

Zengin v. Turkey: Reading, Writing, 'Rithmetic ... and Religion? The European Court of Human Rights Strikes Down Mandatory Religious Education in Public Schools

I. OVERVIEW..... 617
II. BACKGROUND..... 619
 A. *Religion and Education in Turkey*..... 619
 B. *Religion and Education Under the European Court of Human Rights*..... 621
III. THE COURT'S DECISION..... 625
IV. ANALYSIS..... 628
V. CONCLUSION 631

I. OVERVIEW

Hasan Zengin, a Turkish citizen residing in Istanbul, found himself caught in the crossfire between religion and democracy when he requested that his daughter, a seventh grade student in public school, be exempted from a mandatory course on religious culture and ethics.¹ Zengin and his family are followers of Alevism, a branch of Islam that originated in central Asia and has found widespread support across Turkey.² Alevism is most notably distinguished from the Sunni tradition of Islam—the most prominent denomination in Turkey—in terms of prayer, fasting, and pilgrimage.³ While the majority of Turkey's population who practice Sunni Islam follows the Hanafite school of thought, considered to be a traditional and moderate interpretation of Islam, Alevism embraces a more modernist approach.⁴ In contrast to Sunni Islam, Alevism rejects the religious code of *sharia* law as well as the *sunna*, which prescribes forms of behavior and rules according to Islam.⁵

1. See *Zengin v. Turkey*, App. No. 1448/04, paras. 6, 10 (Eur. Ct. H.R. Oct. 9, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 1448/04”).

2. *Id.* paras. 7-8.

3. *Id.* para. 8. Alevists do not comply with the Sunni requirement to pray five times daily, they do not consider pilgrimage to Mecca a religious obligation, and they meet in worship rooms instead of attending mosques. *Id.* para. 9.

4. *Id.* para. 8 n.1. Alevism espouses “freedom of religion, human rights, women’s rights, humanism, democracy, rationalism, modernism, universalism, tolerance and secularism.” *Id.* para. 9.

5. *Id.*

Zengin submitted a request to the Provincial Directorate of National Education at the Istanbul Governor's Office on February 23, 2001, requesting that his daughter be exempted from the mandatory religious culture and ethics course.⁶ In his request, Zengin emphasized that under various international treaties, parents have the right to determine their children's education.⁷ He also argued that the mandatory religious culture and ethics course was in conflict with Turkey's fundamental principle of secularism.⁸ On April 2, 2001, the Directorate denied Zengin's request, stating that pursuant to the Turkish Constitution and the State Education Act, the religious culture and moral education classes were compulsory in the primary and secondary school curricula.⁹ In response, Zengin applied to the Istanbul Administrative Court, challenging the religious nature of the compulsory courses which, he alleged, was based largely on Hanafite Islam and excluded his own faith.¹⁰ On December 28, 2001, the Administrative Court dismissed the request for the same reasons as the Directorate—under the Turkish Constitution and State Education Act the religious culture and moral education course was mandatory.¹¹ Zengin appealed to the Supreme Administrative Court, invoking various principles from the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Human Rights Convention).¹² On April 14, 2003, the Supreme Administrative Court dismissed his appeal, holding that the judgment of the Administrative Court was in compliance with the procedural rules and relevant legislation.¹³ In 2004, Zengin applied to the European Court of Human Rights.¹⁴ Under the European Human Rights Convention, the Court *held* that there was a violation of article 2 of the First Protocol because the mandatory course on religious culture and ethics did not meet the European Human Rights Convention's standards of objectivity and pluralism, and because the content of the course failed to respect Zengin's religious and philosophical convictions. *Zengin v.*

6. *Id.* para. 10.

7. *Id.* (citing Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc A/810 (Dec. 10, 1948)).

8. *See id.*

9. *Id.* para. 11 (citing TÜRKIYE CUMHURİYETİ ANAYASASI [Constitution] art. 24; State Education Act, Law No. 1739, § 12 (Turk.)).

10. *Id.* para. 12.

11. *Id.* para. 13.

12. *Id.* para. 14 (citing Convention for the Protection of Human Rights and Fundamental Freedoms art. 9, Nov. 4, 1950, E.T.S. No. 005, 213 U.N.T.S. 221 [hereinafter European Human Rights Convention]).

13. *Id.* para. 15.

14. *Id.* para. 1.

Turkey, App. No. 1448/04 (Eur. Ct. H.R. Oct. 9, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 1448/04”).

II. BACKGROUND

A. *Religion and Education in Turkey*

Prior to the establishment of the Republic of Turkey, the public and religious spheres of the Ottoman Empire were largely indistinguishable.¹⁵ With the passage of the Turkish Constitution in 1923, the Republic of Turkey took on a new character, placing secularism at the core of its national identity.¹⁶ Article 2 of the Constitution provides, “The Republic of Turkey is a democratic, laic and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice [and] respecting human rights.”¹⁷ In the years following the inception of the new state, the Turkish Government took significant steps to illuminate a bright line between religious and public life.¹⁸ First, the Government abolished the caliphate in 1924.¹⁹ This was followed by the repeal of the constitutional provision that had established Islam as the national religion under the Ottoman Empire.²⁰ Finally, the Government adopted an amendment that gave the principle of secularism constitutional status in 1937.²¹

Although the principle of secularism became the guiding force of the newly formed democracy, tension between the religious establishment and the secular movement remained.²² In 1982, Article 24

15. See *Sahin v. Turkey*, App. No. 44774/98, para. 27 (Eur. Ct. H.R. June 29, 2004), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 44774/98”), *aff’d*, 2005-XI Eur. Ct. H.R. 173.

16. See *id.*

17. TÜRKIYE CUMHURİYETİ ANAYASASI art. 2.

18. See *Sahin*, App. No. 44774/98, para. 27.

19. *Id.*

20. *Id.*

21. *Id.*; see also *Refah Partisi v. Turkey*, 2003-II Eur. Ct. H.R. 267, 285 (“Democracy is the antithesis of sharia. [The] principle [of secularism], which is a sign of civic responsibility, was the impetus which enabled the Turkish Republic to move on from Ummah [*ümmet*—the Muslim religious community] to the nation.” (quoting the Turkish Constitutional Court)).

22. See, e.g., *Sahin*, App. No. 44774/98, para. 101 (“Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. In such cases, it is necessary to have regard to the fair balance that must be struck between the various interests at stake: the rights and freedoms of others, avoiding civil unrest, the demands of public order and pluralism.” (citations omitted)).

was added to the Turkish Constitution, mandating religious education in public schools.²³ The provision states:

Education and instruction in religion and ethics are conducted under state supervision and control. Instruction in religious culture and ethics education are compulsory in the curricula of primary and secondary schools. Other religious education and instruction are subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.²⁴

Consequently, the State Education Act was passed, mandating religious culture and moral education at the primary and secondary school levels.²⁵ Although the course was intended to comport with the notion of pluralism²⁶ and therefore explore a wide range of religious convictions, it soon became clear that the curriculum disproportionately emphasized the teachings of Islam.²⁷

Under the Treaty of Lausanne, non-Muslim minority groups were entitled to an exemption from the mandatory course.²⁸ The Turkish Supreme Council for Education further reinforced the non-Muslim minority exemption by stating that "pupils of Turkish nationality who belong to the Christian or Jewish religions and who attend primary and secondary schools . . . are not obliged to follow the classes in religious culture and ethics, provided they affirm their adherence to those

23. TÜRKIYE CUMHURİYETİ ANAYASASI art. 24. Prior to the adoption of Article 24, Turkey had recently endured a military coup, and the Government feared that in the absence of mandatory religious education in state schools, many parents who wanted their children to receive religious education on Islam would send their children to private courses. Adrien Katherine Wing & Ozan O. Varol, *Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example*, 42 TEX. INT'L L.J. 1, 31 (2006). Because several of these courses had ties to Islamic fundamentalist groups, in order to prevent the Turkish youth from being indoctrinated, the Turkish Government elected to include religious education in the school curriculum. *Id.*; see *Sahin*, App. No. 44774/98, para. 109 ("The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts?").

24. TÜRKIYE CUMHURİYETİ ANAYASASI art. 24.

25. Law No. 1739, § 12.

26. *See id.*

27. EUROPEAN COMM'N AGAINST RACISM & INTOLERANCE [ECRI], COUNCIL OF EUR., THIRD REPORT ON TURKEY 19-20 (2004) [hereinafter TURKISH REPORT] ("[S]everal sources have described [the religion and ethics] courses as instruction in the principles of the Muslim faith rather than a course covering several religious cultures."). The instruction on Islam was conducted under the interpretation of the Hanafi conception of Islam, which is markedly different than that of the Alevist approach. Dilek Kurban, *Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union*, 35 COLUM. HUM. RTS. L. REV. 151, 182 (2003).

28. *See* Treaty of Lausanne arts. 38-43, July 24, 1923, 31 L.N.T.S. 701.

religions.”²⁹ In essence, only Muslim students were required to attend the course.³⁰

B. Religion and Education Under the European Court of Human Rights

As a Member of the Council of Europe, Turkey is subject to a variety of international texts. Most notably, Turkey is obligated under the European Human Rights Convention.³¹ Some of the most fundamental human rights protected under the European Human Rights Convention are enshrined in article 9, which ensures freedom of religion,³² and article 2 of the First Protocol, which establishes parental rights in terms of childhood education.³³ Article 2 provides: “No person shall be denied the right to education. 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.”³⁴ The basis for this right is to safeguard the ideals of pluralism within the education system, which the Court has recognized as a fundamental component of any democratic society.³⁵ Moreover, the Court has held that the two sentences of article 2 should be read in light of each other, and, in addition, in light of article 8 (right to respect for private and family life), article 9 (freedom of thought, science, and religion), and article 10 (freedom of expression).³⁶ Accordingly, the right to education cannot be divorced from a parent’s right to have his religion or philosophical convictions respected.³⁷

In an effort to give effect to parental rights enumerated under article 2, the European Court of Human Rights has subjected article 2 to

29. Zengin v. Turkey, App. No. 1448/04, para. 18 (Eur. Ct. H.R. Oct. 9, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 1448/04”) (quoting a decision by the Supreme Council for Education).

30. TURKISH REPORT, *supra* note 27, at 20.

31. *See, e.g.*, An v. Turkey, 2003-III Eur. Ct. H.R. 231, 250-51, 258 (addressing Turkey’s obligation to respect various human rights issues, for example, freedom of expression, freedom of assembly, and the right to an effective remedy).

32. European Human Rights Convention, *supra* note 12, art. 9 (“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.”).

33. *Id.* Protocol No. 1, art. 2.

34. *Id.*

35. Kjeldsen v. Denmark, App. Nos. 5095/71, 5920/72, 5926/72, para. 50 (Eur. Ct. H.R. Dec. 7, 1976), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 5095/71”).

36. *Id.* para. 52.

37. *See id.*

thorough statutory interpretation.³⁸ In distinguishing “religious” from “philosophical” convictions, the European Commission of Human Rights stated that a religious belief should be construed as a “conviction based on faith,” whereas the term “philosophical” cannot be reduced to a single definition.³⁹ Rather, it encompasses a wide spectrum of meanings that fall between a “fully-fledged system of thought” at the one extreme, and “views on more or less trivial matters” at the other.⁴⁰ Therefore, as long as an individual’s philosophical convictions are not at odds with the conception of human dignity, they must be respected in ensuring the right to education.⁴¹ The Court has also invoked article 9, which establishes the right to freedom of thought, conscience, and religion, in order to give effect to the term “convictions.”⁴² On this point, the Court has held that, similar to the term “belief,” which is found in article 9, the term “conviction” in article 2 means more than mere opinions or ideas; it “denotes views that attain a certain level of cogency, seriousness, cohesion and importance.”⁴³ Finally, because article 2 stipulates that the state shall “respect” the right of parents to ensure that their philosophical and religious convictions are in conformity with their children’s education, the Court has announced that the term “respect” imposes an affirmative duty on contracting states.⁴⁴ This positive obligation requires the state to do more than merely acknowledge or take into account a parent’s religious or philosophical convictions.⁴⁵

Over the past fifty years, the European Court of Human Rights has heard a line of cases that address the complex issue of parental rights in the public education system under article 2.⁴⁶ Through its rulings, the Court has demonstrated the difficulties involved in applying a universal text—the European Human Rights Convention—to a spectrum of diverse

38. See, e.g., *Campbell v. United Kingdom*, 48 Eur. Ct. H.R. 1, 16 (1982).

39. See *Bernard v. Luxemburg*, App. No. 17187/90, 75 Eur. Comm’n H.R. Dec. & Rep. 57, 68 (1993).

40. *Campbell*, 48 Eur. Ct. H.R. at 16.

41. See *id.*

42. *Id.*; see also *Valsamis v. Greece*, 1996-VI Eur. Ct. H.R. 2313, 2323.

43. *Campbell*, 48 Eur. Ct. H.R. at 16.

44. See *id.* at 17.

45. *Id.*

46. See, e.g., *Folgerø v. Norway*, App. No. 15472/02, 1, 2 (Eur. Ct. H.R. June 29, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 15472/02”) (addressing the rights of parents to exempt their children from a mandatory primary school course on Christianity, religion, and philosophy); *Kjeldsen v. Denmark*, App. Nos. 5095/71, 5920/72, 5926/72, para. 1 (Eur. Ct. H.R. Dec. 7, 1976), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 5095/71”) (addressing the rights of parents to ensure that a sex education course conforms with their religious and philosophical convictions).

countries and cultures.⁴⁷ Nevertheless, it has successfully developed a workable set of principles that have been applied across national borders.⁴⁸ Recognizing the need, however, to take into account the unique material situation and legislative intent behind each nation's policies, the Court has, in large part, adopted an ad hoc approach when confronted with issues of parental rights in an education system on the one hand, and local governmental interests on the other.⁴⁹ On this point, the Court has given great deference to individual states in setting and planning their school curricula, which, as the Court has noted, may vary according to the country and era.⁵⁰

When confronted with an article 2 violation, the Court has stated that as a threshold matter, any demonstrable attempt on behalf of the government to indoctrinate students is strictly prohibited.⁵¹ It has been well-established that under article 2, “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.”⁵² However, the Court has also highlighted its judicial restraint in refraining from interfering with states' decisions regarding the setting and planning of school curricula.⁵³ In this capacity, the Court has recognized that while the views of the majority should not always prevail—and a proper balance between the position of minorities and that of the majority should be sought—the mere fact that a single religion is more prominently represented in the curriculum than any other, does not, by itself, constitute a departure from the ideals of

47. *Compare Campbell*, 48 Eur. Ct. H.R. at 14-18 (applying article 2 of the Convention to a highly developed democracy in Northern Europe), *with Buscarini v. San Marino*, 1999-I Eur. Ct. H.R. 605 (applying article 2 to a microstate that is landlocked and has a relatively small population).

48. *See, e.g., Valsamis v. Greece*, VI Eur. Ct. H.R. 2313, 2324 (1996) (stating the Court's universal principle that the “[Convention] forbids the State ‘to pursue an aim of indoctrination that might be regarded as not respecting parents’ religious and philosophical convictions”).

49. *See, e.g., Angeleni v. Sweden*, App. No. 10491/83, 51 Eur. Comm'n H.R. Dec. & Rep. 41, 42, 51 (1986) (refusing to grant an exception to the daughter of an atheist mother because the government-mandated course on religious knowledge had a legitimate aim in providing all children with some education in the subject).

50. *See Sahin v. Turkey*, App. No. 44774/98, para. 100 (Eur. Ct. H.R. June 29, 2004), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search “Application Number 44774/98”) (“As is well established by [the Court's] case-law, the national authorities are in principle better placed than an international court to evaluate local needs and conditions.”); *see also Valsamis*, VI Eur. Ct. H.R. at 2324.

51. *Kjeldsen*, App. Nos. 5095/71, 5920/72, 5926/72, para. 53.

52. *Id.*

53. *See Valsamis*, VI Eur. Ct. H.R. at 2324.

pluralism and objectivity.⁵⁴ Moreover, if parents were allowed to object to a subject matter on the premise that it conflicted with their religious or philosophical beliefs, institutional teaching may, in effect, be rendered impracticable.⁵⁵

Because article 2 ensures that parents' religious and philosophical convictions are respected within the education system, the most common demand by parents pleading an article 2 violation has been for their children to be exempt from the disputed courses.⁵⁶ Having been denied an exemption by the state's legislative and/or judicial authorities, parents turn to the European Court of Human Rights as a court of last resort.⁵⁷ In order to bring the exemption option within the scope of possible solutions, the Court examines the disputed course and the relevant state policies underlying the course.⁵⁸ To a great extent, this case-by-case analysis weighs the government's interests on the one hand against parental rights under article 2 on the other.⁵⁹

Over the years, the Court has been hesitant to circumvent state education policies and to order exemptions when students could receive supplementary lessons from their parents or be enrolled in private schools.⁶⁰ Additionally, where the state had already established an exemption procedure for students professing a religious belief that may conflict with the course, the Court readily upheld the exemption procedure as a sufficient mechanism to meet its obligation to respect parents' religious and philosophical convictions.⁶¹ However, in recent years, the Court has taken a more cavalier approach when confronted

54. *Folgerø v. Norway*, App. No. 15472/02, at 39 (Eur. Ct. H.R. June 29, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 15472/02") ("Christianity represented a greater part of the Curriculum for primary and lower secondary schools than knowledge about other religions and philosophies . . .").

55. *Kjeldsen*, App. Nos. 5095/71, 5920/72, 5926/72, para. 53.

56. *E.g.*, *Folgerø*, App. No. 15472/02 at 3.

57. *See id.*

58. *See, e.g.*, *Kjeldsen*, App. Nos. 5095/71, 5920/72, 5926/72, para. 54.

59. *See, e.g., id.* (weighing the State's interest in providing sex education, which served the purpose of supplying students with useful information intended to curtail the excessive birth rate out of wedlock, against the fact that the course offended Christian parents' religious and philosophical convictions).

60. *See Valsamis v. Greece*, 1996-VI Eur. Ct. H.R. 2313, 2324 (denying an exemption from a school-wide parade celebrating the State's military victory, which offended parents' pacifist religion, on the basis that the child's obligation to attend the parade did not deprive her parents of supplying the child with their own guidance and religious/philosophical knowledge); *see also Kjeldsen*, App. Nos. 5095/71, 5920/72, 5926/72, para. 54 (denying an exemption from a sex education course because parents could enroll their children in the State's heavily subsidized private schools, which were not bound by the strict obligations of the public school).

61. *See Bernard v. Luxemburg*, App. No. 17187/90, 75 Eur. Comm'n H.R. Dec. & Rep. 57, 74 (1993).

with the issue of exemption.⁶² In June 2007, the Court declared that simply because parents could seek alternative schooling for their children or supply their own form of education, the state was not justified in dispensing of its obligation to ensure that state schools were open to everyone.⁶³ Additionally, the Court held that extending exemptions where the course conflicted with parents' religious or philosophical convictions was no longer an adequate remedy under article 2 disputes.⁶⁴

In order to receive an exemption, parents were generally expected to disclose specific information about their religious and philosophical convictions to the school authorities in order to demonstrate a conflict between the required course and their own beliefs.⁶⁵ The Court held that this disclosure may therefore constitute a violation of article 8 (right to respect for private and family life) and article 9 (freedom of thought, conscience, and religion).⁶⁶ Accordingly, the Court determined that the very nature of the exemption process imposes too heavy a burden on parents to disclose private aspects of their lives, and, in turn, may deter parents from making the exemption requests in the first place.⁶⁷ Having effectively struck down the exemption option and offering no alternative remedy, the Court left any future article 2 disputes hanging in the balance.⁶⁸

III. THE COURT'S DECISION

In the noted case, the European Court of Human Rights applied its transnational article 2 case law principles and also relied substantially on an ad hoc inquiry into the Turkish education system to determine whether there was an article 2 violation.⁶⁹ The Court unanimously held that although the course instruction did not rise to the level of indoctrination, the content of the lessons did not meet the criteria of

62. See *Folgerø*, App. No. 15472/02, para. 101.

63. *Id.* (holding that a state's refusal to exempt children of parents who were members of the Norwegian Humanist Association from a mandatory course on Christianity, religion, and philosophy constituted an article 2 violation).

64. See *id.*

65. *Id.* para. 98 (requiring students to submit a note written by a parent in order to be exempt from classes that conflict with his/her religion or philosophical convictions).

66. *Id.* paras. 98-101.

67. *Id.*

68. See *id.* para. 100 (holding that the refusal to grant an exemption was a violation of article 2, but also holding that an exemption is not an appropriate remedy based on the ideals of pluralism and the right to education for all).

69. See *Zengin v. Turkey*, App. No. 1448/04, para. 57 (Eur. Ct. H.R. Oct. 9, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 1448/04").

objectivity and pluralism.⁷⁰ The Court also held that because the compulsory course lacked adequate instruction on the Alevi faith, the syllabus did not respect Zengin's religious and philosophical convictions.⁷¹ Finally, even though the State had instituted an exemption policy for pupils whose religion conflicted with the required course, the Court rejected the exemption procedure as an inappropriate method of ensuring respect for parents' religious and philosophical convictions.⁷²

The Court first addressed whether the mandatory course on religious culture and ethics was taught in an objective, critical, and pluralistic manner.⁷³ To this end, the Court considered the Turkish syllabus on "religious culture and ethics" as required for children aged six through fifteen (first through ninth grades).⁷⁴ The Court noted that the governing principles of the syllabus—to educate students on all of the major religions and to foster a culture of peace and tolerance—were in harmony with the implied principles of pluralism and objectivity under article 2 of the European Human Rights Convention, as well as the principle of secularism, guaranteed by the Turkish Constitution.⁷⁵ Although the course emphasized Islam over other religions, the Court maintained that because Islam is the majority religion in Turkey, the focus on Islam did not offend the notion of pluralism and objectivity and did not rise to the level of indoctrination.⁷⁶

The Court next analyzed whether the manner in which Islam was emphasized over other religions was permissible under article 2.⁷⁷ Upon closer examination of the syllabus, the court determined that students were required to learn Islamic prayers and memorize passages from the Qu'ran.⁷⁸ From examining the textbooks, the Court noted that the course was not confined to teaching the Muslim faith in a general manner, but rather, provided instruction on the major principles and cultural rites in

70. *Id.* paras. 63, 70.

71. *Id.* para. 70.

72. *Id.* para. 75.

73. *Id.* para. 57.

74. *Id.* para. 58.

75. *Id.*

76. *Id.* para. 63 (citing *Folgerø v. Norway*, App. No. 15472/02, para. 89 (Eur. Ct. H.R. June 29, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 15472/02")). In *Folgerø v. Norway*, the Court held that although Christianity was disproportionately emphasized in the curriculum, it did not, per se, constitute a departure from the principles of pluralism and objectivity and did not amount to indoctrination. *Folgerø*, App. No. 15472/02, para.74.

77. *Zengin*, App. No. 1448/04, para. 89.

78. *Id.* para. 62. The syllabus also taught that Islam is a universal religion and addressed topics such as the conduct of the prophet Mohammed. *Id.* para. 60.

Islam.⁷⁹ Moreover, the course did not provide any teaching on the Alevi faith, which is a recognized religious conviction that has deep roots and is well-represented in Turkey.⁸⁰ Accordingly, the Court held that the instruction provided in the mandatory course did not meet the criteria of objectivity and pluralism enshrined in article 2, and because the Alevi faith was excluded from the syllabus, it did not respect Zengin's religious and philosophical convictions.⁸¹

The second issue the Court addressed was whether the Government had taken adequate steps to avoid situations where a conflict arose between the required course and the religious or philosophical convictions of a student's parents.⁸² The Court pointed out 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."⁸³ Under Turkey's education policy, Christian and Jewish students could be exempt from the required course, provided they establish their adherence to one of those religions.⁸⁴ The Government also made it possible for students of other faiths to be exempt, provided they submit a request.⁸⁵

The Court found two problems with the exemption procedure.⁸⁶ First, because the State had carved out a categorical exemption for Christian and Jewish students, that arrangement implied that the mandatory course was likely to create conflicts for those students and their parents' religious convictions.⁸⁷ Relying on the European Commission against Racism and Intolerance's Third Report on Turkey, the Court pointed out that "if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone."⁸⁸ On the other hand, if the mandatory course was

79. *Id.* For example, the belief in other worlds and the concept of invisible creatures. *Id.*

80. *Id.* paras. 66-67. Although lessons on two individuals in Islamic history that had a major impact on the emergence of Alevism were provided in the ninth grade, the Court held that this limited instruction did not compensate for the lack of instruction in primary and secondary school. *Id.* para. 67.

81. *Id.* para. 70.

82. *Id.* para. 71. For example, the Government might exempt students from the required course or make attendance optional. *Id.*

83. *Id.*

84. *Id.* paras. 18, 72.

85. *Id.* paras. 18, 75. At the July 9, 1990 hearing on exemptions, the Government announced that in addition to granting exemptions to Christian and Jewish students, the exemption procedure could be extended to students of other religious or philosophical convictions. *Id.* para. 75.

86. *See id.* paras. 73, 175.

87. *See id.* para. 74.

88. *Id.*; *see* TURKISH REPORT, *supra* note 27, para. 68.

intended to provide instruction only on Islam, it was therefore a course on a specific religion and should not be compulsory.⁸⁹ Second, the fact that parents must declare their adherence to a particular faith in order for their children to be exempt may conflict with article 9 (freedom of thought conscience and religion) of the European Human Rights Convention and article 24 (freedom of religion and conscience) of the Turkish Constitution, which states that “[n]o one shall be compelled . . . to reveal religious beliefs and convictions.”⁹⁰ Thus, because the State Education Act obligates parents to inform school authorities of their religious or philosophical convictions in order for their children to be exempt, the State’s exemption procedure does not adequately protect parents’ freedom of conviction.⁹¹ Moreover, as shown by the noted case, school authorities can always refuse to grant an exemption.⁹² Therefore, the Court found that Turkey’s education exemption procedure (requiring parents to disclose their religious or philosophical convictions in order for their children to be exempt) imposed too heavy a burden on parents.⁹³ Accordingly, the Court held that under the second sentence of article 2, which ensures respect for parents’ religious and philosophical convictions, Zengin’s rights had been violated.⁹⁴

IV. ANALYSIS

The Court’s reasoning represents a departure from its case law precedent and expands the scope of article 2. Prior to the noted case, the test used to determine whether the disputed course respected a parent’s religious or philosophical convictions was whether the material was

89. TURKISH REPORT, *supra* note 27, para. 68. The European Commission Against Racism and Intolerance recommended that the Turkish Government “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.” *Id.* para. 69.

90. *Zengin*, App. No. 1448/04, para. 73 (quoting TÜRKİYE CUMHURİYETİ ANAYASASI art. 24).

91. *Id.* para. 76.

92. *Id.* para. 75.

93. *Id.* para. 76.

94. *Id.* The Court also held that based on its finding that there was an article 2 violation, no separate question arose under article 9 of the European Human Rights Convention. *Id.* As for damages, the Court held that the finding of a violation constituted sufficient just satisfaction for any nonpecuniary damages, because bringing the Turkish education system into conformity with the Court’s holding would end the article 2 violation. *Id.* paras. 83-84. Finally, the Court ordered the State to pay Zengin €3,726.80, which was determined by the costs and expenses, less the sum of €850 granted in legal aid, plus any tax that may be chargeable. *Id.* paras. 81-83.

conveyed in an objective, critical, and pluralistic manner.⁹⁵ The policy underlying that approach was based on the notion that regardless of whether the subject matter emphasized a single religion over others, as long as it was presented in an objective, critical, and pluralistic manner, there was no article 2 violation.⁹⁶ Although the Court in the noted case found that the manner in which the course instruction was conveyed did not meet the requirements of objectivity and pluralism, it went one step further. It concluded that because the syllabus lacked instruction on the Alevi branch of Islam, the course failed to respect Zengin's religious and philosophical convictions.⁹⁷ Consequently, the Court broadened the scope of its article 2 analysis and established a new precedent: when a particular faith is not included in the syllabus, the parents' religious and philosophical convictions are not respected.⁹⁸

Across the European continent, twenty-five of the forty-six Council of Europe Member States have made religious education a compulsory subject.⁹⁹ Not surprisingly, the majority religion in those countries is Christianity. In light of the Court's holding that the Alevi branch of Islam must be included in the syllabus in order to meet article 2 muster,¹⁰⁰ the noted case begs a few fundamental questions. In addition to providing general instruction on the Christian faith, must religious education courses also provide specific instruction on each branch of Christianity, namely, Catholicism, Protestantism, and Greek Orthodox? Also, must the syllabus include instruction on the multitude of Protestant denominations, such as Anglicanism, Lutheranism, Calvinism, and Presbyterianism, because they are markedly different from one another? In holding, for the first time, that in order to respect a parent's religious convictions, the course should include that parent's specific religious conviction,¹⁰¹ the Court has essentially given standing under article 2 to

95. See *Folgerø v. Norway*, App. No. 15472/02, para. 85 (Eur. Ct. H.R. June 29, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 15472/02") ("The question to be determined is whether the respondent State, in fulfilling its functions in respect of education and teaching, had taken care that information or knowledge included in the Curriculum for the . . . subject be conveyed in an objective, critical and pluralistic manner . . .").

96. *Zengin*, App. No. 1448/04, para. 64.

97. *Id.* para. 70.

98. See *id.* In reaching this conclusion, the Court took into account that Alevism "represents one of the most widespread faiths in Turkey after the Hanafite branch of Islam." *Id.* para. 9. Ninety-nine percent of the Turkish population is Muslim, and fifteen to twenty percent of those Muslims belong to the Alevi branch of Islam. Niyazi Öktem, *Religion in Turkey*, 2002 BYU L. REV. 371, 387 (2002).

99. See *Zengin*, App. No. 1448/04, para. 31.

100. *Id.* para. 70.

101. See *id.*

any individual whose religious denomination is not incorporated in the state's syllabus.

In addition to finding that the instruction was not in conformity with article 2,¹⁰² the Court delivered a severe blow to the Turkish education system as a whole. In holding that the exemption procedure itself was an affront to the European Human Rights Convention, it struck down the well-established practice.¹⁰³ Yet, the Court did not offer any instruction or guidance vis-à-vis how the Turkish Government should proceed in order to bring the course into conformity with article 2—and, furthermore, in the absence of an exemption policy, how to provide appropriate channels for recourse to ensure respect for parents' convictions. Thus, by implication, the Court left the Turkish Government with only one option—to make the course on religious culture and ethics optional for everyone.¹⁰⁴

While the Turkish Government may perceive the Court's holding as an order to simply include Alevism in the syllabus and tone down the emphasis on Islam, the Court's holding goes much further. By striking down the exemption procedure,¹⁰⁵ it is effectively impossible for Turkey to maintain even the most all-inclusive, pluralistic course on religious culture and ethics, without any parent taking exception to the course. The Court has recognized that religious freedom 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, skeptics and the unconcerned."¹⁰⁶ Thus, if an atheist or "unconcerned" parent, for example, wishes to have his child exempt from the course, and the school is not entitled to require parents to disclose matters of their private lives in order to grant exemptions, an automatic exemption must be granted. Accordingly, without mandating that religious education be optional in Turkey's public school system, as an implication to the holding in the noted case, the Court has done just that.

Finally, the Court found a way to circumvent its well-established principle that the contracting state is in the best position to set its own curriculum.¹⁰⁷ In the noted case, the Court refrained from dictating to the Turkish Government how best to bring the syllabus into conformity with

102. *Id.*

103. *See id.* para. 76.

104. *See* TURKISH REPORT, *supra* note 27, para. 68.

105. *Zengin*, App. No. 1448/04, para. 76.

106. *Sahin v. Turkey*, App. No. 44774/98, para. 66 (Eur. Ct. H.R. June 29, 2004), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 44774/98"); *Buscarini v. San Marino*, 1999-I Eur. Ct. H.R. 605.

107. *See Valsamis v. Greece*, 1996-VI Eur. Ct. H.R. 2313, 2324.

article 2. As Turkey is the only majority-Muslim Member of the Council of Europe,¹⁰⁸ the Court historically has deferred to the Turkish Government when it came to balancing the nation's deep-seated Muslim tradition with the infantile ideal of secularism.¹⁰⁹ Now, however, the Court demonstrates a significant shift in policy when it comes to the majority-Muslim nation. While the Government argued 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,"¹¹⁰ the Court made clear that it was no longer willing to defer to the state when individual rights were being suppressed. As a Member State of the Council of Europe, irrespective of its unique position as the sole nation with a majority-Muslim population, the Court sent a clear message that Turkey will be held to the same standards and expectations of other European nations when it comes to safeguarding the European Human Rights Convention's democratic ideals.¹¹¹

V. CONCLUSION

The ramifications of the noted case are sure to have a profound impact not only on the Turkish education system, but also on the unique religious-democratic dichotomy in Turkish society. In many ways, the education system is a microcosm of Turkish society at large—constantly balancing the deep-seated Islamic tradition with the secularist ideals of the modern state. Undoubtedly, the European Court of Human Rights has positioned itself to become an agent for change within Turkish society. Now that the Court has raised the bar on the Turkish Government, encouraging an even greater leap toward secularism, Turkey is poised to demonstrate to the world that the European

108. See Wing & Varol, *supra* note 23, at 52.

109. See *Sahin*, App. No. 44774/98, para. 101 ("Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance.").

110. *Zengin*, App. No. 1448/04, para. 44.

111. *Compare id.* para. 76 (holding that the exemption procedure is inappropriate in a Muslim-majority country, even though the government may have a pressing social need to provide religious education in order to prevent fundamentalism from taking hold of the country's youth), with *Folgerø v. Norway*, App. No. 15472/02, para. 57 (Eur. Ct. H.R. June 29, 2004), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search "Application Number 15472/02") (striking down the exemption procedure for a mandatory course on religious studies in spite of Norway's interest in having "all pupils together in the classroom when important issues like the combating of prejudice and discrimination, or better understanding of different backgrounds, were taught").

democratic system of governance is fully compatible with the Islamic nature of the State.

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