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Abstract

It is often assumed that Turkey's chance of accession to the EU would be enhanced were the European project to move in an inclusive, cosmopolitan direction. However, the inclusion of women's rights and post-sexual revolution sexuality in the battery of 'EU-niversal' values could still represent an obstacle from the perspective of pro-religious actors in Turkey. This paper examines to what extent Turkish views converge with those expressed in the EU/Europe with regard to two recent debates over criminalisation of adultery, and veiling in public institutions. Based on extensive primary research, it shows that whilst secularists of all ideological backgrounds agree with the EU/European position, there is some ambivalence in Islamist perspectives. This was evident only in a limited fashion with the adultery debate. However, European Court of Human Rights verdicts upholding a secularist ban on veiling engendered deep disappointment in many Islamists, spurring some to conclude that 'EU-niversal' and Islamic values are incompatible. The ongoing tension between the religious actors and the secularists is a battle fought over women's bodies. That is why, the women question in Turkey is a good yardstick to measure the extent to which Turkey has embraced EU-niversal values.

Keywords

Democratisation - European Citizenship - European Identity - Fundamental/Human Rights - Gender Policy

Introduction

For an outside observer, the dynamics of Turkish society could be highly perplexing. Turkey is a country of many contrasts and perhaps the most striking is the very different ways in which women's bodies are represented. On the one hand, there is a vast group of Turkish women who are educated, liberal, uncovered and integrated into the labour force; on the other hand, there is a group of women who follow the Islamic life style, are covered, and who mostly remain in their homes – although there are some Islamic women in the labour force as well. Many observers are fascinated by the co-existence of these women and remark on the powerful semiotics of the headscarf as the main instrument of demarcation. Yet, the issue goes much deeper into the very core of the Turkish collective identity. In fact, Turkish women and their bodies have become carriers of societal norms and values – tools in the ongoing struggle between different political actors. In many ways then, the ongoing tension between religious actors and secularists is a battle fought over women's bodies. The question of women's place in Turkey is thus a good yardstick when measuring the extent to which Turkey has embraced what has been called 'EU-universal values', i.e. norms which are said to be valid for everyone but which are also infused with a western, cultural subtext. This paper analyses the situation of women in Turkey with reference to two highly explosive recent debates over the headscarf and a proposal to ban adultery. Both speak to the dynamics in Turkey of adopting European values and norms.

For example, when in February 2008, the Turkish parliament voted to adopt a Constitutional Amendment that would enable women to wear their headscarves when they attend institutions of higher education, the ruling Justice and Development Party (AKP) government declared it an important step in fulfilling individual rights and furthering democracy in Turkey. But the move was opposed by various other segments in the Turkish society and viewed as an attempt by the governing party to manipulate key concepts such as democracy and individual liberties to advance religious authoritarianism in Turkey. The debate on women's headscarves in Turkey thus illustrates the complexities of democratisation as measured by the depth and salience of the struggle between the Islamists and the secularists in Turkey. This piques the question: If respect for women's rights and post-sexual revolution sexuality is part and parcel of the cosmopolitan canon of values, what does the current ascendancy of pro-religious forces in Turkish social and political life suggest for Turkey's compatibility with the European enterprise? In other words, the issue of gender equality in Turkey emerges as an important aspect of the Turkish adoption of the 'EU-universal values'.

The European project and cosmopolitanism

Checkel and Katzenstein recently observed that the European project may unfold in one of two directions. The first is an 'onward-looking and cosmopolitan European identity project'. By way of contrast, the second is an 'inward-looking nationalist populist identity project', albeit one which is also apparent at the supra-national level in the notion of

'fortress Europe'.¹ The cosmopolitan undertaking is undoubtedly the more inclusive. Yet, the claim that cosmopolitan Europe 'transcends culture and represents nothing but the collective consent emanating from shared moral values'² is problematic. Broadly speaking, this is because the moral values in question emerged out of the Western, and by and large, the liberal tradition. It is for this reason that Nicolaidis describes the European Union's normative foundations as predicated upon 'EU-niversal values'³. The parochial origin of these values has long posed a dilemma for aspirants to the European project whose political and social lives may be rooted in alternative *Weltanschauungs*.

In the Turkish case, this dilemma is amplified by the post-1968 European consensus – in principle if not always in practice – that women's and gay rights are part of the universal canon. This may pose a dilemma for certain actors in socially conservative Turkey. The Islamist-rooted Justice and Development Party (AKP), for example, claims to embrace the democratic and inclusive political values that would underpin a cosmopolitan Europe⁴; yet its reading of women's rights or sexuality may diverge considerably from mainstream views within the EU. For, if there is anything along the lines of a 'civilisational' cleavage between the 'West' and 'Islam', it is located in the social rather than the political domain. As Inglehart and Norris show, there are high levels of support for democracy and political freedoms *across* the Western and Muslim worlds (even if many Middle Eastern regimes do not heed citizens' democratic preferences).⁵ But the progressive attitudes towards women's rights and sexual freedoms which have come to occupy 'politically correct' ground in the West are often rejected by Muslims wedded to more traditional and patriarchal codes of conduct. The same cleavage is evident *within* Muslim-majority societies like Turkey where 'pro-secular' forces place a premium on social pluralism if not necessarily on political pluralism, whereas 'pro-religious' forces appear to trumpet political pluralism but often disparage social pluralism – at least with regard to women's rights and sexuality.⁶ We address the question with reference to two recent debates related to gender and sexuality. The purpose is to determine whether views in Turkey align with those expressed by EU/European actors like the European Commission (EC) or the Council of Europe (CoE) and its European Court of Human Rights (ECtHR). We turn first to the so-called 'adultery debate' which erupted in the fall of 2004 when the AKP sought to insert a measure criminalising adultery in a penal code being revised to meet EU standards.

¹ Checkel, J. and Katzenstein, P. (2009) *European Identity*, Cambridge: Cambridge UP.

² Kraus, P. (2003) 'Cultural Pluralism and European Polity-Building', *Journal of Common Market Studies*, 41(4): 665-86.

³ See Nicolaidis, K. (2008) 'The Clash of Universalisms – Or Why Europe Needs a Post-Colonial Ethos', paper presented at the ISA annual convention 'Bridging Multiple Divides', San Francisco, 26 March 2008.

⁴ There is, of course, an ongoing and intense debate over whether the AKP is sincere or whether it is in fact instrumentalising democratisation discourse in order to undermine the secularist establishment and Islamise state and society. Consideration of that debate is beyond the scope of the present essay.

⁵ Inglehart, R. and Norris, P. (2003) 'The True Clash of Civilizations', *Foreign Policy*, 135: 63-70, 1 March 2003.

⁶ Somer, M. 'Democracy (For Me): Religious and Secular Beliefs and Social and Political Pluralism in Turkey', Sakıp Sabancı International Research Award third place 2010. Available at: <http://www.sabanciuniv.edu/tr/arastirma/sakip_sabanci_uluslararasi_arastirma_odulu/images/Nora_Fisher_Onar_Sabancı_Essay_Contest_2009_Final.pdf> (accessed 10 May 2010).

We then examine reactions to 2004 and 2005 ECtHR verdicts which upheld a Turkish secularist ban on veiling in public institutions. We show that in these debates there was overwhelming convergence between the views of EU/European actors and those of secularists in Turkey regardless of political stripe (e.g. Kemalists and liberals alike). Islamist-rooted actors, on the other hand, tended to display some ambivalence towards the EU/European position. This was evident to a limited extent in the adultery debate in that a marginal group of hard-line Islamists displayed heartfelt resistance to the EU/European and Turkish secularist line. We found, however, that the ECtHR rulings on the veil represented somewhat of a turning point in perceptions across the Islamist camp of 'European justice'. For they spurred many Islamists to question whether a 'EU-universal' normative framework can indeed accommodate Islamic religiosity. Analysis is based on extensive primary sources, including interviews with key players in the debates, especially from within the Islamist constituency.

Gender equality as a norm in Turkey

The main dilemma on gender equality in Turkey stems from the gap between the legal basis and the social acceptance of the legal rights and their implementation. Even though women in Turkey possess significant legal rights which make the country comparable to the West European democracies on paper, the practice of these rights is largely constrained by conservative forces in society.⁷ An important component of constraint is the division between public and private spheres in Islam and the notion that a woman's place is at home. A case in point is over women's rights to keep their own last names in marriage. Even though, in Turkey, a woman has the legal right to carry her own name along with her husband's surname after marriage – as is the case for one of the author's of this paper – they may have a hard time making other individuals recognise that right. Thus, even when Turkish women possess the legal rights, from keeping one's own surname, to the right to education or to be voted for political office, their ability to use these legal rights are determined and limited by social norms prevalent at the Turkish society.

The personal experience of one of the authors as a professional woman is highly telling in that aspect. In 2005, in a presentation prepared by an administrative unit, the Director of that unit had changed and shortened the women's last name so as to reflect on her married name. In so doing, the Director willfully did not acknowledge the woman's legal right to use her full last name. Interestingly, this is often practiced in work places, where administrative staff regularly shorten last names leaving out maiden names even though women legally use both surnames. Women's legal rights, which are recognised by the Turkish state, are thus constantly violated by some individuals such as the above-mentioned Director. This could be treated as a form of verbal violence and an abuse of individual, legal rights. This is highly perplexing. If a well-known professor at a university is subject to this violation and abuse of individual rights, what chance do young girls in villages have in exercising their legal rights, i.e. the right to be educated or the freedom to choose their own spouse? If a woman in a power position is unable to

⁷ Müftüler-Baç, M. (2009) 'Turkish Women's Predicament', *Women Studies International Forum*, 22(3): 303-16.

make the society accept her legal rights, there is a serious problem going on at a deeper level. The AK party's position on gender equality is also highly dubious. This position is reflected in the policies adopted by the government as well as in their declarations. When the AK Party vice-president Dengir Mir Mehmet Fırat declared that 'AK party women would not be slaves to the feminist ideology'⁸, he was reflecting the notion among the Islamists that women have a distinct place at home as a mother. The AK party's position on gender equality is also highly maimed by the multiple wives that some AK party officials and their supporters have. Polygamy is allowed under Islamic law, but it is outlawed in Turkey, so the women who become second, third, or fourth wives do not have any legal status. This issue became explosive when a supporter of the AK Party, Mehmet Karaduman who has three wives, argued that 'polygamy is a necessity in order to prevent adultery' and that his practice is in accordance with Islamic law.⁹ The next section accordingly deals with the explosive question of adultery in Turkey.

The 'adultery debate'

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) comprehensively defines this in its first article as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁰

CEDAW is part and parcel of second- and third-wave feminist efforts to ensure that women's rights are recognised as a core human right. One form their battle has taken is national campaigns to revise legislation steeped in patriarchal conceptions of women's sexual conduct and responsibilities towards the family. Such campaigns led to the legalisation of divorce and abortion in Spain and Italy in the 1970s and 1980s, and decriminalisation of adultery in Greece in 1986. The EU endorses the agenda through a number of instruments. It has established an Equality Unit in Directorate-General V of the European Commission (EC) through which it promotes equal treatment, positive action, and gender mainstreaming.¹¹ EC regular reports also flag women's rights issues in candidate states. The Union only claims competence, however, on gender equality in the

⁸ 'Fırat: AKP kadınlar feminizmin kölesi değil', Radikal, Turkish daily newspaper, 4 May 2008. Available at <<http://arsiv.ntvmsnbc.com/news/445128.asp>> (accessed 10 May 2010).

⁹ 'Dört eş, sınırsız zinayı önlermiş', Sabah, Turkish daily newspaper, 26 April 2008. Available at: <http://www.ankarahaber.com/news_detail.php?id=9984> (accessed 10 May 2010).

⁹ 'Dört eş, sınırsız zinayı önlermiş', Sabah, Turkish daily newspaper, 26 April 2008. Available at: <http://www.ankarahaber.com/news_detail.php?id=9984> (accessed 10 May 2010).

¹⁰ See Art. 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Available at: <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> (accessed 10 May 2010).

¹¹ See Eslen-Ziya, H. (2008) 'The European Union's Influence: How the European Union Helps Women's Active Groups Mobilize? A Comparative Study of Turkey and Greece', unpublished doctoral dissertation, Institute of Philosophy and Sociology, Polish Academy of Sciences (PAN).

economic sphere, relying on 'soft laws' for social issues. This means that the question of how to uphold women's rights is left in considerable measure to the discretion of member states.

In addition to women's rights *per se*, the Turkish adultery debate raised concerns about privacy with regard to sexual conduct. The post-sexual revolution trend in European jurisprudence has been towards permissiveness vis-à-vis a wide range of sexual behaviour. That said, laws censuring practices such as homosexuality persist on the books in some EU states, unapplied and forgotten until activists campaign for their abolition¹². This entails a clear bias towards feminist and post-sexual revolution norms to the detriment of traditional conceptions of gender and sexuality. Yet there is also some haziness as to how this is to be accomplished, testified to by the above mentioned *laissez-faire* attitude of the Union towards gender-related legislation, and the persistence of dead letter laws banning forms of sexual conduct no longer considered deviant. The Turkish adultery debate erupted at the interstices of these categorical, but also somewhat fuzzy, 'EU-niversal' values.

Adultery, prohibited by Islamic law, was banned in Ottoman times and women were punished more harshly than men. Women's status was transformed with the foundation of the Republic and Mustafa Kemal's (Atatürk) enactment of a secularist cultural revolution. In this context, women's rights became a symbol of progress during the journey towards 'contemporary civilisation' associated in the secularist imaginary with European modernity. Nevertheless, and very much reflecting the patriarchy which at that juncture also infused European 'civilisation' (and according to many feminists still does), the Turkish civil code like the Swiss code from which it was borrowed included articles banning adultery and designating men as heads of household. Since the 1980s, feminist groups inside and outside the country have criticised such measures. In 1996, the adultery clause was dropped for penalising men and women unequally.¹³ Like many similar measures in Europe, it was in any case a dead letter because it stipulated the guilty party be caught in the act of intercourse. By 2002, and at the behest of feminist organisations whose leverage was enhanced by EU pressure¹⁴, Turkey had overhauled its civil code in keeping with the principle of non-discrimination. Turkey even became party to the Optional Protocol (of CEDAW) allowing for right of individual petition to the Convention's Committee on the Elimination of Discrimination against Women.

Then, in late August 2004, word leaked that the AKP was considering inserting an article banning adultery in the criminal code being revised for compatibility with the

¹² In a precedent setting case, a gay plaintiff claimed that a law banning homosexuality in Ireland was discriminatory although he had never been persecuted under it or any other law. The ECtHR found in his favour. Loucaides, L. G. (2004) *Essays on the Developing Law of Human Rights*, London: Martinus Nijhoff, p.88.

¹³As in Ottoman times, men were considered offenders if they had a long-term affair, whereas women were guilty if they had a single dalliance.

¹⁴ Paker, H. (2009) 'Kimlik Siyaseti ve Türkiye'de Kadın Hakları Örgütlerine Katılım', TÜSEV (Turkish Third Sector Foundation). Report, Civil Society Index Project. That said, Turkish feminists were also concerned with what they feared was a strand of Orientalism in EU actors perceptions according to which Turkish Muslim women are passive objects of constant, often sexual denigration. See, for example, Forsman, Z. K. (2004) 'Türkiye'nin Avrupa Birliği Üyeliğinin Ön Koşul Olarak Kadın Hakları' in Berktaş, F. (ed.) *Türkiye'de Avrupa Birliğinde Kadının Konumu*, Istanbul: KA-DER, as well as Berktaş's own entry in the same volume.

Copenhagen Criteria (CC). The move marked the first time since coming to power that the party took up a cause dear to its conservative core constituency.¹⁵ It also came just weeks before a 6 October 2004 Commission report which would recommend whether (or not) to open accession negotiations. Major reforms like striking the death penalty, progress in preventing and punishing torture, and the imminent overhaul of the criminal code had led many to expect a green light. For its part, the Commission had hinted that the report would be positive but would recommend stronger promotion of gender equality.¹⁶ As such, when Brussels got wind of the AKP proposal, the pro-secular national as well as international press whipped up a maelstrom.

Islamist proponents of the ban insisted that in the Turkish context the measure would empower women. The proposal was described as a function of popular demand on the part of 'Anatolian women'.¹⁷ These women were said to seek criminalisation of adultery because polygamy exists in Islam but is illegal in Turkey where only civil ceremonies are recognised. This spurs some men to use non-binding religious ceremonies to justify infidelity, depriving pious wives of a moral channel for redress. The practice, moreover, puts 'second wives' (i.e., mistresses) and their children at risk of being cast aside with no legal channel for redress.¹⁸ On these grounds, some Islamist women demand both criminalisation of adultery and legal recognition of religious marriage ceremonies on par with civil ceremonies. Many female AKP parliamentarians rallied behind the proposal, asserting that marriage is a contract and that like any other contract its violation should be punished; but at least one amongst them was baffled: 'You cannot change people through punishment', she declared, 'I have no idea where this idea came from. I am stunned'.¹⁹

The argument was certainly mind-boggling for secularist feminists who had been lobbying intensively for months to ensure the abolition of items in the old code authorising virginity testing and reduced sentences for 'honour killings'.²⁰ Feminist groups issued coordinated press releases declaring the adultery proposal discriminatory towards women. In any civilized country, they argued, adultery could be grounds for divorce only, not criminal persecution.²¹ There were also definitional concerns as in Turkish the word 'adultery' can mean both extra- and pre-marital sex. The proposal thus potentially infringed on the rights of non-married consenting adults to have sexual

¹⁵ Nearing the end of its second year in power, the party had yet to address a number of issues important to its grassroots such as the ban on headscarves in public institutions, and the ban on graduates of *imam hatip* religious high schools enrolling in university departments other than theology.

¹⁶ Uçan Süpürge, 'Kadın hakları AB ile siyasi kriter', 20 August 2004. Available at <http://www.ucansupurge.org/arsiv/www.ucansupurge.org/index0bc7.html?option=com_content&task=view&id=208&Itemid=71> (accessed 12 April 2010).

¹⁷ Hürriyet, 'Zinaya Ceza Verilmesini Anadolu Kadını İstiyor', Saffet Korkmaz, 1 September 2004. Available at <<http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=253079&p=2>> (accessed 12 April 2010).

¹⁸ Yeni Şafak 'Zina ve Sorun Çözme', Ayşe Düzkan cited by Ahmet Taşgetiren, 10 September 2004.

¹⁹ Hürriyet, 'AKP'li Kadın Vekiller Zina Suç Olsun Diyor', 3 September 2004.

²⁰ See Eslen-Ziya, *supra*, note 10.

²¹ *Supra*, note 18.

relations. Islamist women's support for the proposal reinforced the feminist perception that religious women collude in their own oppression.²²

Outrage was not confined to feminist circles. It was shared by secularists of wide-ranging ideological backgrounds who are otherwise at odds over matters like minority rights which are not related to religiosity.²³ Secularists across the political spectrum condemned the proposal as a potential infringement of women's rights and private life. Many were careful to add that this did not imply approval of adultery. But some, like a liberal columnist at the AKP-friendly *Yeni Şafak*, challenged his pious readers by eulogising the great adulterers of French and Turkish literature.²⁴ A female columnist at the nationalist *Türkiye* likewise mocked the proposal from a different angle, asking whether any man would admit to having been cuckolded in a courtroom. For Kemalists, who vigilantly guard the boundary between private and public religious semiotics, the proposal was an insult to women and an attempt to undermine the laicist, democratic order by introducing a measure derived from Islamic law.²⁵ In an editorial entitled 'To be European, or...', a prominent columnist spoke for much Kemalist sentiment when he argued that the proposal revealed the true conservative face of the AKP grassroots. The party's attitudes, moreover, were declared unbecoming to a developed, modern country.²⁶ This statement flagged the considerable embarrassment in Kemalist discourse and secularist responses more broadly at the image of Turkey the affair projected to Europe and the world.²⁷

The Turkish secularist impression that the proposal intimated of Islamic law was echoed by EU figures. Günter Verheugen, the commissioner responsible for enlargement, declared incredulously, 'I cannot understand how a measure like this could be considered at such a time – it can only be a joke'. He went on to caution that 'Turkey should not give the impression [...] that it is introducing Islamic elements into its legal system while engaged in a great project such as the EU'.²⁸ Opponents of Turkish membership, like Dutch Commissioner Frits Bolkestein, capitalised on the incident to warn the European public that Turkish accession would 'Islamise' Europe.²⁹ International

²² See, for example, Berktaş's comments in *Tarihin Cinsiyeti* (*supra* note 14).

²³ For analysis of how political factions in Turkey align and realign depending on whether the question at hand has to do with religiosity (secularists versus Islamists) or with identity pluralism in the public sphere (liberals, moderate Islamists, and social democrat Kemalists versus nationalist Islamists, hard-line Kemalists, and ultranationalists). See Onar, N. F. 'Beyond Binaries: "Europe", Pluralism, and a Revisionist-Status Quo Key to Turkish Politics', Sakıp Sabancı International Research Award second place. Available at: <http://www.sabanciuniv.edu/tr/arastirma/sakip_sabanci_uluslararası_arastirma_odulu/images/Nora_Fisher_Onar_Sabancı_Essay_Contest_2009_Final.pdf> (accessed 10 May 2010).

²⁴ *Yeni Şafak*, 'Madam Bovary'nin Aşıkları Olmasaydı...', 27 September 2004. Available at: <<http://yenisafak.com.tr/arsiv/2004/eylul/27/kbumin.html>> (accessed 26 April 2010).

²⁵ *Cumhuriyet*, 'İmam Nikâhı...', Hikmet Çetinkaya, 10 September 2004.

²⁶ *Cumhuriyet*, 'To be European, or...', Oral Çalışlar, 10 September 2004.

²⁷ *Cumhuriyet*, 'Hülya da Söyledikten Sonra', Cüneyt Arca'yürek, 8 September 2004.

²⁸ 'EU Irked by Turkish Adultery Law', BBC, 9 September 2004. Available at: <<http://news.bbc.co.uk/2/low/europe/3641026.stm>> (accessed 26 April 2009).

²⁹ Bowley, G. 'Envoy Reject Criticism by EU members: Turkey is Advised to Drop Adultery Law', *International Herald Tribune*, 14 September 2004. Available at: <<http://www.ucm.es/BUCEM/be/prensa/2004/09/14/articulos/70>> (accessed 26 April 2010).

coverage cast the debate in similar, binary terms as a 'stark choice Turkey faces between modernisation, with a pro-Western stance, and a more Islamic, traditionalist direction'.³⁰ Prime Minister Erdoğan, under pressure from all sides, responded aggressively. Declaring that Turkey had met all the political criteria set forth in the CC, he attacked the EU for interfering in an internal debate in which the Union had no competence. The crisis heightened when the AKP pulled the revised criminal code packet from the floor of parliament in a last minute bid to make opposition delegates agree to the adultery clause. Verheugen warned that both a criminal code with the clause, and any delay in passing the extant version would force the Commission to deliver a 'no' verdict in its upcoming report. Then, abruptly, Erdoğan flew to Brussels where he elicited an explicit commitment to 'yes' in the 6 October report in return for dropping the adultery item. *Yeni Şafak*, an AKP-affiliated daily, lionised the prime minister as an adroit bargainer, declaring 'He went, he solved, he came'. The pro-secular press, meanwhile, breathed a sigh of relief, and equated the outcome with drawing closer to Europe.³¹

Importantly, in a series of interviews following the debate with prominent Islamist actors affiliated with the AKP, many discounted the episode as 'marginal'.³² It was blamed, above all, on the intransigence of 'far too conservative elements',³³ i.e., on religious hard-liners. Another commentator charged the prime minister's wife of galvanising her husband in the naïve belief that she was helping pious women when, obviously, few women would turn in their adulterous husbands.³⁴ For, while adultery is a sin in all the major religions, it is no business of the state.³⁵ Some felt, moreover, that the affair had been manipulated by the AKP's opponents. As a close associate of the party leadership put it:

The whole thing was exaggerated. [Banning adultery] wasn't a very important thing in Turkey but it was presented to Europe as if it was a pressing question and as if there were many people who were actually strongly behind the ban³⁶.

A parliamentarian expressed similar frustration, recalling that the idea had merely been floated at an internal party meeting. There was 'no law, not even a draft', he pointed out, but when Brussels and the non-AKP media got wind of it the government was pushed into a corner. He believed this was 'unfortunate because the level of perception and understanding at which Turkey has arrived is "beyond" such debates. Turkish culture is far more advanced than any place where such a thing would be outlawed, and the law had no chance of passing'.³⁷ A former foreign minister likewise described banning

³⁰ Ibid.

³¹ A sample of headlines on the day of Erdoğan's return from Brussels, 24 September 2004, reads: 'Our path has been cleared', *Hürriyet*; 'They confronted each other and smiled', *Tercüman*; 'The EU door has opened', *Milliyet*; 'We're European', *Sabah*; 'Wonderful result', *Vatan*; 'He Solved the crisis in 5 minutes', *Star Gazetesi*.

³² Interview with Zekeriya Akçam.

³³ Interview with Hasan Celal Güzel.

³⁴ Ibid.

³⁵ Interview with Fehmi Kuru.

³⁶ Ibid.

³⁷ Interview with Zekeriya Akçam.

adultery as 'ridiculous [...] in such matters we have accepted western norms'. He too pointed the finger at secularists, especially Kemalists, for blowing a trivial matter out of proportion in order to tar the AKP with a fundamentalist brush at home and abroad.³⁸

These views were not shared, however, by a number of independent Islamist intellectuals with connections to very conservative circles. For them, the adultery debate spoke of an existential gap between the westernised elite and its European partners on one hand, and Turkey's pious populace on the other. Ironically echoing the exclusionary and essentialist logic of their conservative counterparts within the EU, they cited the adultery debate as evidence that the westernist project had not taken root in Turkey, not least because of what they described as a civilisational gap between codes of conduct in Turkey and post-sexual revolution Europe.³⁹ Europeans nevertheless persist in claiming that their views on sexual conduct are universally valid. This was deemed coercive but also futile and dangerous. For, if the law does not provide people with a substantive sense of justice they will take it into their own hands, fuelling phenomena like honour killings.⁴⁰ Such minority but intense views suggest that a faction within the Islamist camp did indeed favour criminalisation of adultery on religious and cultural grounds. Nevertheless, it appears that moderates and/or pragmatists within the coalition prevailed so that at the end of the day the AKP stance was in accord with that of Turkish secularists and EU/European actors.

Leyla Şahin v. Turkey

The adultery debate may have been a flash in the pan. It was nevertheless suggestive of the underlying cleavages in Turkish society and sparked suspicion between all the actors involved. Those tensions resurfaced when, in July 2004, and again in November 2005, the ECtHR upheld a Kemalist ban on veiling in public institutions including universities. In so doing, the Court dismissed the plaintiff's claim that – *inter alia* – her freedom of religion had been violated when she was expelled from university for refusing to remove her veil during an exam. Article 9 of the European Convention on Human Rights (ECHR) defines freedom of religion as the right to manifest one's religious 'belief in worship, teaching, practice and observance' either 'alone or in community with others and in public or private [...]'. The article stipulates, however, that the right can be curtailed to protect 'public order, health or morals, or the protection of the rights and freedoms of others'. The principle of freedom of religion thus epitomises a dilemma at the heart of the EU-universal canon: When is it acceptable to censure an individual or group's freedom (of religion) in order to ensure that the freedom(s) of others, religious or otherwise, are not compromised?

Countries across the EU have responded to this dilemma differently. Britain's *laissez-faire* approach permits use of religious headgear like veils and turbans by public employees. German policies differ from *Land to Land*, whilst France bans all religious symbols from

³⁸ Interview with Yaşar Yakış.

³⁹ Interview with Akif Emre.

⁴⁰ Interview with Ali Bulaç.

secondary schools.⁴¹ In the aftermath of 9/11, criticism of veiling has intensified, from calls for a full ban on head-to-toe coverings by conservative politicians in Holland,⁴² to public expressions of discomfort with the practice by high-ranking officials in Britain.⁴³ Brussels, however, steers clear of the controversial subject, whilst the record of ECtHR jurisprudence on freedom of religion is uneven. It has, for instance, ruled in favour of Jehovah's witnesses and religiously-motivated pacifists,⁴⁴ but has never endorsed a Turkish Muslim's challenge to Kemalist secular institutions.⁴⁵

The Turkish Directorate of Religious Affairs (*Diyanet*) does characterise veiling as a religious duty for the pious Muslim in light of passages in the Koran which exhort women to cover their hair, neck, and arms.⁴⁶ But, as noted above, the secularist founders of the Turkish Republic encouraged women to uncover as visible symbols of Turkey's progress towards 'contemporary civilisation'. The project was embraced by many amongst the urban elite and middle classes, but did not penetrate more conservative rural areas. With mass migration to the cities in the ensuing decades, newly urban pious women began to challenge the idealised image of the secular republican woman by sporting a 'modern' version of the veil: the headscarf (*türban*).⁴⁷ As veiled women became bolder,⁴⁸ the state became stricter, particularly after the 1980 military coup when a ban was imposed on veiling public institutions. It was contested in the courts for almost a decade, but finally affirmed by the Constitutional Court in 1991. Henceforth, Islamists have condemned the measure as authoritarian, citing both the religious obligation and

⁴¹ France cited the ECtHR verdicts when enacting its own legislation on this front.

⁴² Such calls are quite populist in nature as only a handful of women in the entire country wear this style of hijab.

⁴³ Former British foreign minister Jack Straw launched a heated debate when he described full hijab as a 'visible statement of separation and of difference' and called upon veiled women to at least expose their faces so that 'face-to-face' conversation would be possible. 'Straw's Veil Comment Sparks Anger', BBC, 5 October 2006. Available at: <http://news.bbc.co.uk/2/hi/uk_news/politics/5410472.stm> (accessed 26 April 2010).

⁴⁴ In May 1993, for example, the Court ruled in favour of the plaintiff in *Kokkinakis v. Greece*. Available at <<http://www.religlaw.org/template.php?id=182>> (accessed 26 April 2010). Kokkinakis had been arrested 60 times, summoned to court 18 times, and spent 6 years in prison on the basis of a law which in principle was meant to protect the 'feeble from exploitation' but which in practice, Jehovah's Witnesses argued, is used to silence the public expression of religiosity other than Greek Orthodoxy. In a likewise precedent-setting case, *Valsamis v. Greece* (December 1996), the ECtHR ruled in favour of Jehovah's Witnesses who, moved by religiously motivated pacifism, had refused to send their daughter to school on the day of a national parade because of the militaristic overtones to the event.

⁴⁵ The AKP's predecessors, the Islamist Welfare Party (RP) and Virture Party (FP), both launched unsuccessful cases with the Court after their closure by the Turkish Constitutional Court on grounds of anti-secularism.

⁴⁶ A number of passages in the Koran exhort women to cover. For instance Al-Ahزاب:59 reads 'Oh Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks [Jalabeeb] all over their bodies.' Whilst such passages may be subject to different interpretations, all four of the main schools of Islamic jurisprudence agree on the propriety of veiling. Since Turkey is a secular state, the *Diyanet* (Turkish Directorate of Religious Affairs) position has no implications for those who choose not to observe religious convention with regard to veiling.

⁴⁷ Gökarısel, B. and Mitchell, K. (2005) 'Veiling, Secularism, and the Neoliberal Subject: National Narratives and Supranational Desires in Turkey and France', *Global Networks*, 5(2): 155.

⁴⁸ In the 1980s, for example, female medical students emboldened by the Turkish-Islamic synthesis began to demand exemption from dissecting male cadavers and refused to take off their headscarves in the operating theatre. Kalaycıođlu, E. (2005) 'The Mystery of the Türban', *Turkish Studies*, 6(2):234.

democratic choice of pious women citizens. Strikingly, defenders of the ban also employ both religious and democratic rationales, arguing that freedom of religion can only truly be protected in a secular society where the state is equidistant from all forms of religious practice (including atheism). This is why, they argue, it is imperative that the public sphere be void of religious symbols like the veil, especially in a socially conservative, Muslim majority country where unveiled women might be pressured to cover. Islamist insistence on veiling is accordingly read as an attempt to penetrate and dismantle the secular state.⁴⁹ The AKP came to power in 2002 on a platform which included rescinding the ban. Many attribute the vigour with which the party pursued EU membership during its first years in power to the belief, prevalent amongst many moderate Islamists from the late 1990s until the ECtHR verdicts, that the EU/European normative regime would favour their position in the name of freedom of religion.⁵⁰

When the Court's ruling did just the opposite secularists were accordingly pleased. Kemalists were perhaps the most ecstatic. Figures from the President of the Republic, to the Chairman of the Board of Higher Education seized upon the opportunity to declare (misleadingly as it turned out) that the verdict was binding, i.e., that henceforth the ban could not be revoked.⁵¹ The staunchly Kemalist *Cumhuriyet* went even further, charging the AKP with treason for having openly sympathised with the plaintiff in a case against Turkey.⁵² The verdicts, it was hoped, would smooth Turkey's EU path and establish a happy precedent for France, Germany, and Britain against whom headscarf cases were pending at the Court.

Other secularists – from liberals to right-wing nationalists – were somewhat more ambivalent, expressing some sympathy with veiled women but ultimately convinced that the measure was necessary to safeguard secularism and, concomitantly, democracy. As the editor of *Radikal* put it: 'On one hand seventeen year-olds want to study and express themselves. On the other, when I look at them I do not see a girl or a young woman [...] I see a uniform, a political identity, an Islamic symbol. At that point it becomes a struggle between them and me'.⁵³ Interestingly, his views were echoed by prominent right-wing figures who argued that Islamists' preoccupation with veiling revealed a penchant for pre-modern symbols which in turn called into question their commitment to democracy, a product of modernity.⁵⁴

⁴⁹ For an extensive discussion of both positions see Arat, Y. (2005) *Rethinking Islam and Liberal Democracy: Islamist Women in Turkish Politics*, Albany: SUNY Press.

⁵⁰ From 1999 to 2004, for example, pro-religious commentators such as Nazlı Ilıca and Fehmi Koru of *Yeni Şafak* devoted many of their columns to extolling the EU accession process as a panacea for Turkey's ills. Fisher, N. (2006) 'Marriage of convenience or genuine communion?: Liberal and Moderate Islamist Collaboration on Turkey's EU Accession', paper presented at ECPR Joint Sessions, Nicosia, Cyprus, May 2006.

⁵¹ The ruling only said that the ban was appropriate to the Turkish context, not that it could not be rescinded.

⁵² The wife of foreign minister and current president Abdullah Gül had also filed a headscarf case at the Court. She withdrew it when her husband was elected to office in 2002.

⁵³ Interview with İsmet Berkan.

⁵⁴ Interview with Gündüz Aktan. This striking convergence in the views of liberals and right-wing nationalists – nemeses when it comes to matters like minority rights or the Armenian question – was also echoed in the sympathy which a handful of other liberals and right-wing nationalists, such as Şahin Alpay on one hand, and Aytemur Kılıç on the other felt towards veiled women. That is, some figures from these

Islamists, meanwhile, from the most moderate to the most hard-core, were predictably outraged. The pro-religious press accused the court of being 'irrational',⁵⁵ 'subjective',⁵⁶ and 'politicised'⁵⁷; as well as of 'abetting Kemalist authoritarianism'.⁵⁸ The verdicts, it was argued, suggested that 'Europeans' and 'European justice' were incapable of transcending a 'deep-rooted fear of Islam'.⁵⁹ For, in light of EU/European actors' ardent defence of the rights of Kurdish, Christian, and Alevi minorities in Turkey, one could only conclude that there were 'profound double-standards' towards Turkey's Sunni Muslim majority.⁶⁰ As such, whilst 'human rights, freedom of thought, and democracy' might have intrinsic value, European attempts to use these principles to transform non-Western societies were driven by ulterior motives, ignorance, and spite.⁶¹ As one enraged columnist put it:

Those who talk about Western values as universalism need to ask 'What sort of universalism is this?'; When it suits the West's interest, 'human rights' are insisted upon in an imperialist manner and with armed force; when it is not, a court can come out with a decision that prohibits the fulfillment of a religious obligation like veiling.⁶²

Islamists attributed the decisions to at least three factors: poor judgment, political expediency, and a combination of traditional and post-9/11 Islamophobia. Some, for instance, believed the ECtHR had been fed misleading information by secularists to the effect that rescinding the ban would lead to violent social upheaval. The justices thus might have genuinely believed they were choosing between freedom of religion and the stability of the country.⁶³ For, as one commentator pointed out, it was not as if there were no precedents in the EU for the sort of arrangement demanded by pious Muslims in Turkey – Britain's relaxed approach being a case in point.⁶⁴ Second, it was felt that the decisions may have been a matter of political expediency. Folding the ECtHR and 'Europe' together, it was argued that in a post-9/11 context, Europe could not afford to alienate Turkey and so sought to placate those who portrayed themselves as Westernist.⁶⁵ That said, most Islamists believed the rulings to be, at least in part, an expression of enmity towards Turkey,⁶⁶ itself viewed as a manifestation of Islamophobia⁶⁷. It was

otherwise hostile camps concurred that the ban and thus the ECtHR rulings represented an infringement of pious women's freedoms rather than a challenge to secularism.

⁵⁵ Yeni Şafak, 'Yanlış Bir Karar', Fehmi Kuru, 30 June 2004

⁵⁶ Ibid.

⁵⁷ Yeni Şafak, 'YÖK Başkanı Erdoğan Teziç Başörtüsü Konusunda Hukuki Düşünmüyor', Mehmet Ballı, 12 January 2002.

⁵⁸ Yeni Şafak, 'Batılılar Kılavuzu Kim?', Sami Hocaoglu, 5 July 2004.

⁵⁹ Ibid.

⁶⁰ Yeni Şafak, 'Batı Herşey Değildir', Resul Tosun, 3 July 2004.

⁶¹ Yeni Şafak, 'Başörtüsü İle Yüzleşme', Akif Emre, 6 July 2004.

⁶² *Supra*, note 57.

⁶³ Interview with Ayhan Bilgen.

⁶⁴ Interview with Yaşar Yakış.

⁶⁵ Interviews with Fehmi Kuru and Zekeriya Akçam.

⁶⁶ Interview with Mehmet Elkatmış.

argued that European's long tradition of hostility on these fronts had been further exacerbated by 9/11.⁶⁸ Indeed, the ruling was said to reveal the chain of logic which animates Islamophobia: 11 September called for a 'war on terror'; terror was associated with Islam; Islam was associated with political Islam; political Islam was associated with the headscarf; therefore, a ban on the headscarf was legitimate.⁶⁹

Crucially, and unlike the pattern had been with regard to the adultery debate, Islamist figures did not retroactively reconsider their position. Whilst this did not amount to a total rejection of a normative and legal framework predicated on 'EU-niversal values', it did attest to a heightened awareness amongst Islamists as to the challenges of embracing such a framework. The rulings thus marked a turning point in Islamist enthusiasm for Turkey's European project. Indicatively, the editor of *Yeni Şafak* and a close associate of the AKP leadership, declared that he was 'ashamed in the name of justice' when he saw the ECtHR verdicts. The rulings, he believed, implied the Court thought Turks should sacrifice a fundamental right in order to please a military regime.⁷⁰ The decision accordingly marked a setback in the evolution of a

universal set of rules to regulate state-individual and state-society relations [...] if we don't maintain the same standards for everyone, if we encourage everyone to apply [universal principles] as they see fit, in accord with their own 'special circumstances', then law becomes the law of the jungle.⁷¹

In a similar vein, an AKP parliamentarian feared the rulings had ignited a reaction against the European take on universal values. Affirming his commitment to such values despite their perceived miscarriage by the Court, he declared:

I don't care about the EU, I care about universal values. And if places where universal values do not hold are threatening to you [Europeans], fine, we'll bring universal values to those places too. But when we do, you can't betray those values. And it is possible to have cohabitation as well; don't force every aspect of your universalism onto us. We're not going to force you to become Muslim or veil. Do not penetrate our private field. We just want a common language to share our common values in the public sphere.⁷²

Such views suggest that even if there was disappointment at the rulings, some credence was still giving to the desirability of adopting 'EU-niversal' values in Turkey.

But for other commentators disappointment ran so deep as to suggest there was no possibility of reconciling 'EU-niversal' and Islamic justice. These figures saw the rulings as the expression of a broader trend in which the West imposed its human rights and

⁶⁷ Interview with Ayhan Bilgen.

⁶⁸ Interviews with Fehmi Koru and Ali Bulaç.

⁶⁹ Interview with Fehmi Koru.

⁷⁰ Interview with Ayhan Bilgen.

⁷¹ Interview with Fehmi Koru.

⁷² Interview with Zekeriya Akçam.

democratisation rhetoric on the Muslim world 'so that there will be no alternatives to western normative and ideological hegemony'. In this vein, an intellectual who had also been dismayed by the EU/European and Turkish secularist position on the adultery question, believed that any attempt to disaggregate a sort of Habermasian public sphere regulated by European-cum-universal values and an Islamic private sphere was doomed to fail. The Court, he argued, had vindicated the Kemalist position precisely because Islamists had sought to defend veiling in the language of universal rights and freedoms rather than in their own terms. For, he declared, veiling is not a freedom, it is a form of worship:

For a Muslim it is not a matter of personal choice. It is a religious obligation. When you reduce it to a matter of freedom or to the field of personal choice, when you start speaking with western concepts, then the concept becomes filled with western values and judgments. They set themselves up to fail, a great mistake.⁷³

This in turn shows us that the most important aspect of the European values versus the Islamist values debate is over women's bodies and the right to cover up. However, the other side of the coin, the right of women not to use the headscarf is automatically sacrificed if one puts the matter down as one of religious obligation.

Conclusion

This paper examined recent debates over an AKP proposal to criminalise adultery, and ECtHR rulings on a ban on veiling in public institutions. The cases revealed that whilst secularists across the Turkish political spectrum espouse views compatible with the progressive mainstream in the EU/Europe, there is some ambivalence in Islamist views. This was evident to a limited extent during the adultery debate in that most Islamists later disavowed the position the party had taken at the time of the debate. The ECtHR verdicts, however, engendered deep consternation in most Islamists. For some, they represented a miscarriage of justice which might be explained by misinformation fed to the Court, political expediency, and the negative post-9/11 climate. For such commentators this suggested that if conditions were to change in the future the process of reconciling 'EU-niversal' and Islamic values could continue. For others, however, the verdicts attested to a basic incommensurability in European and Islamic normativity. In either case, they spelled the end of the AKP honeymoon with the EU/Europe.

What is very interesting in this picture is that the Islamists see the increased role of Islam in Turkish politics as a natural result of the adoption of the European values in Turkey. One should note that what is at stake is the right to dissent and/or the loss of freedom of expression for those who are not among the Islamists. The most visible debates are over symbols of Islam in public life, most notably the headscarf. This brings us to a larger question: In a country where the majority adheres to Islam and believes in its application in public and private life, does cosmopolitanism necessitate sacrificing secularism? Is it possible, then, that through the EU accession process Turkey would become a democratic

⁷³ Interview with Akif Emre.

country where Islam dominates the way of life? If so, what does this tell us in terms of the compatibility between democracy and secular values in an Islamic society? Finally, what kind of space would there be in the European Union for a democratic but an Islamic Turkey? Such questions further speak to the significance of the women's question as a factor of identity demarcation in Turkey and as a gauge of Turkey's European vocation.

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