



13.07.2015

The Committee of Ministers of the Council of Europe

**RE: The Case of *Mansur Yalçın and Others v. Turkey* Application No. 21163/11
(LEADING *Hasan and Eylem Zengin v. Turkey* Application No. 1448/04)**

In the case of *Mansur Yalçın and Others v. Turkey*, the European Court of Human Rights has observed that in the field of religious instruction, the Turkish education system was still inadequately equipped to ensure respect for parents' convictions. The violation of Article 2 of Protocol No. 1 found by the Court on that account had arisen out of a structural problem already identified in the case of *Hasan and Eylem Zengin*. Turkey had to remedy the situation without delay, in particular by introducing a system whereby pupils could be exempted from religion and ethics classes without their parents having to disclose their own religious or philosophical convictions.

Since the rejection of Turkey's appeal to the Grand Chamber the Government has not taken any steps or prepared an action plan or started a consultation process that have been shared with civil society.

In the meantime, in an important decision, the Court of Cassation has held that the compulsory Religious Culture and Knowledge of Ethics course is "religious instruction".¹ The case, which was initiated in 2008, concerned the application of an atheist family. The parents who resided in Antalya, Turkey, did not want their child S.E.D. who was in 5th Grade at the time, to take the Religious Culture and Knowledge of Ethics course and requested exemption. Following the rejection of the application by the Governorship the judicial process which lasted eight years has started. Antalya 3rd Administrative Court held that the student had to be exempted from the course. Following this decision the student was granted the right to exemption from the course. The appeal by the Governorship led to a decision by the Court of Cassation (8th Chamber) which observed that the Religious Culture and Knowledge of Ethics course was not based on the teaching of a particular denomination and annulled the decision of the local Administrative Court. While the applicants were preparing to take the case to the ECtHR, the latter decided on the case of *Mansur Yalçın and Others v. Turkey* which

¹ Court of Cassation 8th Chamber, June 2015.



was then submitted to the Court of Cassation as an additional defense file and the Court of Cassation took into account the judgment of the ECtHR on the aforementioned case.

The 8th Chamber of the Court of Cassation underlined that the state when undertaking its responsibility in the area of teaching and education must ensure that the information included in the curricula is transmitted in an objective and pluralist manner and the religious and philosophical views of parents are respected. The judgment read:

Where the curricula used in teaching is based on an understanding of a particular religion, it is clear that such a course cannot be accepted as religious culture and knowledge of ethics and will be religious instruction.²

The judgment further held:

It is not compatible with the law that the compulsory religious culture and knowledge of ethics course, which the applicants claim to be incompatible with their religious or philosophical belief or unbelief, is made compulsory with regardless of religious affiliation or whether they are atheist or not.

The student was enrolled in the third year of high school in the 2014-2015 school year at the time of the judgment.

The Court of Cassation judgment, albeit favorable, does not imply that exemption may be granted to all upon their request. The Court of Cassation decisions do not automatically lead to legislative or policy change. It should also be noted that considering the length of proceedings at the domestic level the judicial remedy can not be deemed effective. During judicial proceedings students still have to take the course or else they cannot pass to the next grade.

To date, there have not been any legislative changes in this sphere.

In conclusion, the Turkish Government ha failed to take effective general measures that ought to be taken in order to prevent similar violations from happening as in the cases of *Mansur Yalçın and Others v. Turkey* and *Hasan and Eylem Zengin v. Turkey*.

² Hürriyet Daily, “Danıştay, din kültürü dersinin ‘din eğitimi’ olduğuna karar verdi”, 17.06.2015.



The 2015-2016 school year will start in September 2015. The Government must introduce general measures compatible with the Court's findings without delay.

We recommend that, taking into account that millions of students may be affected by the situation as well as the fact that many parents refrain from taking the domestic judicial remedy course due to fear of discrimination or harassment, together with the implementation of the judgment on *Hasan and Eylem Zengin v. Turkey*, the *Mansur Yalçın and Others v. Turkey* the enforcement of the judgment be monitored under **enhanced supervision**.

We recommend that the Turkish Government be given a strict timetable for taking effective general measures, either by introducing a non-discriminatory exemption mechanism, or by abolishing the compulsory Religious Culture and Knowledge of Ethics course, or by changing the course curricula and course material to an objective course about religious, beliefs and life stances that would be compatible with the ECHR.

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The Norwegian Helsinki Committee (NHC) is an Oslo based non-governmental organization working since 1977 to ensure that human rights are respected in practice. It strives to achieve this goal through monitoring, reporting, teaching and democracy support. NHC bases its work on international human rights instruments adopted by the United Nations, the Council of Europe, and the Organization of Security and Cooperation in Europe (OSCE). It has projects in a variety of countries, including in Eastern Europe, Western Balkans, and Central Asia.

The Freedom of Belief Initiative was launched in September 2011 with the aim of monitoring issues related to freedom of thought, religion, of belief in Turkey, and to make legal standards and monitoring reports related to such topics accessible to all stakeholders. In this regard, it has presented reports on the protection of the freedom of thought, religion, and belief in Turkey under the framework of the Universal Periodic Review and the Human Rights Council, both mechanisms of the United Nations. Since March 2013, it has continued its activities with the support of the Norwegian Helsinki Committee with the Right to the Freedom of Belief Monitoring Project, which encompasses both monitoring and reporting activities.