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Using Rights to Re-invent Secularism  
in France and Turkey

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**MEDITERRANEAN PROGRAMME**

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**AMÉLIE BARRAS**

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## Abstract

For the last two decades the human rights' discourse has been increasingly used across the world – one could argue that there has even been a globalization of human rights. This discourse has also, been intrinsically linked to positivism, enlightenment and secularism. It is with this in mind that this paper looks at how religious Muslim individuals and groups in France and Turkey have been appropriating human rights discourse and its national, regional and international legal channels to challenge state secular policies and redefine the relationship between religion and the state. I argue that because groups are framing their demands through a rights based discourse their plea becomes more powerful and legitimate, as they are using and re-appropriating elements of a global secular framework to challenge boundaries of Turkish and French state secularism. Moreover, the EU variable over the last decade has strengthened even more the value of human rights claims. By looking into two specific case studies - the work of the Collective Against Islamophobia in France and the Merve Kavakci case v. Turkey presented at the Strasbourg court of Human Rights, I attempt to analyze if groups are using this 'authorized narrative' simply because it is the most effective way for them to assert their religiosity, or if they have found a space where they can propose a new plural ethos that can better co-exist with their piety - in other words, a space where they can redefine, and propose perhaps a more plural and de-centralize vision of secularism.

In 2004, France passed a law banning all 'conspicuous' religious symbols from public schools. What caught my attention at that time, was that headscarved students who demonstrated against this law received the support of some secular rights based organizations, and were using slogans that stressed the incompatibility of those laws with their human rights: '*Right to school, Right to Knowledge*' (January 17<sup>th</sup> 2004, demonstration in Paris, my translation from the French 'Droit à l'école, Droit à l'éducation')). In the same vein, I discovered that the right based discourse was also used by religious groups and individuals to challenge strict secular policies in Turkey, and this led to the creation of broader coalitions with secular human rights groups. I found this to be quite an interesting phenomenon as it seemed that religious groups and individuals were re-appropriating a discourse considered by many as secular\* to protect their rights. Thus, the separation, stressed by many in the literature, between secularism and Islam seemed, at least in this case, to be suddenly quite blurred. From that starting point, I felt compelled to analyze, more thoroughly, how groups were using this discourse in response to state strict secular laws, and to what extent it offered them a space where secularism and piety could co-exist – a space where perhaps they could pluralize their state's vision of secularism. This article is a presentation of my preliminary research finding on this research inquiry.

## Keywords

Secularism, Human Rights, Islam, Expression of public piety

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\* By secular discourse, I am referring to non-religious discourses.



## I. A brief introduction on the similarities of secularism in France and in Turkey\*

Secularization is a global hegemonic phenomenon that has taken different shapes in societies. In this article, I am specifically interested in state secularism – therefore, in a political and legal scheme implemented by states on societies, as part of their policy to manage and control religion. Indeed, it is important here to underline that although secularization seems to have touched in one way or another every corner of the world, the way it has been received and implemented, as a state policy, has been much influenced by specific historical and political experiences of countries.

In France and in Turkey *laïcité* and *laiklik* (a derivative of *laïcité*) are respectively used to refer to secularism. Yet, it is relevant to stress that some scholars are wary of translating them into secularism, as their meanings are very context specific (Bowen, 2007: 2)<sup>1</sup>.

### *Laïcité in France*

The term *laïcité* appeared quite late in the French language. Since it has never been defined clearly it has become one of these terms similar to democracy that is easily essentialised and invested with a multitude of meanings. It could be compared to what Mouffe and Laclau call an empty signifier not characterized by: ‘a supreme density of meaning, but rather by a certain emptying of its content, which facilitates its structural role of unifying a discursive terrain’ (Torfing, 1998: 98). Although, its meaning is very vague; the signifier in itself is extremely powerful in the French context. Therefore this emptiness allows it to be invested or rather easily hegemonized with different meanings, and easily redefined.

The Conseil d’Etat (the highest judicial instance in France) sees the law of 1905 (where the term *laïcité* does not appear<sup>2</sup>) as central in defining and providing a legal framework to the term. This law often referred to as the law of separation, regulates the status of religions in France by preventing the state from subsidizing or extending special recognition to any religion (Conseil d’Etat, 2004: 258). For the Conseil d’Etat *laïcité* also implies the neutrality of the state with regards to religion, which should not favour or discriminate against any type of religion. In short this neutrality is a form of public order that should allow for religious pluralism to flourish in the Republic. The practicalities of this neutrality unfolds in the jurisprudence of the last decades, where it is stipulated that state representatives (e.g. professors, public servants, etc) are required to be neutral, and therefore not represent publicly any religions (for instance, they are not allowed to wear visible religious symbols, or engage in proselytizing activities) (Conseil d’Etat, 2004: 337)<sup>3</sup>.

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\* This paper reports preliminary research results while the author continues field work in Turkey. A previous version of this paper was presented in Workshop 10 ‘Globalization, Secularization and Religion - A Changing Terrain?’ at the Ninth Mediterranean Research Meeting, Florence & Montecatini Terme, 12-15 March 2008, organised by the Mediterranean Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute. Field work for this paper was made possible through a generous doctoral grant from the Canadian Social Research Council.

1 Indeed, M. Troper in his article ‘*French Secularism, or laïcité*’ (2000: 1267-84) explains how secularism only reflects partially the meaning of *laïcité*. Davidson (2003: 334-348) offers a similar argument for the Turkish term *laiklik*.

2 The term *laïcité* appears for the first time in the French Constitution of 1946, and then later in the Constitution of 1958, however nowhere in the texts is *laïcité* defined, or is it given a clear legal framework.

3 This is well explained in the Kherouaa affair of the Conseil d’Etat (November 2, 1992): ‘Because education is secular, the obligation of neutrality imposes itself absolutely to teachers that cannot express in their teachings their religious faith. However because freedom of conscience is a rule, this principle does not apply to students who are free to demonstrate their faith, the only limit to this display being the freedom of others ((Conseil d’Etat, 2004: 337) my translation) (*‘Parceque l’enseignement est laïque, l’obligation de neutralité s’impose absolument aux enseignants qui ne peuvent exprimer dans leur enseignement leur foi religieuse. En revanche, parce que la liberté de conscience est la règle, un tel principe ne saurait s’imposer aux élèves qui sont libres de manifester leur foi, la seule limite à cette manifestation étant la liberté d’autrui’* ).



One could argue that the political meanings given to *laïcité* go far beyond a legal framework, and have, at certain moments in history, endorsed a quasi-ideological aura. This has been illustrated recently with the 2004 law preventing ‘conspicuous’ religious symbols in primary and secondary schools<sup>4</sup>, and the debates that led to it. Within those debates, the Commission Stasi (a body put in place, in 2003, by the former French President, Jacques Chirac, who recommended passing this law), and the government that endorsed the law (as well as several civil society groups and intellectuals) have invested *laïcité* with being a common good superior to religion, and being responsible for preserving public order and the neutrality of the public space. President Chirac expressed this idea in his speech of December 17, 2003 and noted that *laïcité* is:

The privileged place for meetings and exchanges, where everyone can come together bringing the best to the national community. **It is the neutrality of this public space that enables different religions to harmoniously co-exist** (emphasis added, my translation)<sup>5</sup>

Preserving neutrality here can justify excluding any particular signs perceived as **disturbing** the exchange of ideas - the public space becomes a space where ethnic, religious and other characteristics are erased (everyone, is thus ‘equal’). As Bowen (2006: 29) highlights this notion of protected public sphere goes much further than the law of 1905 and the jurisprudence of the Conseil d’Etat that only requires the state and its agents to be neutral, but not students or ordinary citizens<sup>6</sup>. One of the main concerns with this will of forbidding religious symbols in public space revolves around how does one define public space – i.e. should the state forbid the wearing of headscarves only in schools, or does this also extend to other ‘public spaces’ such as hospitals, city halls, parliaments, etc.

To better understand the above, it is useful to note here, as Bowen (2006) reminds us, the importance that France gives to the state. In France, many believe that individuals acquire freedom **through** the state and not freedom **from** the state. The state in France is responsible for overseeing the common good and it is because of this responsibility that it feels it needs to regulate religion – to ensure that the common good and public order are preserved. Thus, we could argue that *laïcité* here is invested with the power to preserve this common good, and if this implies regulating and restraining freedom of religion to the private sphere it will do so.

What is equally interesting in this definition of *laïcité* and its practical implementation, particularly with the law of 2004, is how the state has denied any agency to veiled students<sup>7</sup>. Therefore, not treating them as full fledged free-thinking citizens, but rather objectifying them into victims that had to be saved from imposed religious values. For Göle<sup>8</sup> this behaviour is a way of avoiding to address a

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4 Although this law refers to all ‘conspicuous’ religious symbols, it was pointed out by a majority of commentators that it specifically targeted the wearing of headscarves in schools. It is indeed often referred to as: ‘*la loi sur le foulard*’ (the law on the headscarf).

5 ‘*le lieu privilégié de la rencontre et de l’échange où chacun se retrouve pour apporter le meilleur à la communauté nationale. C’est la neutralité de l’espace public qui permet la coexistence harmonieuse des différentes religions*’

6 Indeed, it is interesting to note here that the Conseil d’Etat has never ruled against the systematic student ban of headscarves in schools. In 1989, the year of the first headscarf affair, the Conseil d’Etat published an Opinion on the issue and advised that: ‘Students wearing signs by which they intend to demonstrate their belonging to a religion is not in itself incompatible with the principle of *laïcité*, in so far as it is considered to be the exercise of freedom of expression and the manifestation of religious beliefs’ ((Avis no 346.893), my translation) (*‘le port par les élèves de signes par lesquels il entendent manifester leur appartenance à une religion n’est pas par lui-même incompatible avec le principe de *laïcité*, dans la mesure où il constitue l’exercice de la liberté d’expression et de manifestation de croyances religieuses’*). McGoldrick (2006: 70) stresses the importance of this interpretation, as the Conseil d’Etat does not see an incompatibility between wearing the headscarf and *laïcité*. However, in its Opinion the Conseil d’Etat also puts limits to the exercise of this freedom, underlining that the wearing of religious symbols should not be of a proselytising nature, and should not disturb the functioning of public services, implying here that students could not refuse to attend classes on the basis of their religious convictions.

7 It is interesting to note here that the *Commission Stasi* in charge of deciding if a law should be voted interviewed only one French veiled women (Bouzar, 2007: 94)

8 Article available online: <http://www.islamlaicite.org/article263.html> (consulted on 9/12/2007)

rather disturbing modern reality, in which individuals are at the same time subject of their own actions, and yet also bounded to a belief.

### **Laiklik in Turkey**

The Republic of Turkey was established as a secular state by Atatürk in 1923. This attachment to secularism is reiterated in article 2 of Turkey's current constitution:

The Republic of Turkey is a democratic, **secular** (*laik*) and social State based on the rule of law, respectful of human rights in a spirit of social peace, national solidarity and justice, adhering to the nationalism of Atatürk and resting on the fundamental principles set out in the Preamble (Article 2, 1982 Constitution, emphasis added).

The creation of this new secular Republic came with other reforms to separate the public and religious sphere among them it is worth citing the abolishment of the Caliphate (in 1923), the retraction in the Constitution of the provision declaring Islam a state religion, the closing of religious courts, the introduction of a new civil code that abolished the Seriat and that is based on the Swiss civil code, and the banning of the traditional Turkish Fez for men (1925)<sup>9</sup>. McGoldrick (2007:133) notes that these reforms were: 'inspired by the evolution of the nature of society in the nineteenth century and sought first and foremost to create a religion free zone in which all citizens were guaranteed equality without distinction on the grounds of religion or denomination'.

It is noteworthy to indicate that the main difference between French *laïcité* and Turkish *laiklik* is that the idea of separation between state and religion underpinning the French 1905 law is not enforced in Turkey. Indeed, in the Turkish case the state openly and publicly controls Islam through its State Directorate of Religious Affairs (SDRA) under the supervision of the Prime Minister, which is responsible for nominating Imams and muezzins, as well as controlling Islamic religious education and training. As Mitchell and Gokarikel (2004: 3) explain this control aims to promote a state republican Islam<sup>10</sup>.

However despite this difference, *laiklik*, like French *laïcité*, has never been clearly defined and has therefore been at the source of many divisive debates. The idea of creating a public sphere free of religious symbols seems to have also been of prime importance for secular elites in Turkey. This has been particularly so since the mid-80s, where one notices a growth of a new Islamic economic, cultural and political elite<sup>11</sup>. Indeed, it is in the 1980s and even more importantly after the 1997 soft coup<sup>12</sup> that the state started to actively implement a ban on the headscarf in schools, universities and state buildings (which affected public service employees). The first set of regulations on dress was issued in July 1981 and required staff working for public institutions to wear serious and modern dress. It also indicated that both students and teachers should not wear the headscarf in educational institutions. In December 1982, a circular issued by the Higher-Education Authority, followed suit, and banned the headscarf in all lecture halls. Mc Goldrick (2005: 135) underlines that although these

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9 For further information on the secular reforms in Turkey as well as on the religious dress regulations please see Berkes (1998) and McGoldrick (2007:133).

10 It is interesting to note here that, through this control, the state is privileging a certain strain of Sunni Islam.

11 In the 1980 the Turkish state introduced 'The Turkish Islamic Synthesis', where a greater religious liberalism was permitted. This neo-liberal climate allowed Islamic politics, economy and culture to develop. However, as Mitchell and Gokarikel (2005: 7) explain, this opening was still heavily controlled by the state.

12 In 1997 the military demanded that the Welfare Party ruling the country at the time in coalition with the Center-Right True Faith Party restore secularism. Concretely, they demanded to restrict Imam Hatip schools (religious schools), increase mandatory secular education from 5 to 8 years and control religious orders. The party came to a stalemate as it was too divided on those issues, and resigned. This 'soft' coup was backed up by the Constitutional Court, which later expelled the Party's leader from parliament, banned him from political participation for 5 years and seized all the party's assets (Esposito, 2000:6).

guidelines were contested, the Constitutional Court in its 7 March 1989 judgement confirmed that this ban was necessary to preserve secularism and democracy:

The Constitutional Court observed that freedom of religion, conscience and worship, which could not be equated with a right to wear any particular religious attire, guaranteed first and foremost the liberty to decide whether or not to follow a religion. It explained that, once outside the private sphere of individual conscience, freedom to manifest's one's religion could be restricted on public-order grounds to defend the principle of secularism (ibid).

This background can help us trace similarities between the French and Turkish cases. Indeed, it seems that in both cases the headscarf is perceived as particularly disturbing because it violates the state idea of a confined religion (more specifically of confined Islam). This brings us to this idea that secularism symbolises here not only the neutrality of the state (and its employees), but also the neutrality of the public sphere and of its subjects. In both countries, extending the boundaries of this neutrality has taken great importance over the last decades, and bans on the headscarf have symbolised this effort. Mitchell and Gökariksel (2004: 9) offer an interesting analysis of this phenomenon. For them, the state has been using secularism as '*a technology of governance*' to create a modern '*unattached and unbiased liberal subject*' justifying their attempt to '*discipline*' and control in the public sphere the body of Muslim women marked by non-neutral particularities:

Muslims girls and women thus became subjects of the state in an attempt to liberate them from the subjectivity of their home and family. The state is portrayed as neutral compared to the particularistic and traditional realm of family, and as such is accorded a monopoly over morality (ibid)

Secularism has become in both countries an inevitable hegemonic signifier used in almost every discourse. The fact that its definition remains vague or some may argue over-determined (i.e. signifying at the same time democracy, modernity, common good, public order, etc) has allowed different groups, despite internal differences, to unify themselves around this powerful signifier. I argue that it is specifically this unfixed/over-determined meaning that is allowing groups to find the space to redefine and reshape the meaning of secularism allowing for greater religious freedom.

The two cases studies below illustrate how Muslims groups and individuals have been using a right based discourse, and have created alliances with secular groups to challenge the strict boundaries of state secularism both in Turkey and France, and propose a vision of secularism that seems to be more compatible with their religious piety.

## II. Re-inventing secularism

Le Fort calls human rights the 'generative principle of democracy' for it is through the promotion of an 'awareness of rights' – the dissemination of democratic discourse to new areas of the social, the radicalisation of the concept of human rights, and the institutionalisation of democratic principles – **that disempowered political subjects can win their struggles for recognition** (Smith, 1998: 8 (emphasis added))

The right based discourse can be quite powerful, since, as Wilson (1997: 18) precisely puts it, law is a form of violence that constitutes authority, consequently using and appropriating right based discourses can enable individuals to gain authority – to become political subjects, and not objects.

Furthermore, the study of the on the ground use of human rights is interesting, as this leads us to investigate how they have been produced, re-interpreted, pluralized, and materialized in specific political and historical contexts. Here, rights become, not solely an instrument, but an expression of particular tensions in a state. Moreover, as I will demonstrate through my two case studies below, the fact that human rights are considered to be a product of the enlightenment and secular era, and that there is an international framework protecting them, allows domestic groups to find legitimacy for their claim at the international level, and network with trans-national actors.

### *The case study of the Collective Against Islamophobia in France (CCIF)*

The CCIF was established in 2003 in response to the increasing acts of ‘Islamophobia’ in France. It is an association made of 20-30 volunteers/activists and one permanent lawyer. Although the organisation does not consider itself to be a Muslim organisation, most of its members are second or third generation French Muslims<sup>13</sup>.

Their activities are threefold. They have first created an ‘*Observatoire de l’Islamophobie*’ (Observatory of Islamophobic acts) responsible for making a list of ‘Islamophobic’ written and oral statements and acts occurring in France, and producing an annual report<sup>14</sup>. They have also put in place a legal clinic made up of lawyers providing support to victims of ‘Islamophobia’, and when necessary helping them to contact the relevant legal authorities. Finally, they regularly conduct sensitisation activities with citizens, civil society organisations, and politicians.

#### Redefining *laïcité*

The members of CCIF were quite preoccupied by the 2004 law on ‘conspicuous’ religious symbols, as they perceived it as going against the spirit of *laïcité*, which guarantees the neutrality of the state, freedom and equality of religion and a respect for plurality. They expressed two central concerns with the law. First, this law had extended the principle of neutrality to users of the public service (i.e. school children) a provision that was not outlined in the law of 1905 and that, in their view, sets a dangerous precedent for extending this rule to other users. Second, the law went against the principle of state neutrality that underpins their definition of *laïcité*. Indeed, for them this law specifically discriminates against girls wearing the headscarf, and therefore against a particular religion<sup>15</sup>. Furthermore, they perceive the law as discriminating directly against the right to universal access to education promoted by the state, and protected in international conventions.

The principle of *laïcité*, which has no other purpose than guaranteeing the neutrality of the state, religious freedom, and respect for pluralism, **has been scorned by the state itself, which adopted in the 21st century a law of exception:** the march 15, 2004 law on the principle of *laïcité*, the wearing of signs and dress that manifests conspicuously a religious belonging<sup>16</sup> (my translation (emphasis added))

#### Extension of the 2004 law to other public spaces:

Oppositely to the idea conveyed, *laïcité*’s purpose is not to exclude religion and its practice from the public sphere. **On the contrary, *laïcité* guarantees the neutrality of the State, religious freedom (even if this does not please rigid secularists), and the respect for pluralism.** Indeed, there is no religious freedom without total neutrality from the State and its representatives guaranteeing the equality of treatment of users (...) **This is why the demands link to neutrality of public agents in the exercise of their function are not applicable to the situation of users. It**

13 Interview with Lila Charef, lawyer for CCIF and Samy Debah member of CCIF on November 13th 2007.

14 One should note that this is quite a novelty in France, as the use of the term ‘*Islamophobie*’ created many controversies, especially among secular human rights organisations that seem to have particular difficulties to address issues related to religious discrimination. Despite this fact, it is noteworthy that over the last couple of years many of those same organisations have started an internal reflection on the issue, and some have even adopted it in their program of work (e.g. Mouvement Pour l’Amitié des Peuples et Contre le Racisme (MRAP)).

15 They sustain that in practice mainly girls wearing the headscarf were excluded from schools. Although, the law also affected the Sikh community, they have often been described as ‘collateral damage’. Indeed, they were never mentioned in the discussions that preceded the law, which solely focused on the headscarf. Moreover the CCIF argues that it has been easier to find accommodations for them after the law was passed.

16 ‘*Le principe de laïcité qui n’a d’autre objet de garantir la neutralité de l’État, la liberté de religion et le respect du pluralisme, a été bafoué par l’État lui même, au vingt et unième siècle par l’adoption d’une loi d’exception: la loi du 15 mars 2004 portant sur le principe de la laïcité, le port de signes et tenues manifestant ostensiblement une appartenance religieuse*’ (CCIF, Bilan de la loi du 15 mars (emphasis added)).

**is true that this is not the case anymore for schools (legal exception based on the March 15, 2004 law), yet this remains the case in hospitals and in all administrations.**<sup>17</sup> (my translation (emphasis added))

Interestingly, since 2004 the work of the members of CCIF has been driven by their first concern with the law. Indeed, they have recorded many cases related to the extension of the ban of headscarf by public institutions beyond primary and secondary school students. Since this extension of the law has no legal basis they have been using a right based argumentation to demonstrate this illegality. They have been providing legal support to many different cases. One of their major case, which was won in front of the HALDE (The High Authority Fighting against Discrimination and for Equality) in May 2007, is the one of veiled mothers who wanted to participate to their children school outings and events, but who were not allowed to do so, because they were wearing the headscarf (CCIF, Press Release, 13/06/07)<sup>18</sup>. Their main argument was that schools had no legal grounds to prohibit the participation of those women to outings. Indeed, these women are not state employees or students (for whom there are legal restrictions on wearing the headscarf) and therefore, should be allowed to partake in these activities. What is noteworthy here, is that the CCIF read this prohibition as a violation of the principle of *laïcité* that, according to them should protect religious pluralism and freedom not solely in the private sphere but in the public sphere also. Other cases that they have defended are linked to women who were not allowed to enter city halls because they were wearing a headscarf (e.g. to participate to a naturalisation ceremony or to be witness at a wedding), to women who were not allowed to follow university classes, night courses, pass driving exams, participate in internships, vote during regional elections (2005), etc.

The way they handle these cases varies, yet most of the time, the first step is to dialogue and send a written letter stating the illegality of the situation to the institution in an attempt to resolve the matter informally<sup>19</sup> - most of their cases are resolved in this fashion. The second step is to file a complaint with the relevant judicial authority to resolve the matter formally. The legal arguments used differ according to the cases – yet, they often refer to anti-discrimination clauses in the French Penal Code that forbid discrimination on the basis of religious belief as well as underline international human rights treaties or conventions ratified by France (UDHR, ICCPR, Convention Against Discrimination in Education, etc). To inform and help complainers build their cases, they have developed a series of practical cards (*Fiche Pratique*) available on their website, which outline the different human rights that may be violated and number the steps that need to be followed by individuals who are victims of a violation.

A reading of the CCIF press releases and reports shows that they often oppose the ‘objectivity’ of laws to the arbitrary behaviour of public institutions. They seem to underline a dislocation in French society, where public institutions supposed to protect the basic tenets of the Republic - Equality, Liberty and Justice -, are becoming a field of discrimination. In addressing this dislocation they often call for a full respect of *laïcité* as define by the ‘objectivity’ of the law. One feels that they have invested themselves with the responsibility of ending arbitrariness and re-establishing a ‘true’ *laïcité*: ‘Each time the CCIF is seized, **it proceeds to a recall of the law**’ (Press release, 08/12/05 (my

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17 ‘*Contrairement à l’idée actuellement véhiculée, la laïcité n’a pas pour objet d’exclure la religion et sa pratique du domaine public. Bien au contraire, la laïcité est la garantie de la neutralité de l’État, de la liberté religieuse, (n’en déplaise aux laïcistes) et du respect du pluralisme. En effet, il ne saurait y avoir de liberté religieuse sans la plus totale neutralité de l’État et de ses représentants garantissant l’égalité de traitement de l’usager (...) C’est pourquoi les exigences liées à la neutralité des agents publics dans l’exercice de leurs fonctions ne sont pas applicables à la situation de l’usager. Il est vrai que ce n’est désormais plus le cas à l’école (exception législative issue de la loi du 15 mars 2004) mais cela demeure dans les hôpitaux et toutes les administrations*’ (CCIF, Bilan de la loi du 15 mars (emphasis added)).

18 The press release is available online: <http://www.islamophobie.net/> (consulted 5/12/2007)

19 It is interesting to note here that some institutions that are not public schools have internal regulations banning the wearing of the headscarf. They use the 2004 law to justify this clause, although, legally, this law does not apply to them.

translation))<sup>20</sup>, ‘This decision constitutes a **victory of the law against arbitrariness**’ (Press release, 22/10/05 (my translation))<sup>21</sup>. In this vein, they have been strongly encouraging victims of violations to systematically file complaints with relevant authorities: ‘To eradicate these illegal processes, and put an end to the impunity of those discrimination, **the CCIF strongly encourages mothers of students, and all other victims, to file systematically a complaint against perpetrators**’ ((Press release, 08/12/05) my translation)).<sup>22</sup>.

### Building broader coalitions

Although the CCIF concentrates its legal work at the national level, its documents refer to rights protected by international human rights treaties, and its website regularly features international events that deal with the topic (ex: ‘Arbour speaks of increased intolerance towards Islam in Europe’ (my translation)<sup>23</sup> (referring to a statement made by the UN High Commissioner for Human Rights, Ms. Louise Arbour)). Moreover, they collaborate and lobby at the European and the International level. For instances, in 2005 they met, and have since then been sending frequent information to Ms. Asma Jahangir, UN Special Rapporteur on freedom of religion and belief<sup>24</sup>, as well as to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. They have also participated to events and met with representatives of the European Union and the OSCE. Finally, they have been working with several human rights groups in Europe and in the United States, notably the US international commission on religious freedom.

This international networking is noteworthy. Indeed, developing networks between domestic and international rights actors enable domestic concerns to be put on the international agenda, and empowers and legitimises the claims of domestic groups. This can, therefore, be analyzed as a trans-national way for domestic groups to challenge their state hegemonic representation of *laïcité*.

### *The Merve Kavakci Case*<sup>25</sup>

I have chosen to look more closely at the Merve Kavakci case to better illustrate how individuals have been using trans-national human rights mechanisms and networks to question the limits of their state policies. Although, few individual cases underlining the limits of the Turkish secular system were brought to the international fora<sup>26</sup>, Turkish faith-based NGOs (e.g. *Mazlumder*, *AKDER*, etc) have

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20 ‘A chaque fois que le CCIF est saisi, il procède à un rappel à la loi’. This press release is available online: <http://www.islamophobie.net> (consulted 5/12/2007)

21 ‘Cette décision constitue une victoire du droit face à l’arbitraire’. This press release is available online: <http://www.islamophobie.net> (consulted 5/12/2007)

22 ‘Pour éradiquer ces procédés illégaux, et mettre un terme à l’impunité de ces discriminations, le CCIF encourage vivement les mères parents d’élèves, et toute autre victime, à porter plainte systématiquement contre les auteurs de discriminations avérées à leur égard’. This press release is available online: <http://www.islamophobie.net> (consulted 5/12/2007)

23 ‘Arbour parle d’intolérance croissante envers l’Islam en Europe’. This statement is available online: <http://www.islamophobie.net> (consulted 5/12/2007)

24 Ms. Asma Jahangir was on a field visit to France at that time, and later produced a UN report on the situation of freedom of religion in France. The report is available online at: <http://www2.ohchr.org/english/issues/religion/visits.htm>

25 To access the full judgement of the European Court of Human Rights see: <http://cmiskp.echr.coe.int/tpk197/portal.asp?sessionSimilar=4591242&skin=hudoc-en&action=similar&portal=hbk&Item=1&similar=frenchjudgement> (consulted 10/12/2007)

26 Among interesting religious freedom cases that recently passed in front of the ECHR we can note the case of Hasan and Eylem Zengin v. Turkey (October 2007), and the case of Leyla Sahin v. Turkey (2004).

been framing their concerns with a human rights language and have been collaborating with international NGOs to ask for greater religious freedom in Turkey<sup>27</sup>.

The Merve Kavakci case is particularly interesting in three respects. First it is a case that was won in April 2007 against Turkey at the European Court of Human Rights (ECHR). Although the court did not base its ruling on article 9 of the European Convention on Human Rights (religious freedom) it still marked a precedent in the ruling of the court, and received quite extensive media coverage. The case is also noteworthy because, in parallel of being presented at the ECHR, Merve Kavakci worked with international secular groups and presented her case in different international forums. Finally, here again, through the use of a right based discourse there is an attempt to renegotiate the boundaries of state secularism, and propose a model more compatible with religious piety.

Merve Kavakci was the first woman elected in Turkey running for the former Virtue Party and wearing a headscarf in 1999. After her election, Kavakci walked into Parliament to take her oath wearing her headscarf. Although the dress code regulation in Parliament did not mention a ban on the wearing of religious signs, the mainstream parties saw this move as an offensive challenge against the secular roots of Turkey. As a result, Kavakci was forced out of Parliament without taking her oath, and saw her Turkish citizenship revoked<sup>28</sup>. She and two of her former colleagues were banned from politics for 5 years, and the closure of the Virtue Party by the Constitutional Court followed suit<sup>29</sup>. Kavakci<sup>30</sup> used her right to seize the European Court of Human Rights: ‘To find worldly justice’<sup>31</sup>. On April 5 2007, the court ruled that Turkey was in violation of Article 3, Protocol 1 of the European Convention on Human Rights, which mandates that states ‘ensure the free expression of the opinion of the people in the choice of the legislature’. The Court awarded Kavakci 4, 000 euros in damages.

It is important to underline that although the Court ruled in favour of Kavakci, its judgement was quite mitigated. Indeed, as in previous judgements the Court was very wary of preserving the ‘secular’ character of Turkey, and has therefore left a great ‘margin of appreciation’ to the country. Accordingly, in this judgement the court first underlined that the measures taken by Turkey in the Merve Kavakci case were following legitimate aims:

The court noted that the temporary restrictions imposed on the applicants’ political rights had been intended to preserve the secular nature of the Turkish political system. Given the importance of that principle for democracy in Turkey, **it considered that the measure had pursued legitimate aims, namely the prevention of disorder and protection of the rights and freedoms of others.** (Press release, ECHR, Chamber Judgements, 5.4.2007, emphasis added)<sup>32</sup>

It is only after having stipulated this that it then specified:

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27 I will be conducting field work in Turkey during the spring and summer of 2008, and will investigate this further.

28 The official reason given for revoking her citizenship was that Merve Kavakci had acquired US citizenship prior to her election without obtaining formal permission from the Turkish authorities. Ironically, it is relevant to highlight that authorities have generally never been strict about citizens informing them when getting double nationality (Cemrek, 2004: 57).

29 The Virtue Party was banned in 2001 by the Constitutional Court, which accused the party of anti-secular activities, including advocating the choice to wear the headscarf in state universities and in public places.

30 The two other colleagues of Ms. Kavakci, Mr. Silay and Ms. Ilicak, also brought their cases to the ECHR, won and were also compensate. However, Ms. Kavakci was the only one wearing the headscarf, and who alleged that there had been, also, a violation of Article 9 of the Convention (freedom of thought, conscience and religion) and article 14 (prohibition of discrimination) (Press release, ECHR, *Chamber Judgements*, 5.4.2007,

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=Kavakci%20%7C%2071907/01&sessionId=4591297&skin=hudoc-pr-en> (consulted 12/12/2007)).

31 Interview with Merve Kavakci on September 11th 2007.

32 To consult the press release, see:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=Kavakci%20%7C%2071907/01&sessionId=4591297&skin=hudoc-pr-en> (consulted 12/12/2007)

**the sanctions imposed on the applicants were serious and could not be regarded as proportionate to the legitimate aims pursued.** The Court therefore concluded that there had been a violation of Article 3 of Protocol No.1 (ibid, emphasis added).

Article 9 of the ECHR<sup>33</sup>:

It is important to note that Merve Kavakci considered there had also been a violation of Article 9 of the ECHR (article protecting religious freedom). Indeed, for her, both her citizenship and political mandate were taken away because she manifested her religious convictions by wearing the headscarf in Parliament. She sustained that there were no legal basis for doing so, as the internal dress code for MPs did not preclude the right to wear the headscarf, and that paragraph 2 of article 9 of the ECHR stipulated that the access to political function could not be limited because of the wearing of religious symbols (*Affaire Kavakci c. Turquie, Jugement Définitif, 05/07/2007*). However, the court did not consider that it was necessary to examine separately this violation, and only looked at the violation of Article 3, Protocol 1.

This is noteworthy, and inscribes itself, yet again, in an attempt of the court not to interfere in Turkey's secular politics. It is significant here to mention briefly the Leyla Sahin case v. Turkey for which the Chamber of the ECHR Court gave a judgement in June 2004. Leyla Sahin was a medical student in Turkey who was not allowed to continue her studies in Turkish universities because she was wearing a headscarf. She also seized the ECHR claiming that there was a violation of Article 9 of the Convention. The court, in this case, ruled in favour of Turkey, as they found that the restrictions were justified by the 'special' context of Turkey where 'the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith' (*Leyla Sahin v. Turkey*)<sup>34</sup>. The analysis of the judgement provided by Gokariksel and Mitchell (2005: 12) is quite interesting. Indeed, they argue that with this decision: 'the ECHR confirmed and supported the terms and methods of the Kemalist project of producing modern, secular subjects in Turkey'. For them, the ECHR did not only consider that the headscarf was not compatible with pluralism, but that it was also a threat to the unveiled: 'In this discourse the headscarf is represented as a tool of oppression that extends beyond patriarchal family ties and religious convictions to comprise outside pressure on others' (ibid).

Therefore, although the use of a right based discourse can be an effective way to challenge state policies beyond national borders, and for women to prove that they are not objects of tradition or even '*docile*' subjects of the state, but active subjects, its success can, ultimately, be limited by regional or international politics.

Going beyond the ECHR: international lobbying

Despite the reservation of the ECHR court, we should note that bringing a case to the ECHR offers a platform for networking and lobbying activities – activities that end up not being limited to regional human rights instances, but which are extended to UN and other forums.

The Merve Kavakci case is representative of that. For instance, she received the support of the International Parliamentary Union (IPU) based in Geneva, which adopted a resolution at its 171<sup>st</sup> annual session affirming the illegality of the Turkish Constitutional Court decision on her case:

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33 For a full reading of article 9 please consult the European Convention on Human Rights: <http://www.hri.org/docs/ECHR50.html> (consulted 12/12/2007)

34 For the full judgement see:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=leyla%20%7C%20sahin&sessionid=4626145&skin=hudoc-en> (consulted on 12/10/2007)



The IPU fears, in view of the information on file, that Ms. Kavakci was not only arbitrarily prevented from assuming here mandate and duties as an elected representative of the Turkish people but may also have been deprived of her membership without any valid legal basis and according to a procedure not provided for under Turkish law (Resolution adopted by the IPU Council, Geneva, 27 September 2002)<sup>35</sup>,

and which testified, as a third party, in her favour at the ECHR. She also received the support of the Becket Fund for Religious Liberty<sup>36</sup>, a US based foundation providing international legal aid to individuals who feel their religious freedom have been breached. In this vein, they provided legal advice for her case at the ECHR<sup>37</sup>, as well as a space for her to testify in front of the former United Nations Commission for Human Rights (known, today, as the Human Rights Council)<sup>38</sup>.

In sum, the creation of an international network is here, again, noteworthy. Indeed, as Sikkhin and Keck rightly underline: ‘international human rights pressures can lead to changes in human rights practices, helping to transform understanding about the nature of a state’s sovereign authority over its citizens’ (Sikkhin, 1998: 117). Another element that is significant is the influence of the United States. Indeed, US based NGOs (Human Rights Watch, Freedom House, Becket Fund, etc) have been playing an interesting role in support of religious freedom in those cases. In a personal interview Merve Kavakci stressed that Turkish *laiklik* ought not to be confused with American secularism, as in the Turkish case the state exercise a total monopoly over religion. She thought Turkey should embrace a model closer to the US one, where the state poses neither as a religious nor a non-religious entity, and where the individual rights to freedom of religion is protected. Similar to the French case, it is interesting here to underscore how the human rights discourse is used to promote a type of secularism where the state has less control over the religious.

### III. Tentative Conclusions

The right base discourse seems to be a quite interesting mean of contesting nationally and internationally the boundaries of state secularism in France and in Turkey.

It is a powerful and most importantly ‘legitimate’ discourse as it is considered to be modern, a product of the enlightenment and of the secular rational state. In France, as we have seen, the use of this discourse and legal procedures at the national level has been quite successful. This is, in part so, because France has well developed anti-discrimination legislations, and because the Conseil d’Etat in its jurisprudence has had quite an open and liberal interpretation of *laïcité* (that often differs from the state’s interpretation). In Turkey, as we have seen, the Consultative Court has had a rather less liberal interpretation of *laiklik* and has frequently supported, through its rulings, state’s policies. Therefore, the use of national legal procedures might be more limited in Turkey than in France. Nevertheless, the use of the human rights discourse at the regional and international level is noteworthy in both cases, as it does not only offer platforms for possible redresses, but also spaces for networking and lobbying putting concerns of religious freedom in strict secular states on the international agenda.

Moreover, in those two cases the contestation seems to happen not at the level of the signifier (i.e. secularism) but rather at the level of the signified (i.e. its definition). Indeed, the right based discourse is used here to redefine the boundaries and the meaning of secularism for it to be more compatible with religious freedom, yet secularism per-se does not seem to be the object of contestation. Studying

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35 <http://www.ipu.org/hr-e/171/Tk66.htm> (consulted on 10/12/2007)

36 <http://www.becketfund.org/> (consulted on 10/12/2007)

37 It is relevant to note here that they have also provided support to the Leyla Sahin case.

38 Statement of Merve Kavakci at the UN Commission for Human Rights:  
<http://www.becketfund.org/index.php/article/373.html> (consulted on 10/12/2007)

this renegotiation reminds us that the meaning of secularism is far from being fixed and essential; rather it is quite fluid and malleable.

Finally, although this article is, only based on preliminary research results, it demonstrates that there are many different ways of understanding, living and practicing secularism. As Tully rightly puts (2007:83)<sup>39</sup> these ‘practical acts of everyday life’ are often overlooked by policy makers, and even researchers that focus on the state hegemonic vision of secularism. Yet, these practices need to be studied and acknowledged, as it will help us understand the different dimensions and visions of secularism. Moreover, following Tully’s line of thought, I wonder if the task of researchers would not also be to feed or ‘*link*’ those practices to official policies and international discussions on secularism, participating perhaps to a greater democratisation of the term.

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39 Tully refers, here, to *every day practices* regarding integration in the EU – yet, I think that his argument could also be valid and appropriate for *every day practices* of secularism.

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