



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FORMER SECOND SECTION

CASE OF HASAN AND EYLEM ZENGİN v. TURKEY

(Application no. 1448/04)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

09/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hasan and Eylem Zengin v. Turkey,

The European Court of Human Rights (former Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 3 October 2006 and 18 September 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 1448/04) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Hasan Zengin and Miss Eylem Zengin (“the applicants”) on 2 January 2004.

2. The applicants were granted legal aid.

3. The applicants maintained, in particular, that the manner in which the compulsory lessons in religious culture and ethics were taught infringed their rights as guaranteed by the second sentence of Article 2 of Protocol No. 1 and Article 9 of the Convention.

4. In a decision of 6 June 2006, the Chamber declared the application admissible.

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 October 2006 (Rule 59 § 3 of the Rules of Court).

There appeared before the Court:

– *for the Government*

Mr M. ÖZMEN,

Co-Agent,

Mr H. ÜNLER,

Ms Z.G. ACAR,

Ms E. ESIN,

Ms D. KILISLIOĞLU,

Mr İ. AYCAN,

Mr S. DUMAN,

Advisers;

– *for the applicants*

Mr K. GENÇ,

Mr A.Ş. YAKIŞAN,

Ms İ. MELİKOFF

Mr T. ÖKER,

Mr H. ZENGİN,

Counsel,

Advisers,

First applicant.

The Court heard addresses by Mr Genç and Mr Özmen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Hasan Zengin, who was born in 1960, and his daughter Eylem Zengin, who was born in 1988, live in Istanbul.

At the time Mr Zengin lodged the application on his own and his daughter's behalf, she was attending the seventh grade of the state school in Avcılar, Istanbul.

A. Background to the case

7. Hasan Zengin stated that his family were adherents of Alevism.

8. Alevism originated in central Asia but developed largely in Turkey. Two important Sufis had a considerable impact on the emergence of this religious movement: Hoca Ahmet Yesevi (12th century) and Hacı Bektaş Veli (14th century). This belief system, which has deep roots in Turkish society and history, is generally considered as one of the branches of Islam, influenced in particular by Sufism and by certain pre-Islamic beliefs. Its religious practices differ from those of the Sunni¹ schools of law in certain aspects such as prayer, fasting and pilgrimage.

9. According to the applicant, Alevism is a belief or philosophy influenced by other cultures, religions and philosophies. It represents one of the most widespread faiths in Turkey after the Hanafite² branch of Islam. It advocates close contact with nature, tolerance, modesty and love for one's neighbour, within the Islamic faith. Alevis reject the sharia (code of laws in orthodox Islam) and the *sunna* (forms of behaviour and formal rules of orthodox Islam) and defend freedom of religion, human rights, women's rights, humanism, democracy, rationalism, modernism, universalism,

1. The majority of Turkey's population follows the Hanafite theological school's moderate interpretation of Islam.

2. Hanafism is one of the four theological schools of Sunni Islam.

tolerance and secularism. Alevi do not pray by the Sunni rite (in particular, they do not comply with the obligation to pray five times daily) but express their devotion through religious songs and dances (*semah*); they do not attend mosques, but meet regularly in *cemevi* (meeting and worship rooms) for ritual ceremonies. Equally, Alevi do not consider the pilgrimage to Mecca as a religious obligation. They believe that Allah is present in each person. According to Alevism, Allah created Adam in his image and all his manifestations in this world are in human form. Allah is neither in the sky nor in paradise, but in the centre of the human heart.

B. The applicants' request for exemption and application to have the decision set aside

10. On 23 February 2001 the applicant submitted a request to the Provincial Directorate of National Education (“the Directorate”) at the Istanbul Governor's Office, seeking to have his daughter exempted from religious culture and ethics classes. Pointing out that his family were followers of Alevism, he stressed that, under international treaties such as, for example, the Universal Declaration of Human Rights, parents had the right to choose the type of education their children were to receive. In addition, he alleged that the compulsory course in religious culture and ethics was incompatible with the principle of secularism.

11. On 2 April 2001 the Directorate replied that it was impossible to grant the exemption request. In particular, it stated:

“... Article 24 of the Constitution states 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. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.'

Article 12 of the State Education Act (Law no. 1739) ... provides that 'secularism shall be the basis of Turkish national education. Religious culture and ethics shall be among the compulsory subjects taught in primary and upper secondary schools, and in schools of these levels.'”

For these reasons, your request cannot be granted.”

12. Following the Directorate's refusal, the applicant applied to the Istanbul Administrative Court for judicial review. He alleged that the compulsory classes in religious culture and ethics were essentially based on the fundamental rules of Hanafite Islam and that no teaching was given on his own faith. He challenged, *inter alia*, the compulsory nature of this school subject.

13. In a decision of 28 December 2001, the Administrative Court dismissed the applicant's request, holding, *inter alia*:

“Article 24 of the Constitution has established that religious culture and ethics are among the compulsory subjects taught in primary and secondary schools, and section 12 of Law no. 1739 [states] that religious culture and ethics are among the compulsory subjects taught in primary and upper secondary schools of the equivalent level.

In this context, the dismissal of the plaintiff's request is not contrary to the law...”

14. The applicant appealed on points of law against that judgment, relying, *inter alia*, on the Convention.

15. In a judgment of 14 April 2003, served on 5 August 2003, the Supreme Administrative Court dismissed his appeal and upheld the first-instance judgment, holding that the latter complied with the procedural rules and the legislation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

16. Article 24 of the Constitution, in so far as relevant, provides:

- “1. Everyone has the right to freedom of conscience, religious belief and conviction.
2. Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.
3. No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.
4. 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. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.
5. No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.”

B. The State Education Act (Law no. 1739)

17. Section 12 of the State Education Act (Law no. 1739) provides:

“Secularism is the basis of Turkish state education. Religious culture and ethics shall be among the compulsory subjects taught in primary and upper secondary schools and in schools of an equivalent level.”

C. Decisions on exemptions and on the syllabus

1. *Decision no. 1 of 9 July 1990 on exemptions*

18. On 9 July 1990 the Supreme Council for Education adopted a decision on religious culture and ethics classes and pupils who were entitled to exemption from them. It stated:

“Following the proposal by the Ministry of Education, pupils of Turkish nationality who belong to the Christian or Jewish religions and who attend primary and secondary schools, with the exception of schools for minorities, are not obliged to follow the classes in religious culture and ethics, provided they affirm their adherence to those religions. If, however, such pupils wish to attend such classes, they must submit a written request from their legal representative.”

19. At the hearing the Government explained that this exemption procedure could be extended to other religious or philosophical convictions, such as atheism, without however producing specific examples.

2. *The Turkish education system and decision no. 373 of 19 September 2000 on guidelines for classes in religious culture and ethics*

20. Since 1997 compulsory state education has lasted eight years (instead of the previous five) for children aged 6 to 14; the first five years correspond to primary school (1st to 5th grade) and the following three to secondary school (6th to 8th grade).

21. In decision no. 373 of 19 September 2000, the Minister of Education approved the guidelines for classes in religious culture and ethics (taught in grades 4, 5, 6, 7 and 8).

The principles adopted in this connection are as follows:

“... today, when intercultural influence is increasing, it has become necessary, in order to foster a culture of peace and a context of tolerance to know about other religions.

For this reason, the school syllabus...;

... includes teaching [to the effect] that the aim of all religions is to educate upright individuals. [Religious instruction also aims to educate people] who are informed about the historical development of Judaism, Christianity, Hinduism and Buddhism, their main features and the content of their doctrine, and to be able to assess, using objective criteria, the position of Islam in relation to Judaism and Christianity...

A. The principles to be observed during the teaching and learning experience...

1. Always bear in mind the principle of secularism. There should be no infringement of freedom of religion, conscience, thought and expression.

2. Emphasise that differences in religious understanding and practice are of value.

3. Take advantage, in so far as possible, of pupils' feelings and behaviour in order to socialise them and to educate them as good citizens through religious and ethical knowledge.

4. Seek to ensure that pupils internalise the principles of love, respect, fraternity and friendship, which strengthen national unity and union, and national concepts and values such as the homeland, the nation, the flag, the martyr...

5. Emphasise that religion is one of the important principles of the national culture.

...

9. Teach the concept of worship in the wide sense; that work, cleanliness and high moral standards are ways of worshipping...

10. Make pupils aware that acts of worship, as well as being demonstrations of love, respect and gratitude towards Allah, enable the individuals in a group to bond in love and respect, to help each other, to show solidarity...

11. When studying subjects related to the prophet Mohammed, provide examples concerning his morality.

...

13. Base lesson material on verses [from the Koran] and relevant sayings and traditions [of Mohammed]..., the passages for reading should be illustrated by stories and images.

14. Throughout the entire teaching process, make a careful distinction, in covering topics and the choice of examples, between those from the Koran and those developed subsequently. To this end, taking into account public and community events, emphasise those which have their source in the Koran and those which result from habit, customs, tradition, beliefs, lifestyles and cultural influence.

...

Using different examples, explain that, far from being a myth, Islam is a rational and universal religion.

...

7th grade... Units: Unit 1 – Knowledge of the Koran. Unit 2 – Religion is good morals. Unit 3 – Pilgrimage and sacrifice. Unit 4 – Angels and other invisible beings. Unit 5 – Belief in the other world. Unit 6 – Our family. Unit 7 – Knowledge of religions...”

22. The applicants submitted five textbooks, for grades 4, 5, 6, 7 and 8, on religious culture and ethics. They are used in schools, having been authorised by the Ministry of Education.

In the 4th grade textbook, instruction moved from the concept of religion to examine the relationship between morality and religion, the Creator and

the creature, the family and religion, and knowledge of the life of the prophet Mohamed.

The 5th grade textbook begins by explaining the meaning of the expression “I believe in God”. It focuses particularly on teaching the fundamental concepts of Islam: the profession of faith, prayer, the mosque as the place of worship, the nature of the prayers recited during the month of Ramadan, the prophet Mohammed's family life. A general overview is given of the prophets whose names appear in the Koran.

The 6th grade textbook begins by covering the different daily prayers. It is explained that every Muslim is obliged to pray five times daily. The corresponding rituals are illustrated in the book, which then deals with subjects such as charity, love for the homeland and the nation, harmful behaviour, friendship and brotherhood, and the four holy books, namely the Torah, the Zabur (psalms), the Gospels and the Koran.

The 7th grade textbook emphasises knowledge of the Koran, the link between religion and high moral standards, pilgrimage and sacrifice, angels and invisible creatures, belief in the other world and the family. In addition, the main religions, namely Judaism, Christianity, Islam, Hinduism and Buddhism, are presented over fifteen pages.

The 8th grade textbook discusses the prophet Mohammed's high moral standards, culture and religion, the concepts of religion, reason and science, belief in fate and the link between faith and conduct. Subjects such as “differences in approach in religion”, “advice of religions and of Islam”, “secularism”, “freedom of religion and conviction” are also covered in this book.

It appears from reading these textbooks that the pupils are also required to learn several suras from the Koran by heart.

23. For their part, the Government submitted the textbook for the 9th grade (the first year of upper secondary school).

This textbook begins by dealing with man's place in the universe. It subsequently covers topics such as human nature and religion, the role of religion in human life and the various forms of belief, namely monotheism, polytheism, Gnosticism, agnosticism and atheism. Explanations are also provided for various concepts, such as prayer and the link between prayer and cleanliness; this chapter illustrates the rituals surrounding the partial and total ablutions in Islam (*gusul* and *abdest*). In addition, certain essential elements, such as the life of Mohammed, the Koran and fundamental concepts (interpretation, the suras, etc.), are described with the aim of providing information on Islam. The rest of the textbook deals primarily with the concepts of “values and family”, “the homeland, flag, freedom, independence, human rights, secularism, the secular State, Atatürk and secularism, etc”. Finally, it deals with the subject of “the Turks and Islam” in the context of Turkish history; this chapter examines the Turks' former beliefs, such as the concept of “God-heaven”, Manichaeism, Buddhism, the

Christian religion and Judaism. Individuals who influenced the Turks' understanding of Islam are also discussed, in particular Ebu Hanife (born 699, died 767, founder of the Hanafite school) and Imam Şafii (born 767, died 820, founder of the Shafite School), as well as Hoca Ahmet Yesevi and Hacı Bektaş Veli (see paragraph 8 above).

24. The Government also explained that pupils were assessed in this subject only by written examinations.

III. RELEVANT INTERNATIONAL TEXTS

A. International Covenant on Civil and Political Rights

25. The relevant passage of Article 18 of the International Covenant on Civil and Political Rights provides:

“4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

B. Recommendations 1396 (1999) and 1720 (2005) of the Parliamentary Assembly of the Council of Europe

26. In Recommendation 1396 (1999) on religion and democracy, adopted on 27 January 1999, the Assembly recommended that the Committee of Ministers invite the governments of the member States, *inter alia*:

“13. ... (ii) to promote education about religions and, in particular, to:

(a) step up the teaching about religions as sets of values towards which young people must develop a discerning approach, within the framework of education on ethics and democratic citizenship;

(b) promote the teaching in schools of the comparative history of different religions, stressing their origins, the similarities in some of their values and the diversity of their customs, traditions, festivals, and so on; ...

(e) avoid – in the case of children – any conflict between the state-promoted education about religion and the religious faith of the families, in order to respect the free decision of the families in this very sensitive matter...”

27. In Recommendation 1720 (2005), adopted on 4 October 2005, the Assembly recommended that the Committee of Ministers encourage the governments of member States to ensure that religious studies were taught at the primary and secondary levels of state education, on the basis, *inter alia*, of the following criteria:

“14.1. the aim of this education should be to make pupils discover the religions practised in their own and neighbouring countries, to make them perceive that everyone has the same right to believe that their religion is the “true faith” and that other people are not different human beings through having a different religion or not having a religion at all;

14.2. it should include, with complete impartiality, the history of the main religions, as well as the option of having no religion;

14.3. it should provide young people with educational tools that enable them to be quite secure in approaching supporters of a fanatical religious practice;

14.4. it must not overstep the borderline between the realms of culture and worship, even where a country with a state religion is concerned. It is not a matter of instilling a faith but of making young people understand why religions are sources of faith for millions;

14.5. teachers on religions need to have specific training. They should be teachers of a cultural or literary discipline. However, specialists in another discipline could be made responsible for this education;

14.6. the state authorities should look after teacher training and lay down the syllabuses which should be adapted to each country's peculiarities and to the pupils' ages. In devising these programmes, the Council of Europe will consult all partners concerned, including representatives of the religious faiths.”

C. The European Commission against Racism and Intolerance (ECRI)

28. The European Commission against Racism and Intolerance has already given its view on the teaching of religion in schools in General policy recommendation no. 5 on “Combating intolerance and discrimination against Muslims” (CRI (2000) 21, 27 April 2000). After reiterating the principles of respect for equality and non-discrimination between religions and recognising the great diversity intrinsic in the practice of Islam, it recommended that the governments of member States “ensure that religious instruction in schools respects cultural pluralism and make provision for teacher training to this effect”.

29. In its third report on Turkey (CRI (2005), the ECRI also considered, in particular, that:

“The syllabus covers all religions and is chiefly designed to give pupils an idea of all existing religions. However, several sources have described these courses as instruction in the principles of the Muslim faith rather than a course covering several religious cultures. ECRI notes that only Muslim pupils are required to follow these courses, while pupils belonging to minority religious groups can be exempted. ECRI considers the situation unclear: 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 freedom.”

In consequence, ECRI urged the Turkish authorities:

“... to reconsider their approach to instruction in religious culture. They should take steps either to make this instruction optional for everyone or to revise its content so as to ensure that it genuinely covers all religious cultures and is no longer perceived as instruction in the Muslim religion.”

IV. COMPARATIVE LAW

30. In Europe, religious education is closely tied in with secular education. Of the 46 Council of Europe member States which were examined, 43 provide religious education classes in state schools. Only Albania, France (with the exception of the Alsace and Moselle regions) and the former Yugoslav Republic of Macedonia are the exceptions to this rule. In Slovenia, non-confessional teaching is offered in the last years of state education.

31. In 25 of the 46 member States (including Turkey), religious education is a compulsory subject. However, the scope of this obligation varies depending on the State. In five countries, namely Finland, Greece, Norway, Sweden and Turkey, the obligation to attend classes in religious education is absolute. All pupils who belong to the religious faith taught in the classes are obliged to follow them, partially or fully. However, ten States allow for exemptions under certain conditions. This is the case in Austria, Cyprus, Denmark, Ireland, Iceland, Liechtenstein, Malta, Monaco, San Marino and the United Kingdom. In the majority of these countries, religious education is denominational.

32. Ten other countries give pupils the opportunity to choose a substitute lesson in place of compulsory religious education. This is the case in Germany, Belgium, Bosnia and Herzegovina, Lithuania, Luxembourg, the Netherlands, Serbia, Slovakia and Switzerland. In those countries, denominational education is included in the curriculum drawn up by the relevant ministries and pupils are obliged to attend unless they have opted for the substitute lesson proposed.

33. In contrast, 21 member States do not oblige pupils to follow classes in religious education. Religious education is generally authorised in the school system but pupils only attend if they have made a request to that effect. This is what happens in the largest group of States: Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Spain, Estonia, Georgia, Hungary, Italy, Latvia, Moldova, Poland, Portugal, the Czech Republic, Romania, Russia and Ukraine. Finally, in a third group of States, pupils are obliged to attend a religious education or substitute class, but always have the option of attending a secular lesson.

34. This general overview of religious education in Europe shows that, in spite of the variety of teaching methods, almost all of the member States offer at least one route by which pupils can opt out of religious education classes (by providing an exemption mechanism or the option of attending a lesson in a substitute subject, or by giving pupils the choice of whether or not to sign up to a religious studies class).

THE LAW

I. ALLEGED VIOLATION OF THE SECOND SENTENCE OF ARTICLE 2 OF PROTOCOL No. 1

35. The applicants submitted that the way in which religious culture and ethics were taught in primary and secondary schools infringed their rights under the second sentence of Article 2 of Protocol No. 1, which provides:

“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 religious and philosophical convictions.”

A. The parties' submissions

1. *The applicants*

36. The applicants alleged that the classes in religious culture and ethics were not conducted in an objective, critical or pluralist manner, and thus did not fulfil the criteria identified by the Court in the context of its interpretation of Article 2 of Protocol No. 1. The syllabus, which was taught entirely from a religious perspective and which praised the Sunni interpretation of the Islamic faith and tradition, together with textbooks describing the traditional rites of Sunni Islam, clearly indicated that this instruction lacked objectivity. The fact that fifteen pages of the 7th grade textbook were used to present certain religions, such as Judaism, Christianity, Islam, Hinduism and Buddhism, was insufficient to ensure compliance with the above-mentioned principles. In reality, only the precepts, rites and prayers of the Muslim faith, always in its Sunni form, were taught, and no detailed information was provided about the other religions. As an example, the applicants stated that, over nineteen pages of the 6th grade textbook, only the various daily prayers in Islam were described.

37. Further, the content and syllabus of the classes in religious culture and ethics were organised in such a way that the existence of the applicants' faith was denied and Islam was taught from a Sunni perspective. The fact that certain information concerning the major figures of the Alevi faith was provided in the 9th grade textbook was far from sufficient to remedy this shortcoming, in that the precepts of Sunni Islam, such as “the fear of committing sin”, in the religious sense of the term, were inculcated from childhood.

38. The applicants challenged the argument that the subject contained no information of a religious nature on the doctrine and rituals of a specific religion. In reality, the syllabus and textbooks used in the schools and all the information concerning the implementation of the syllabus showed that the main aim of the classes was to strengthen the pupils' Islamic culture, which was also the main theme in the teaching. The applicants had no doubt that these classes were intended to provide cultural teaching and to transmit a set of beliefs. The fact that morality was also taught was merely a method of dissimulating the hidden aim of these classes.

39. In addition, according to the applicants, a State governed by the principle of secularism could not have a wide margin of appreciation in the field of religious education. The State could not teach a religion to children who were educated in state schools. The applicants alleged that the State's duty of neutrality and impartiality was incompatible with any power on the State's part to assess the legitimacy of religious beliefs or their means of expression.

2. The Government

40. On the basis of the power to regulate, which the Court in its case-law had acknowledged was enjoyed by the State, the Government argued that education and religious and moral teaching were conducted under the State's supervision in order to prevent abuses. The State enjoyed discretionary power in this area. In this regard, they referred to the principles set out in the decision adopted on 19 September 2000 (see paragraph 21 above) and stressed that the classes in question had been drawn up for the purpose of promoting understanding, tolerance and respect among pupils from differing backgrounds and in order to develop respect and understanding of each individual's identity, of Turkey's national history and values and of other religions and philosophies of life.

41. The Government emphasised that the syllabus, drawn up by the Ministry of Education and not by the religious authorities, complied with the principle of secularism, in accordance with Article 24 of the Constitution and section 12 of the State Education Act (Law no. 1739), and certainly did not correspond to denominational instruction. In this connection, they challenged the applicants' allegation that instruction in religious matters was based on the Sunni understanding of Islam. In the

classes on religious culture and ethics, no specific instruction was provided on the doctrine and rituals of a particular religion; general information was given about various religions. In addition, the compulsory nature of the class implied only that the children had to attend the lessons.

42. The Government also alleged that the mere fact of providing children with teaching on the Muslim faith could not in itself raise a question under the Convention, so long as the lessons were taught in an objective, pluralist and neutral manner. There were legitimate grounds in contemporary Turkish society for granting more time to the study of Islam than to other religions and philosophies of life. This was particularly so given that Turkey was a secular State and that schools were therefore the most appropriate institution for transmitting such knowledge.

43. The syllabus of the subject “religious culture and ethics” did not take into consideration the vision of members of a branch [*mezhep*] of Islam or a religious order [*tarikât*] represented in the country and, consequently, these topics were not covered. The Government also argued that knowledge of the Alevi faith, which seemed to belong more to the area of philosophy, required more in-depth teaching. Thus, information on this topic was given in the 9th grade (the first year of upper secondary school).

44. The Government emphasised that the compulsory nature of the class arose from the fact that it was necessary to protect children from myths and erroneous information, which gave rise to fanaticism. In this connection, they stressed that Jewish and Christian pupils were exempted from these lessons under the Treaty of Lausanne and decision no. 1 of the Supreme Council for Education (see paragraph 18 above). During the hearing they also indicated that, if individuals professing atheism wished to be exempted, their request was assessed by the authorities.

45. The Government also pointed out that the teaching was dispensed under the supervision of the administrative courts, which strictly monitored compliance with the principle of secularism. In addition, the teachers responsible for primary school classes were trained in universities and had obtained diplomas in the discipline of “knowledge of religious culture and morality”. Teachers responsible for these classes at secondary level had a Masters-level degree from a faculty of theology.

46. Finally, according to the Government, it was clear from the Court's settled case-law that the preparation and content of curricula fell within the discretionary power of the State. Consequently, Article 2 of Protocol No. 1 did not enable parents to object to this State prerogative. If it were otherwise, it would be impossible to put in place institutionalised education.

B. The Court's assessment

1. General principles

47. As regards the general interpretation of Article 2 of Protocol No. 1, the Court has set out the main principles in its case-law (see, in particular, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 24-28, §§ 50-54; *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, pp. 16-18, §§ 36-37; *Valsamis v. Greece*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2323-2324, §§ 25-28; and, most recently, *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84, 29 June 2007). The two sentences of Article 2 of Protocol No. 1 must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 52).

48. The right of parents to respect for their religious and philosophical convictions is grafted on to this fundamental right, and the first sentence does not distinguish, any more than the second, between State and private teaching. In short, the second sentence of Article 2 aims at safeguarding the possibility of pluralism in education, a possibility which is essential for the preservation of the “democratic society” as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 50).

49. Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the State. The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The word “convictions”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Valsamis*, cited above, §§ 25 and 27, and *Campbell and Cosans*, cited above, §§ 36-37).

50. It is in the discharge of a natural duty towards their children – parents being primarily responsible for the “education and teaching” of their children – that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility

closely linked to the enjoyment and the exercise of the right to education (*ibid*).

51. However, the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era (see *Valsamis*, cited above, § 28). In particular, 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 does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53).

In fact, 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 same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature (*ibid*, § 53).

52. 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 (see, in particular, paragraph 14 of Recommendation 1720 (2005), paragraph 27 above) in a calm atmosphere which is free of any misplaced proselytism (see *Şefika Köse and 93 Others v. Turkey* (dec.), no. 26625/02, 24 January 2006). The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53).

53. 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. Although, in the past, the Convention organs have not found education providing information on religions to be contrary to the Convention, they have carefully scrutinised whether pupils were obliged to take part in a form of religious worship or were exposed to any form of religious indoctrination. In the same context, the arrangements for exemption are also a factor to be taken into account (see *Anna-Nina Angeleni v. Sweden*, no. 10491/83, Commission decision of 3 December 1986, Decisions and Reports (DR) 51, p. 41; *Zénon Bernard v. Luxembourg*, no. 17187/90, Commission decision of 8 September 1993,

DR 75, p. 57; *C.J., J.J. and E.J. v. Poland*, no. 23380/94, Commission decision of 16 January 1996, DR 84, p. 46). Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 54).

54. The Court reiterates that it has always stressed that, in a pluralist democratic society, the State's duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports 1996-IV*, p. 1365, § 47, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, ECHR 2000-XI). Further, the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership (see *Serif v. Greece*, no. 38178/97, § 51, ECHR 1999-IX).

55. Such an interpretation of the second sentence of Article 2 of Protocol No. 1 is consistent at one and the same time with the first sentence of the same provision, with Articles 8 to 10 of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53). This is particularly true in that teaching is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils as well as their personal independence.

2. *Application of these principles*

56. Pursuant to the Turkish Constitution, Ms Zengin, who was a pupil in a state school, was obliged to attend classes in “religious culture and ethics” from the fourth year of primary school.

57. In the light of the principles set out above, the Court must determine, firstly, if the content-matter of this subject is taught in an objective, critical and pluralist manner, in order to ensure that it is compatible with the principles which emerge from the case-law concerning the second sentence of Article 2 of Protocol No. 1. Secondly, it will examine whether appropriate provisions have been introduced in the Turkish educational system to ensure that parents' convictions are respected.

(a) **Content of the lessons**

58. 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”. It also aims to transmit knowledge concerning all of the major religions. One of the objectives of the syllabus is educate people “who are informed about the historical development of Judaism, Christianity, Hinduism and Buddhism, their main features and the content of their doctrine, and to be able to assess, using objective criteria, the position of Islam in relation to Judaism and Christianity” (see paragraph 21 above).

59. In the Court's view, the intentions set out above are clearly compatible with the principles of pluralism and objectivity enshrined in Article 2 of Protocol No. 1. In this regard, it notes that the principle of secularism, as guaranteed by the Turkish Constitution, prevents the State from manifesting a preference for a particular religion or belief, thereby guiding the State in its role of impartial arbiter, and necessarily entails freedom of religion and conscience (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 113, ECHR 2005-...). In this connection, it notes with interest the Government's observations to the effect that, firstly, the teaching of religion in schools is an appropriate method of combating fanaticism and, secondly, the administrative courts are responsible for supervising compliance with the principle of secularism, both in terms of preparation of the syllabus and in its implementation.

60. The Court observes, however, that, although the instruction is based on the principles set out above, the teaching programme also aims to raise awareness among pupils of “[the fact that] acts of worship, as well as being demonstrations of love, respect and gratitude towards Allah, enable the individuals in a group to bond with love and respect, to help each other, to show solidarity” and “using different examples, to explain that, far from being a myth, Islam is a rational and universal religion”. The syllabus also includes study of the conduct of the prophet Mohamed and of the Koran. Equally, the syllabus for the 7th grade includes teaching on fundamental aspects of the Islamic religion, such as “pilgrimage and sacrifice”, “angels and other invisible creatures” and “belief in the other world”.

61. 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, such as the profession of faith, the five daily prayers, Ramadan, pilgrimage, the concepts of angels and invisible creatures, belief in the other world, etc. (see paragraph 21 above).

62. Equally, pupils must learn several suras from the Koran by heart and study, with the support of illustrations, the daily prayers (see paragraph 22 above) and sit written tests for the purpose of assessment (see paragraph 24 above).

63. Thus, 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 Court's view, this itself cannot be viewed as a departure from the principles of pluralism and objectivity which would amount to indoctrination (see *Folgerø and Others*, cited above, § 89), having regard to the fact that, notwithstanding the State's secular nature, Islam is the majority religion practiced in Turkey.

64. Moreover, the question arises whether the priority given to the teaching of Islam may be considered as remaining within acceptable limits for the purposes of Article 2 of Protocol No. 1. In fact, given the syllabus and textbooks in question, it may reasonably be supposed that attendance at these classes is likely to influence the minds of young children. It is therefore appropriate to examine whether the information or knowledge in the syllabus is disseminated in an objective, critical and pluralist manner.

65. In this regard, the applicant alleged that no teaching was provided on the Alevi faith or its rituals in the compulsory “religious culture and ethics” lessons, although this religious movement differed in numerous areas from the conception of religion presented in school. According to the Government, this resulted from the fact that, in this syllabus, the vision of members of a branch of Islam or of a religious order represented in the country was not taken into consideration.

66. As to the Alevi faith, it is not disputed between the parties that it is a religious conviction which has deep roots in Turkish society and history and that it has features which are particular to it (see paragraphs 8-9 above). It is thus distinct from the Sunni understanding of Islam which is taught in schools. It is certainly neither a sect nor a “belief” which does not attain a certain level of cogency, seriousness, cohesion and importance (see *Campbell and Cosans*, cited above, § 36). In consequence, the expression “religious convictions”, within the meaning of the second sentence of Article 2 of Protocol No. 1, is undoubtedly applicable to this faith.

67. As the Government have recognised, however, 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 it is very large. As to the Government's argument that certain information about the Alevis was taught in the 9th grade, the Court, like the applicants (see paragraph 43 above), considers that, in the absence of instruction in the basic elements of this faith in primary and secondary school, the fact that the life and philosophy of two individuals who had a major impact on its emergence are taught in the 9th grade is insufficient to compensate for the shortcomings in this teaching.

68. Admittedly, parents may always enlighten and advise their children, exercise with regard to their children natural parental functions as educators,

or guide their children on a path in line with the parents' own religious or philosophical convictions (see *Valsamis*, cited above, § 31 *in fine*). Nonetheless, 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.

69. In this regard, the Court considers that, in a democratic society, only pluralism in education can enable pupils to develop a critical mind with regard to religious matters in the context of freedom of thought, conscience and religion (see paragraph 13 (ii) of Parliamentary Assembly Recommendation no. 1396 and paragraph 14 of Recommendation no. 1720, paragraphs 26 and 27 above). In this respect, it should be noted that, as the Court has held on numerous occasions, this freedom, in its religious dimension, is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned (see *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

70. 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 Ms Zengin's father, a follower of the Alevi faith, on the subject of which the syllabus is clearly lacking.

(b) As to whether appropriate means existed to ensure respect for parents' convictions

71. The Court reiterates the Contracting Parties' positive obligation under the second sentence of Article 2 of Protocol No. 1, which gives parents the right to demand from the State respect for their religious and philosophical convictions in the teaching of religion (see *Campbell and Cosans*, cited above, § 37). Where a Contracting State includes religious instruction in the curriculum for study, it is then necessary, in so far as possible, to avoid a situation where pupils face a conflict between the religious education given by the school and the religious or philosophical convictions of their parents. In this connection, the Court notes that, with regard to religious instruction in Europe and in spite of the variety of teaching approaches, almost all of the member States offer at least one route by which pupils can opt out of religious education classes, by providing an exemption mechanism or the option of attending a lesson in a substitute subject, or making attendance at religious studies classes entirely optional (see paragraph 34 above).

72. The Court notes that, under Article 24 of the Turkish Constitution, “religious culture and ethics” is one of the compulsory subjects. However, it

appears that a possibility for exemption was introduced by the Supreme Council for Education's decision of 9 July 1990 (see paragraph 18 above). According to that decision, only children “of Turkish nationality who belong to the Christian or Jewish religion” have the option of exemption, “provided they affirm their adherence to those religions”.

73. The Court considers at the outset that, whatever the category of pupils concerned, the fact that parents must make a prior declaration to schools stating that they belong to the Christian or Jewish religion in order for their children to be exempted from the classes in question may also raise a problem under Article 9 of the Convention (see, *mutatis mutandis*, *Folgerø and Others*, cited above, § 97). In this connection, it notes that, according to Article 24 of the Turkish Constitution, “no one shall be compelled ... to reveal religious beliefs and convictions...” (see paragraph 16 above). Furthermore, it reiterates that it has always stressed that religious convictions are a matter of individual conscience (see, *inter alia*, *Sofianopoulos and Others v. Greece* (dec.), nos. 1977/02, 1988/02 and 1997/02, ECHR 2002-X, and also, *mutatis mutandis*, *Buscarini and Others*, cited above, § 39).

74. In addition, the Supreme Council for Education's decision 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. In the Court's opinion, this necessarily suggests that the instruction provided in this subject is likely to lead these categories of pupils to face conflicts between the religious instruction given by the school and their parents' religious or philosophical convictions. Like the ECRI, the Court 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” (see paragraph 29 above).

75. The Court notes that, according to the Government, this possibility for exemption may be extended to other convictions if such a request is submitted (see paragraph 19 above). Nonetheless, whatever the scope of this 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 conviction. In addition, in the absence of any clear text, the school authorities always have the option of refusing such requests, as in Ms Zengin's case (see paragraph 11 above).

76. In consequence, the Court considers that the exemption procedure is not an appropriate method and does not provide sufficient protection to those parents who could legitimately consider that the subject taught is likely to give rise in their children to a conflict of allegiance between the school and their own values. This is especially so where no possibility for

an appropriate choice has been envisaged for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam, where the procedure for exemption is likely to subject the latter to a heavy burden and to the necessity of disclosing their religious or philosophical convictions in order to have their children exempted from the lessons in religion.

(c) Conclusion

77. Having regard to the foregoing, the Court concludes that there has been a breach of the applicants' right under the second sentence of Article 2 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

78. The applicants also alleged that there had been a violation of Article 9 of the Convention, which provides:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such 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.”

79. Having regard to its finding of a violation of Article 2 of Protocol No. 1 (see paragraph 77 above), the Court considers that no separate question arises under Article 9.

III. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

80. Articles 41 and 46 of the Convention provide:

Article 41

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

Article 46

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. Damage, costs and expenses

81. The applicants made no claim for compensation in respect of pecuniary and non-pecuniary damage. On the other hand, they claimed the sum of 3,726.80 euros (EUR) jointly to cover their costs and expenses and the fees corresponding to the work carried out on the case. They submitted a fees agreement and bills.

82. In the Government's view, the question of just satisfaction did not arise, since the applicants' complaints were manifestly unfounded.

83. Having regard to the applicants' position, the Court considers that the finding of a violation with regard to Article 2 of Protocol No. 1 constitutes in itself sufficient just satisfaction for the damage they sustained. As to the costs and expenses, it considers that the applicants' claim under this head is not excessive and awards them the entirety of the amount claimed, less the EUR 850 granted in legal aid.

84. The Court also observes that it has found in this case a violation of the Convention on account of the inadequacy of the Turkish educational system, which, with regard to religious instruction, does not meet the requirements of objectivity and pluralism and provides no appropriate method for ensuring respect for parents' convictions. These conclusions in themselves imply that the violation of the applicants' rights, as guaranteed by the second sentence of Article 2 of Protocol No. 1, originates in a problem related to implementation of the syllabus for this class and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, the Court considers that bringing the Turkish educational system and domestic legislation into conformity with the above-cited provision of the Convention would represent an appropriate form of compensation which would make it possible to end the violation found.

B. Default interest

85. The Court considers it appropriate to base the default interest on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of Protocol No. 1;
2. *Holds* that no separate question arises under Article 9 of the Convention;
3. *Holds* that the finding of a violation provides in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,726.80 (three thousand seven hundred and twenty-six euros, eighty cents) in respect of costs and expenses, less the sum of EUR 850 granted in legal aid, plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in French, and notified in writing on 9 October 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

J.-P. COSTA
President