context of tolerance”, when one looks at the content of the lessons, it is observed that the lessons are not presented objectively. As to the textbooks used in the context of these classes, examination shows that they are not limited to transmitting information on religions in general; they also contain texts which appear to provide instruction in the major principles of the Muslim faith and provide a general overview of its cultural rites. The syllabus for teaching in primary schools and the first cycle of secondary school, and all of the textbooks drawn up in accordance with the Ministry of Education’s decision no. 373 of 19 September 2000, give greater priority to knowledge of Islam than they do to that of other religions and philosophies. In the “religious culture and morals” lessons, the religious diversity which prevails in Turkish society is not taken into account. In particular, pupils receive no teaching on the confessional or ritual specificities of the Alevi faith, although the proportion of the Turkish population belonging to is very large.

Where the Contracting States include the study of religion in the subjects on school curricula, and irrespective of the arrangements for exemption, pupils’ parents may legitimately expect that
the subject will be taught in such a way as to meet the criteria of objectivity and pluralism, and with respect for their religious or philosophical convictions.

In the light of the above, the Court concludes that the instruction provided in the school subject “religious culture and ethics” cannot be considered to meet the criteria of objectivity and pluralism and, more particularly in the applicants’ specific case, to respect the religious and philosophical convictions of Eylem Zengin’s father, a follower of the Alevi faith, on the subject of which the syllabus is clearly lacking.

The ECtHR also examined the question of whether appropriate means existed to ensure respect for parents’ convictions within the compulsory Religious Culture and Ethics lessons. In other words, it examined whether parents’ decision to opt out of religious education classes were respected in cases where they found the class to be against their own convictions. The Supreme Council for Education’s decision dated 09.07.1990 provides for the possibility of exemption to solely two categories of pupils of Turkish nationality, namely those whose parents belong to the Christian or Jewish faiths.

Citing from ECRI’s third report on Turkey dated 2005, the ECtHR considers that this situation is open to criticism, in that “if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone. Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children’s and their parents’ religious freedoms”.

Whatever the scope of the exemption, the fact that parents are obliged to inform the school authorities of their religious or philosophical convictions makes this an inappropriate means of ensuring respect for their freedom of conscience. No one should be obliged to disclose his or her religious conviction. In addition, in the absence of any clear text, the school authorities always have the option of refusing such requests, as in Zengin’s case. Therefore, the exemption procedure does not have the capacity to prevent violations of rights since it is not an appropriate method and obliges parents to disclose their religious convictions.

Application of Article 46

Individual and General Measures

The Court did not rule for any individual measures in the case. The Committee of Ministers noted that Eylem Zengin had reached the age of admission to a university and that there would in effect be no need for individual measures. Nevertheless, the Committee has stated that in cases where the applicants are still enrolled in school, they must immediately be exempt from the lesson.

The judgment in the Zengin case gives rise to significant consequences in terms of the general measures to be taken. Indeed, even if the judgment in the Zengin case does not provide explicit
instructions to the government on how similar violations would be concluded, it is possible to
draw these general principles from the judgment as a whole. As per this judgment, a three-
faceted obligation falls upon the government; the government must cease the violation, must
ensure \textit{restitutio in integrum} and prevent the recurrence of the violation.

With respect to general measures, the judgment shows that the violation can be deemed to
cease if one of these three options are met:

a) Religious Culture and Ethics lessons will not be compulsory;

b) Lessons on Religious Culture and Ethics will not have the character of indoctrination of a
   specific religion and but be transformed into a culture lesson in both theory and practice;

c) Appropriate means will be developed to respect parents’ convictions and parents and children
   should not be obliged to disclose their religious beliefs.

The provision of at least one of these measures is a necessity for the execution of the judgment.
The ECtHR has stated that the finding of a violation is in itself a sufficient individual measure.
Nevertheless, it has been 5 years since the judgment was passed making it necessary to carefully
examine whether similar violations have occurred. If the necessary measures have not been put
in place for students who have started to take these lessons as of the date of the judgment, an
on-going violation in education may well be the case.

Procedures before the Committee of Ministers

The judgment in the case of Zengin v. Turkey is being processed by the Committee of Ministers
according to standard supervision procedures. The Committee of Ministers has stated that there
is no further requirement of individual measures for the applications but general measures are
called for. The CoM has noted that the harmonization of the Turkish Education system and
domestic legislation with Article 2 of Protocol 1 will be a very positive step in solving the
problem.\footnote{Translation of the Decision of the Committee of Ministers: http://www.aihmiz.org.tr/?q=node/128 [getir.net/ygo1]} The translation of the judgment into Turkish and its dissemination was called for
among the general measures. The judgment was translated into Turkish, albeit with some
mistakes\footnote{The most obvious mistake in the Turkish translation is the following in paragraph 66: ‘Alevism is
certainly neither a sect nor a “belief” which has attained a certain level of cogency, seriousness,
cohesion and importance’. The original text reads as follows: “It is certainly neither a sect nor a
“belief” which does not attain a certain level of cogency, seriousness, cohesion and importance”. When the double negation in the original English text was overlooked, the Turkish translation
resulted in meaning that Alevism is not a “belief”.}

It is not understood from the link given by the Committee of Ministers whether the government
has submitted an action plan on the issue. Nevertheless, according the most recent information
submitted by the government to the Committee of Ministers\(^3\), it is stated that a series of workshops were held between June 2009 and January 2010 under the Ministry of State with the participation of academics, theologians and the leaders of the Alevi community. Although the title of the workshops is not explicitly ‘Alevi Workshops’, it is understood that these workshops are a part of the activities known in the public as the Alevi Opening. In addition, the government stated that they have identified the need to redesign the content of the lessons and that a commission has been established in the Ministry of National Education consisting of prominent Alevi intellectuals and academics to this end. The Commission aims to identify subjects on the Alevi faith that should be included in the textbooks and the curriculum. On 28.2.2011, authorities have submitted a CD to the Committee of Ministers, showing the changes that will take effect in the Religious Culture and Ethics lessons in the academic year 2011-2012. The Committee of Ministers is currently evaluating this information.

**General Measures taken at the national level subsequent to the judgment**

As explained above, there are three options for the execution of the Zengin judgment:

a) Religious Culture and Ethics lessons should not be made compulsory;

b) Lessons on Religious Culture and Ethics should not have the character of indoctrination of a specific religion and but should be transformed into a culture lesson in both theory and practice;

c) Appropriate means should be developed to respect parents’ convictions.

As explained below, it is understood that the government has opted for the second of these options however the elective religion lessons model implemented this year shows that a mixed method has been adopted. In this section, we will evaluate the measures taken at the level of the legislative, executive and judiciary regarding the compulsory Religious Culture and ethics lessons in terms of the method the government has opted for.

**A. The Legislative**

The source of the compulsory Religious Culture and Ethics lessons in Turkey is Article 24 of the Constitution. Article 24 has not been subject to the Constitutional amendments\(^4\) adopted after the Zengin judgment, therefore this course is still in the school curriculum.

\(^3\) [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=zengin&StateCode=&SectionCode=][getir.net/yg5q]

\(^4\) Many provisions of the Constitution were amended with Law No. 5982 dated 7.5.2010. Amendment in Article 24 was not an agenda item.
The Minister of National Education has recently stated that the course is a Constitutional requirement. The statement made by the Minister confirms the method the government has preferred:

After introducing classes on fundamental knowledge of religion in the curriculum as an elective course, the existing compulsory religious culture and ethics lessons in Turkey will have been redesigned as a course where social values are taught. This is a constitutional requirement and all children in all students have to take the class with the exception of those in minority schools in Turkey. Many students and their parents have taken the issue to court in cases where they do not want to take the lessons and have applied to the European Court of Human Rights. Both the decisions of the Turkish courts and the ECHR judgments show that these lessons are necessary provided they are delivered in an objective and equal way. Therefore, there is no need to discuss this subject over and over again. Why are we losing time by continuously discussing this topic? The policy of the Ministry of National Education on the subject is shared with the public in a very clear and transparent way. Then I believe it is in our interest to accept the situation. 

Nevertheless, the Minister’s statement that the lessons will not be given in minority schools gives rise to the thought that the contradiction pointed out in the Zengin judgment is still not eliminated.

No amendments have been made in article 12 of the Education Act No 1739, which is a reiteration of the Constitutional article. Pursuant to this provision, ‘Secularism is essential in Turkish national education. Religious Culture and Ethics is among the compulsory lessons taught in primary schools and high schools and the equivalent’. After the ECHR judgment, a rooted change has been made in the national education system. This change brings, among other things, an important provision regarding religious lessons. With Law No. 6287 dated 30.3.2012 entitled Amendments to the Primary School Law, Education Act and other Legislation, article 9 has re-arranged Article 25 of Law No 1739 (the Education Act). The relevant provision in the amended article is as follows:

Elective courses shall be made available in secondary schools and secondary religious vocational schools (imam hatip schools) according to the abilities, development and preferences of students in order to support their high school education. In secondary schools and high schools, the Quran and the life of Our Prophet Mohammed shall be taught as an elective course. Other elective courses in these schools and the curriculum options for the imam hatip schools and other secondary schools shall be determined by the Ministry.

http://www.akparti.org.tr/site/haberler/zorunlu-din-dersleri-anayasal-bir-gerektir/35460
[getir.net/ygp1]
It is important to touch upon this change for two reasons, which may not immediately be recognized as having any relevance to the compulsory Religious Culture and Ethics lessons. Firstly, as noted above, until 2012, it was thought that the government had adopted model B regarding religious education; however with these amendments, a mixed model has been adopted. On the one hand, compulsory religion lessons will continue, on the other hand additional elective religion lessons will be put in the curriculum. With this arrangement the aim is probably to make lessons available for the majority religion as an elective course, since the compulsory course will not be teaching the specifics of any single religion. The second reason that we examine this issue is also related to the first reason. As explained below, there are ongoing complaints that the compulsory Religious Culture and Ethics lessons in Turkey are not impartial. On the other hand, the organization of the new lessons shows a structural problem regarding impartiality in the delivery of religious education by the state in Turkey and gives rise to new potential risks.

Firstly, other than the lessons on the Quran and the life of Our Prophet Mohammed, no other elective course in the school curriculum is prescribed by law. In other words, the Ministry has a wide margin of appreciation in determining other elective courses but they are obliged to have these lessons in the curriculum. In this sense, these lessons have the character of compulsory elective lessons. This may be better explained as follows: The Ministry is free to put an elective course in one academic year and replace it with another subject the following year. Or they may not open a course that has been announced because of shortage of teachers in that subject. However, the situation does not hold true for the two lessons mentioned in the law. The Ministry has to keep these lessons in the curriculum and organize their delivery. Secondly, the subjects of only one religious faith are included in the curriculum as an elective course that is compulsory. The second of these lessons, ‘The life of Our Prophet Muhammad’ is striking. The way the name of the course is mentioned in the law leads one to conclude that the Prophet of a single faith is recognized by all citizens of the country.

Lessons on other faiths in Turkey are not included in the laws and there is no leeway for such an alternative thanks to the Circular issued by the Ministry of National Education, Directorate General for Basic Education. Furthermore, the 3 different elective religion lessons included in the curriculum, do not have any alternatives whatsoever in the secondary School curriculum. For example, a parent may not opt for his/her child taking lessons on ethics instead of religion.

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7 In addition to the lessons prescribed by law, Fundamental Religious Knowledge can also be taken as an elective course.
8 As of the 9th grade, Theory of Knowledge and Democracy and Human Rights can be taken as some form of an alternative.
It is also stated that in some cases, students may be obliged to take these classes as electives. In addition to the reasons explained above, the provision in the Circular stating that an alternative class will not be opened if there is less than ten people who have applied for it, makes these claims stronger. Finally, the statements of official authorities on the subject are inconsistent. In the first explanation regarding electives, it was stated that the number of students taking Quran lessons was 402 thousand, then the figure 470 thousand was given followed by 643 thousand. The last figure shows that the class preferred the most in Turkey is the Quran lessons followed by the Life of Our Prophet Mohammed.

A recent news story shows that these concerns are indeed reflected in practice. According to the news story, the Pastor of the Diyarbakır Protestant Church Ahmet Güvener’s daughter was exempted from the Religious Culture and Ethics classes but since there was no other elective available in school (there were no alternatives chosen by more than 10 students), she was obliged to take the lessons on Fundamental Religious Knowledge and the Life of our Prophet Mohammed. An effort was made to transfer the student to another school for her to choose an elective but the other schools did not accept the transfer. The issue was brought up in the Protestant Churches Association 2012 Report on Monitoring the Violation of Rights.

From this framework, religious education in Turkey is organized around a single specific religion.

B. The Executive

As explained above, the Ministry of National Education plays an important role in the organization of religious education in Turkey. In this section, in addition to the explanations given above, we will focus on how the delivery of religious education is organized by the administration.

The administration mostly denies petitions that are submitted for an exemption to be granted in the compulsory lessons. Examples of such individual application processes will be mentioned in the section on the Judiciary.

The content of the compulsory Religious Culture and Ethics Lessons is created by the Directorate General for Religious Education under the Ministry of National Education. Though the Government has made a submission to the Committee of Ministers stating that a commission

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has been established in the Ministry for religious education, there is no information on how this
commission was chosen, how they work and what the outcome of their decisions will be. A
similar situation is true for the response given by the Minister of National Education Ömer
Dinçer to the question submitted to the TGNA by Izmir MP Rıza Türmen. In his answer, the
Minister said the following:

In 2008, a specialist commission was established under the advisory guidance of three
academics, comprised of members of the Board of Education and the Directorate for
Religious Education. As the commission was continuing its work, the Minister of State
Faruk Çelik organized a series of Alevi workshops. As a result of these workshops, the
opinions and demands of the representatives of Alevi associations were collected
regarding the Religious Culture and Ethics lessons. These opinions and demands were
evaluated by the said commission and submitted to the Board of Education. The
revisions that were made were adopted with the Decision No. 328 dated 30.12.2010 of
the Board of Education on Primary School Religious Culture and Ethics Lessons
Curriculum. The Secondary School Religious Culture and Ethics Lessons Curriculum was
adopted by Decision No. 329 dated 30.12.2010 of the Board of Education and both
these curricula were decided to be effective as of the 2011-2012 school year.

In the rest of the explanation, it is stated that the new curriculum includes more topics on
Alevism and Bektashism and that the opinions and demands of the Alevi associations and
representatives were taken into account in doing this. However, there is no information
regarding who these individuals are and whether this initiative is sufficient.\footnote{Letter of the Ministry of National Education, Department for Strategy Development in response to
the inquiry of Izmir MP Rıza Türmen. Letter No. 337, dated 17.1.2012)
http://www.aihmiz.org.tr/aktarimlar/dosyalar/1349594746.pdf [getir.net/ygp5]}

The extent to which the lessons thus created are impartial goes beyond the purposes of this
report. Nevertheless, it must be noted that the process followed was not a transparent one.
After the changes made in the curriculum, the Education Reform Initiative carried out a detailed
study on whether the lessons are in conformity with international criteria and human rights
rules.\footnote{“An Evaluation of the Religious Culture and Ethics Lessons Implemented in the 2011-2012 School
Year”, http://www.aihmiz.org.tr/aktarimlar/dosyalar/1349647350.pdf [getir.net/ygws]}
The study notes that ‘the changes are not of a nature that takes into consideration the
revision of the entirety of the curriculum on the basis of impartiality and objectivity, but they are
in the form of some additions and some changes in the places of the units in the books.’ The
approach to the lessons was found to be far from meeting international standards especially the
Toledo Principles of the OSCE. As it is clearly pointed out in the notes where all changes to the
curriculum were examined, ‘In terms of knowledge about religion and faith systems, doctrines
pertaining to Islam are central to the curriculum and taught to students as ‘our religion’.’

Though limited place is given to other interpretations of Islam, the lessons are still continued in a
fashion that promotes a specific interpretation of Islam in detail. It must be noted that some
information added to the curriculum are far from making the lessons conform to international standards.

Other academic work is also far from ensuring compliance with international standards. As noted by Özenç, the first two years of the curriculum does not include any faith other than Islam, and the rituals of this faith are explained in detail. Within the 9 years of religious education, corresponding to 504 hours in the curriculum, only some units corresponding to 21 hours are allocated to some values and teachings of different religions.\(^\text{14}\)

The Alevi Workshops, presented to the Committee of Ministers are also far from bringing a serious solution to the problem. Firstly, compulsory religion lessons are not solely the problem of Alevis. Even if they were, it does not seem possible to reach any solution from the Final Reports of the Alevi Workshops.\(^\text{15}\) The said report summarizes national and international laws alongside national and international court decisions and states that all Alevis are uncomfortable with the existence of the lessons. Yet, according to the report, different Alevi groups brought different solutions or have accepted the proposals for solutions. Though there is no indication of which group was represented and to what extent, the following was stated as alternatives that were suggested: Removing the lessons from the curriculum completely, giving an opportunity for exemption or re-arranging the lessons in a pluralistic and impartial way. The report shows that the Prime Ministry has not considered the first two options as a solution but opted for the third method. In addition to the fact that there is no explanation on why this preference was made, it is also an acceptance that the changes made till now are not of a satisfying nature:

In fact, the Directorate General for Religious Education has made the necessary arrangements in line with the judgments of the ECtHR, and has not received any further notices with respect to the curriculum. However, as it was expressed in the workshops, it cannot be said that the curriculum is found to be satisfying by Alevi citizens.\(^\text{16}\)

Another point to be emphasized, apart from the curriculum, is regarding the pedagogical formation of the teachers who teach this class. In primary and secondary schools, all of the teachers who teach Religious Culture and Ethics lessons are graduates of Departments of Theology where the Islamic religion is taught in all its detail. By adding other lessons of religion in the curriculum, it has become a necessity to ensure that teachers who are appointed to teach this class are equipped to deliver these lessons detail. It is not possible to employ teachers who are followers of other faiths or who have received a detailed and impartial education about other faiths. Therefore, even if an effort is made to deliver compulsory religion lessons as

\(^{16}\) Ibid, p. 158.
impartial lessons in culture, one must discuss whether this can be possible with the current teaching staff.

Though it is stated that with the new arrangements, the lessons have been transformed into lessons on culture, the discrepancy criticized by the ECtHR still persists. In this regard, Christian and Jewish students enrolled in schools other than minority schools are given an exemption from the Religious Culture and Ethics lessons. In reality, if one accepts that Article 24 of the Constitution makes the class compulsory, then one cannot accept an administrative procedure carried out against the Constitution. Yet, according to Decision No. 1 dated 9.7.1990, of the High Board of Education and Training, ‘Upon the proposal of the Ministry of National Education, Jewish and Christian students who are Turkish citizens and who are enrolled in primary and secondary schools other than minority schools, shall be kept exempt from Religious Culture and Ethics lessons provided that they document their observance of another religion. If they do wish to take this class, students are required to bring a petition from their parent in this regard.’

The rule is surprising in many respects and also against human rights. Firstly, as stated in the judgment on Zengin, if students are indeed given a chance to be exempt, then this means that it is still not a lesson on culture. Secondly, exemption has been made possible only for followers of these two religions. Thirdly, the system obliges students and parents to disclose their religious identity and a condition of petitioning is brought for individuals of different faiths to take classes on a subject, which is described as culture lessons. Indeed, it is understood from cases that are filed at courts that individuals who have that section in the national identity cards denoting their religion erased, are refused exemption from the lessons by the courts. By the same token, it is not acceptable for individuals following different faiths to be obliged to disclose their religion. In fact, organizations of Christian citizens are voicing their discomfort with regard to this issue. Since students who are exempt from the classes are not given an alternative elective course, they are left completely outside.

Another important development with regard to the Compulsory Religious Culture and Ethics lessons is the decision of the Supreme Board of Higher Education. The lessons were compulsory until 2013 and the central examinations prepared by the Board included questions on the subject. With a decision of the Supreme Board of Education in 2013, it has been decided that in the Transition to Higher Education Examination (YGS) students will be asked 5 questions on the subject of Religious Culture and Ethics and 8 questions in the Undergraduate Placement Examination (LYS). In other words, following the Zengin judgment, the significance of the

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17 Eg. See Decision of the Ankara 1st Administrative Court dated 11.10.2012 No. E. 2012/1133, K. 2012/2367
subject of Religious Culture and Ethics in the curriculum and its weight and effect in the examinations increased significantly.

After the Zengin judgment, it is observed from the steps taken in regard to religious education that let alone the government being impartial and objective with respect to religious education, a mobilization for religious education has been spread throughout Turkey.

C. The Judiciary
As explained above, the ECtHR judgment notes that if the lessons are not designed as culture lessons, then as a last resort, appropriate means must be developed to respect parent’s faiths. Though the judgment does not list what these appropriate means may be, it is understood from the discussions that the most typical means is to grant students exemption from the class. In the case law of the Council of State until the beginning of 2000s, demands for exemption from these compulsory lessons were rejected on grounds that it was in accordance with the Constitution and the relevant legislation. 20 Despite some exceptions 21, the decisions of the first instance courts were similar. However, immediately following the ECtHR judgment, some decisions of the administrative courts have paved the way for all who do not wish to take the class to be granted exemption. 22

A short time after the Zengin vs. Turkey judgment, a similar case was brought before the Council of State. A parent applied to the Istanbul Governorship Provincial Directorate for National Education for exemption to be granted to his child in Religious Culture and Ethics lessons. Upon the rejection of his demand by the Directorate, the parent applied to the Administrative Court for the annulment of the administrative decision and was refused. The decision was brought before the 8th Chamber of the Council of State. In this case, the Council of State adopted a different method of analysis from those it employed in previous decisions. According to the Council of State, the compulsory lessons stated in article 24 are ‘religious culture and ethics’ lessons. They are not ‘lessons in religion’. If the lessons are organized in a way that is against the ECHR, they cannot be regarded as religious culture and ethics. In its decision, the Council of State notes that the ECtHR judgment does not find lessons in religious culture and ethics in the primary and secondary schools in Turkey to be in violation of the Convention, however, failure to observe the principles of impartiality and pluralism in the education system in the delivery of these lessons and failure to provide an appropriate means for parents by respecting their faith

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22 There are some arguments that this approach of the Council of State is even more progressive than the ECHR case law: Berke Özenç (2008), “AİHM ve Danıştay Kararlarının Ardından Zorunlu Din Dersleri Sorunu”, İÜHM C. LXVI, S. 2, s.191, 218. http://www.aihmiz.org.tr/aktarimlar/dosyalar/1357954045.pdf [getir.net/ygpx]
have resulted in an insufficient system of delivery that has amounted to a violation of the ECHR. According to the decision by the Council of State, religious education should be delivered via a curriculum that is in line with the aim set out in the Constitution; the content should be objective and pluralistic, and the religion of individuals should not be used for discrimination or inequality; the government should stay impartial before religions and see them all as equal to each other. Although the education delivered in primary and secondary schools is called religious culture and ethics, it is evident that the content cannot be regarded as religious culture and education lessons. Since lessons of such characteristics cannot be compulsory, respect must be paid to families’ faiths.

Two determinations made by the Council of State should be underlined. Firstly, the lessons that are compulsory as per the Constitution are not religion lessons but lessons on ‘religious culture and ethics’ which are at an equal distance from all religions. Though it is not explicitly stated in the judgment, this method is in accordance with option (b) mentioned above. Secondly, according to the Council of State, in order for this characteristic of the lessons to be substantially present, the curriculum should be in line with the Convention and the case law of the ECtHR. These two determinations are of utmost importance. However, the Council of State has not brought guidelines as to how the content of the lessons should be audited but has preferred to reiterate the deliberation of the ECtHR in the Zengin judgment.

Although this decision provides a consistent formula for overcoming the conflict between the Constitution and the Convention, it does not give criteria as to the circumstances in which these lessons can be regarded as non-objective but only reiterates the ECtHR judgment thereby posing an important risk.

In some of its later decisions, the Council of State has employed the same formula. It is observed that the decision is also adopted and used by first instance courts. Some administrative courts have reiterated the Council of State decision verbatim in their own rulings. Some others

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have ruled that the mere demand for exemption from the lessons is sufficient reason for the granting of exemption without any further explanation. Yet, even in this period, it is not possible to say that all administrative courts have passed similar decisions. Some courts have taken Article 24 of the Constitution and Article 12 of the Education Act and decided in favour of the administration.

However, it is observed that in 2010, the Council of State has put an end to this practice. In a series of decisions they have passed, the first of which was in 2010, the Council of State determined that the content of the lessons were now of a character that suited the name Religious Culture and Ethics. In a case filed at the Ankara 10th Administrative Court in 2005, the court, contrary to other jurisdictions, asked for an expert study to be carried out on whether the principle of impartiality towards different religious orders was respected through a sociological and pedagogical examination of the text books. The expert’s report on the subject gives the following conclusion:

The text books prepared in for the 4th, 5th, 6th, 7th and 8th year of primary school in the academic year 2005-2006 have been approved by the Ministry of National Education Board of Education with Decisions No. 100, 62, 44 and 38 on 20.05.2005 to be used for 5 years as of the school year 2005-2006. However, the Primary School Religious Culture and Ethics Curriculum that became effective as of 19.09.2000 and the text books complying with that curriculum have been annulled by Board of Education Decision No. 410, dated 28.12.2006. The new curriculum was put into practice in the academic year 2007-2008 and the said textbooks were used for only two years. The textbooks for Religious Culture and Ethics classes in the 10th and 11th grades of high school were also annulled in line with the curriculum that was renewed at the end of the 2006-2007 school year. No textbooks other than the ones prepared by the Ministry of National Education State Books Commission are used in primary and secondary education. In the said books, no single religious order or sect is taken as a basis. The books were prepared, in general, with an approach beyond all sects (metadoxy) and focus on the unifying role of religion. A unifying approach is employed in conveying information about Islam in that the Quran and the Prophet Mohammed are kept central in the books. No reference is made to any sect or religious order. The new curriculum and the textbooks prepared by the Ministry of Education as of the academic year 2006-2007 are more careful in dealing with the issues brought up by the applicants in their claims. The subjects covered in the textbooks are of a character that embraces all religions, sects.

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and religious orders in our country and no positive discrimination is made for any sect, religious interpretation or religious group. The subjects are covered in a manner in line with the Constitution and the laws in that they are delivered as lessons and not religious preaches. The Sunni faith is not taken as a basis in the curriculum and the new curriculum allocates approximately 30 pages to the Alevi faith and culture. There is a foundation that meets the wishes of the applicants to a great extent, however, in chapters on religious days and evenings, the special days celebrated by the Alevi should also be included in the books. The subjects are covered in a metadoxical manner, no sect or local practice is emphasized and the Alevi Islamic faith and culture are covered more extensively in the new curriculum.

According to the Council of State, who adopted the expert report without any further discussion:

It is evident that the religious culture and ethics classes do not have the character of religious lessons since the changes in the curriculum, and that the content should be regarded as religious culture and ethics education; and that the applicant has made his application after the changes in the curriculum. It is without doubt that according to Article 24 of the Constitution, religious culture and ethics instruction is compulsory in primary and secondary schools. Such instruction must be delivered through a curriculum that conforms to the aim set out in the Constitution. The content must be objective and pluralistic, the religion of an individual must not be a source of discrimination or inequality and the state must have an impartial stance towards all religions, accepting them to be equal to one another. In cases where the curriculum takes as a basis a single interpretation of a religion, the class cannot be regarded as lessons in religious culture and ethics and will then be religious instruction. In fact, it has been concluded that as a result of the changes made in the curriculum, instruction on religious culture and ethics in our country is delivered in an objective and rational way. As it can be understood from these explanations, the current practice of religious education does not employ the curriculum used at the date the applicant filed his case on 18 November 2008; the current religious education and ethics classes are in line with Article 24 of the Constitution and the said article stipulates that such instruction is compulsory.  

The principles mentioned in the decision are later used by the Council of State in their own decisions making exemption from the classes on Religious Culture and Ethics impossible. Demands for correction on the decisions have been to no avail.

Decisions for annulment, given based on the previous case law of the Council of State are now being reversed. In a case filed at the Sivas Administrative Court, the panel of judges examined the Religious Culture and Ethics text books taught in the grades of the applicants’ children,

observed that the books included information on the religion of Islam for the most part, and determined that this amounted to teaching the tenets of a particular religion. The court determined that the lessons could not be made compulsory for children under the circumstances. The Council of State argued that it couldn’t be possible to determine whether the content of the textbooks was Religious Culture and Ethics or religious instruction with knowledge of the law alone. According to the Council of State, this can only be known through a sociological and pedagogical examination and the decision for annulment passed by the lower court must therefore be reversed.\textsuperscript{31} In line with this approach, the administrative courts started to take recourse to expert opinions in their decisions on the subject. The relevant expert reports are more of an attempt to prove that the textbooks are impartial rather than an examination into whether the rights of families and children are violated.\textsuperscript{32}

The newly adopted approach of the Council of State with respect to religious education is completely incorrect. The subject matter of the case is not whether religion is taught accurately in a theological sense. The subject matter of the case is whether the rights of students and parents safeguarded by national and international laws are violated. This is an entirely legal issue and cannot be resolved by recourse to an expert opinion.

In fact, in the case of Zengin, the ECtHR has concluded the case by reference to international human rights standards, not through recourse to expert opinion. What the Council of State should do is examine the content and delivery of the lessons and determine whether the rights of the applicants are being violated. Yet, instead of opting for this approach, the Council of State has preferred to bind itself to the expert report. As a matter of fact, after the date the Council of State concluded that the lessons were impartial, many citizens continued to demand exemption from the classes and academic studies have shown that the lessons are not impartial.\textsuperscript{33}

The date of the events subject to the decision is also very striking. As explained above, in the information it submitted to the Committee of Ministers, the government stated that Alevi workshops were held between 2009 and 2010 and that a committee had been established at the Ministry to examine the situation. Furthermore, the government presented a CD with the content of the Religious Culture and Ethics lessons to be effective as of 2011-2012. Yet the Council of State finds the changes made in 2007 to be sufficient. This attitude on the part of the Council of State creates two distinct contradictions. Firstly, the same chamber of the Court has issued decisions for exemption from the class until 2010. Then all of a sudden in a decision dated 2010, it has concluded that the lessons are culture lessons. This means that the decisions passed after the changes in 2007 are wrong. Since the Council of State does not deliberate on the difference between the two curricula in question, one cannot understand how it has reached


\textsuperscript{33} See note 13 and 14.
this conclusion. Another issue is the contradiction between the Council of State decision and the initiatives of the government. The Council of State deliberated that the changes made are sufficient to meet ECHR standards, yet the government does not find this sufficient and sends new documents to the Committee of Ministers. In the response to the inquiry by Izmir MP Rıza Türmen, the Ministry of National Education states that the new measures adopted have become compliant with the ECtHR judgment in the 2011-2012 academic year.\(^\text{34}\)

In other words, the Council of State has fallen behind the government in terms of protecting these rights.

The Administrative Courts have followed the 2010 case law of the Council of State and started to reject applications of families from other faiths for exemption from the compulsory class.\(^\text{35}\) Decisions of the first instance courts in favour of applicants have started to be reversed by the Council of State in favour of the administration.\(^\text{36}\)

In addition to the judiciary, applications are filed with the TGNA Human Rights Violations Investigation Commission for exemption from the compulsory religious education. These applications are rejected on the grounds that the authority to change the practice rests with the Ministry of National Education.\(^\text{37}\) In another case, despite having won the case, the individual applying to the Commission was told that the decision held true only for grades 7 and 8 and that his child was obliged to take the class in 9th grade. The applicant was denied any favourable outcome from the Human Rights Presidency of the Prime Ministry and the TGNA Human Rights Violations Investigation Commission.\(^\text{38}\)

Conclusion and Recommendations

To the Government

As explained in the beginning of the report, the ECtHR judgment in the case of Zengin can be executed by means of three different methods:

a) Religious Culture and Ethics classes should not be made compulsory;

b) Lessons on Religious Culture and Ethics should not have the character of indoctrination of a specific religion and but should be transformed into a culture lesson in both theory and practice;

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\(^{34}\) See note 10 above.


\(^{36}\) Ankara 1st Administrative Court Decision dated 11.10.2012 No. E. 2012/1133, K. 2012/2367


c) Appropriate means should be developed to respect parents’ convictions and parents and children should not be obliged to disclose their religious beliefs.

Among these different methods, the Government has opted for method (b) and also employed method (c) for the new courses in the curriculum. With the new arrangements, religious lessons have started to occupy an important place in the curriculum. The curriculum formulated according to method (b) is observed to be far from the Convention criteria. Academic studies clearly show that despite improvements, problems still persist. Moreover, the problem does not rest solely in the curriculum. Because the members of the Directorate of Religious Education in the Ministry of Education, who prepare the curriculum, and the teachers who teach these classes both come from an educational background where a specific religious tradition is prevalent, it is difficult for the lessons to be delivered in a pluralistic way. After the Zengin judgment, the high numbers of parents who wish for their children to be exempt from these lessons show how important the right to exemption is. Recent decisions of the Council of State do not evaluate the situation in terms of human rights and are therefore open to criticism. Contrary to what the authorities say, compulsory religious lessons are not a Constitutional obligation and it should suffice to keep it in the curriculum as an elective course to meet the requirements of the Constitution. 39

Accordingly:

a. In order to establish respect for everyone’s freedom of religion and conscience in Turkey, the government should refrain from opting for method (b), which is in fact the most difficult method to implement, and opt for elective courses as described under method (C), whereby the alternatives can also be written in the law and religious education can be formulated in such a way so as to ensure that no single religion is imposed on students.

b. Elective religion lessons should not be imposed on students by indirectly making them compulsory electives. Legal safeguards must be introduced to prevent this practice.

c. The central examination for entry into universities should not include questions on lessons that convey information mostly on a single religion as this leads to a disadvantaged situation for students who have not taken the lessons.

To the Committee of Ministers

The judgment on Zengin vs. Turkey has been kept under supervision by the Committee of Ministers for over 5 years. During this time, the requirements of the judgment have not been met and other problems have risen in Turkey with respect to religious education. Statements by

the government that they have gathered with relevant representatives and made the necessary arrangements do not seem satisfying.

Accordingly:

a. The judgment, which has still not been executed by the government despite a period of more than 5 years, should be taken outside the scope of standard procedure and supervised through enhanced procedure.

b. It is not possible to understand whether these lessons meet international criteria from an examination of a CD. It is necessary to reveal the multi-dimensional aspects of the problem and find a pluralistic solution. To this end, a supervision procedure should be followed with the involvement of experts from the Committee of Ministers and the participation of groups who are against compulsory religion lessons in Turkey.
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