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Dimitrina Petrova
Executive Director

London, 13 February 2008

Turkey: constitutional amendments lifting headscarf ban in higher education

The Equal Rights Trust welcomes the adoption by Turkey's parliament on 9th February 2008 of two constitutional amendments that will ease restrictions on the freedom to wear the Islamic headscarf in public higher education institutions. It has been widely reported that the ban has led to a reduction in the number of women attending higher education and placed women who wear the headscarf as a matter of religious conviction at a disadvantage with regards to the exercise of their right to manifest their religious beliefs and access education. The ban has been the subject of much debate in Turkey where constitutional provisions guaranteeing secularism, equality and freedom of religion have been interpreted by the Constitutional Court to restrict the wearing of the Islamic headscarf in public universities. The amendments have been sent to the President for ratification and the opposition Republican People's Party has said it will appeal the decision before the Constitutional Court.

Although the right to manifest one's religion, including the freedom to wear or display religious symbols, which is an essential part of that right, is not absolute, limitations should be applied restrictively and under precise conditions. The Equal Rights Trust considers that both the freedom of persons who wish to wear or display a religious symbol and the freedom of persons who do not want to be confronted with or coerced into it should be weighed up carefully. Striking a fair balance will require, among other things, special consideration of the needs and protection requirements of women, religious minorities or vulnerable groups. While refraining from interference with women's choice of attire, the government also has a duty to protect women who do not chose to wear a headscarf from harassment and other discriminatory treatment, especially if they become a vulnerable minority in an increasingly religion-dominated context.

The ban on wearing of veils or headscarves in public universities in Turkey stems from two Constitutional Court judgements of 1989 and 1991 which held that regulations allowing headscarves or veils to be worn in public universities were contrary to the constitutional principles of secularism, equality before the law and freedom of religion.

Under the two amendments approved by the parliament on 9 February 2008, Article 10 of the constitution concerning equality before the law will include a paragraph stipulating that “State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings, and in the provision of access to all public services”. Article 42, concerning the right to education, will include a paragraph which specifies that “no person may be deprived of their right to higher education on any grounds not clearly provided for in law. The limits to the exercise of this right shall be defined by law.”

The bill containing the two constitutional amendments also proposes a change to Article 17 of the Higher Education Council (YÖK) law, concerning attire. The amended law will stipulate that “no one can be deprived of higher education because they cover their heads and there can be no implementations in that direction. However, the style of covering must leave the face of the person open in order to allow identification and must be tied under the chin.”

Whilst welcoming the changes, the Equal Rights Trust is concerned that the constitutional amendments and changes to the Higher Education Council law are piecemeal solutions to a wider problem. The adopted changes will apply only to institutions of higher education and not primary and middle schools or employers in the public sector. Furthermore, the proposed legislation remains prescriptive to such an extent that it could be considered as arbitrary because it imposes unwarranted restriction on the right to manifest one’s religion, applying only to the traditional headscarf tied under the chin and not other forms of headscarf.

The Equal Rights Trust urges Turkish authorities to consider the adopted constitutional amendments as a first step to putting in place a comprehensive anti-discrimination legislation that would effectively combat all forms of discrimination. This would ensure not only greater respect for the right to equality and non-discrimination but would more effectively protect all human rights, particularly those that are most closely linked to the right to equality, such as the right to freedom of thought, conscience and religion and the right to freedom of opinion and expression.