Committee on the Elimination of Discrimination against Women
Thirty-fourth session
16 January-3 February 2006

Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (thirty-fourth session)

concerning

Communication No. --8/2005

Submitted by:	Rahime Kayhan
Alleged victim:	The author (represented by counsel, Ms. Fatma Benli)
State party:	Turkey
Date of communication:	Dated 20 August 2004
Document references:	Transmitted to the State party on 10 February 2005 (not issued in document form)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 27 January 2006

Adopts the following:

Decision on admissibility

1.1 The author of the communication dated 20 August 2004, is Ms. Rahime Kayhan, born on 3 March 1968 and a national of Turkey. She claims to be a victim of a violation by Turkey of article 11 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel, Ms. Fatma Benli, Attorney at law. The Convention and its Optional Protocol entered into force for the State party on 19 January 1986 and 29 January 2003, respectively.

The facts as presented

2.1 The author, a teacher of religion and ethics, is married and the mother of three children between the ages of two and 10. She has worn a scarf covering her hair and neck (her face is exposed) since the age of 16, including while studying at a State university

It would also be discrimination and a violation of the right to develop one's physical and spiritual being.

2.8 The author states that on 9 June 2000, she was arbitra

a choice between working and uncovering her head violates her fundamental rights that are protected in international conventions. She believes it to have been unjust, legally unforeseeable, illegitimate and unacceptable in a democratic society.

3.3 The author complains that the action taken against her was arbitrary because it was not grounded in any law or a judicial decision. The only dress code is the so-called Regulation relevant to the Attire of the Personnel working in Public Office and Establishments of 25 October 1982, which specifies that "Heads should be uncovered at the work place" (art. 5). It is alleged that this regulation no longer applies in practice and that persons who have disobeyed it have not been warned or disciplined.

3.4 The author also claims that the punishment for violating article 125A/g of the Public Servants Law No. 657 on the issue of clothing is a warning (for the first infraction) and condemnation (for a repeated infraction). Instead of this, the author was allegedly punished for the crime of "breaking the peace, silence and working order of the institutions with ideological and political reasons" without evidence of her having committed the offence. She maintains thus that the decisions of the Erzurum Administrative Court and the State Council were based on the application of the wrong provision. They do not answer the question of why the acts of the defendant were considered political and ideological actions. She questions why the administration had permitted her to wear a headscarf for nine years if it had been an ideological action.

3.5 The punishment to which she was subjected restricted her right to work, violated equality among employees and fostered an intolerant work environment by categorizing persons according to the clothes that they wear. She claims that had she been a man with similar ideas, she would not have been so punished.

3.6 Having been unjustly expelled from the civil service and her teaching position, the author feels compelled to have recourse to the Committee and requests it to find that the State party has violated her rights and discriminated against her on the basis of her sex. She further requests the Committee to recommend to the State party that it amend the Regulation relevant to the Attire of the Personnel working in Public Office and Establishments, prevent the High Disciplinary Boards from meting out punishment for anything other than proven and concrete offences and lift the ban on wearing headscarves.

3.7 As to the admissibility of the communication, the author maintains that all domestic remedies have been exhausted with her appeal to the State Council. She also states that she has not submitted the communication to any other international body.

The State party's submission on admissibility

4.1 By submission of 10 May 2005, the State party argues that domestic remedies have not been exhausted in that the author did not bring an action in accordance with the Regulation on the Complaints and Applications by Civil Servants, which was adopted by decree 8/5743 of the Council of Ministers on 28 November 1982 and published in the Official Gazette on 12 January 1983. Moreover, she did not bring an action before the Turkish Parliament (Grand National Assembly) under article 74 of the Constitution and she did not use the remedy provided under section

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Law (No. 2577) allows the parties to request a "revision of judgement" within a 25-day time limit. The grounds for the remedy's use include: if the allegations or objections that impact the merits are not dealt with; if there are contra dictory elements; if there is a mistake of law or a procedural irregularity; or for fraud or forgery that impact the merits. The Divisions of the Council of State, General Assemblies of Administrative Tax Trial Divisions and Regional Administrative Courts, which have issued the decisions that will be reviewed, receive the applications. Those judges who were involved in the decision-making cannot participate when the (same) decision is being reviewed.

6.6 While the author claims that her appeal to the Council of State was sufficient to satisfy the requirements of article 4, paragraph 1 of the Optional Protocol, because the "revision of judgement" remedy is an extraordinary remedy, the State party argues that "revision of judgement" is a regular remedy within Turkish administrative law that should be utilized after an appellate body has rendered a decision. That the author considers the remedy to be ineffective is immaterial to the issue of exhaustion of domestic remedies and reflects only the personal view of the

7.3 The Committee notes that the State party argues that the communication ought to be declared inadmissible under article 4, paragraph 2 (a) of the Optional Protocol because the European Court of Human Rights had examined a case that was similar. The author assures the Committee that she has not submitted her complaint to any other international body and points to the dissimilarities between the case of Leyla Sahin v. Turkey and her own complaint. In its early case law, the Human Rights Committee pointed out that the identity of the author was one of the elements that it considered when deciding whether a communication submitted under the Optional Protocol to the International Covenant on Civil and Political Rights, was the same matter that was being examined under another procedure of international investigation or settlement. In Fanali v. Italy (communication No. 075/1980) the Human Rights Committee held:

> "the concept of 'the same matter' within the meaning of article 5 (2) (a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body".

The Committee on the Elimination of Discrimination against Women concludes that the present communication is not inadmissible under article 4, paragraph 2 (a) of the Optional Protocol to the Convention — already, because the author is a different individual than Leyla Sahin, the woman to whom the State party referred.

7.4 In accordance with article 4, paragraph 2 (e) of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Protocol for the State party concerned unless those facts continued after that date. In

communications submitted under the Optional Protocol to the International Covenant on Civil and Political Rights.[1]

7.6 The Committee notes that the first time that the author refers to filing an appeal was in respect of a warning and a deduction in her salary for wearing a headscarf at the school where she taught in July of 1999. She stated that in her petition to the court she declared that the penalty for her infraction should have been a warning and not a "higher prosecution". On this occasion, the author did not raise the issue of discrimination based on sex. The author was pardoned under Amnesty Law No. 4455. The next opportunity to raise the subject of sex-based discrimination came in February 2000, when the author defended herself while she was under investigation for having allegedly entered a classroom with her hair covered and "with ideological and political objectives she spoilt the peace, quiet and work harmony of the institution". The author focused on political and ideological issues in her defence. She challenged the Ministry of Education to prove when and how she had spoilt the peace and quiet of the institution. Her lawyer defended her before a.25

relation to article 4, paragraph 1 of the Optional Protocol. In any event the Committee considers it unnecessary to make this determination or whether the communication is inadmissible on any other grounds.

7.9 The Committee therefore decides:

(a) That the communication is inadmissible under article 4, paragraph 1, of the Optional Protocol for failure to exhaust domestic remedies;

(b) Th