COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF DOGRU v. FRANCE

(Application no. 27058/05)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Dogru v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Jean-Paul Costa,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27058/05) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Ms Belgin Dogru ("the applicant"), on 22 July 2005.

2. The applicant, who was granted legal aid, was represented by Mr M. Bono, a lawyer practising in La Ferté-Macé. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged a violation of her right to religious freedom and her right to education guaranteed by Article 9 of the Convention and Article 2 of Protocol No. 1 respectively.

4. On 7 November 2006 the Court decided to communicate the application to the Government. It was also decided to examine the admissibility and merits of the case at the same time (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and lives in Flers.

6. The applicant, a Muslim aged eleven at the material time, was enrolled in the first year of a state secondary school in Flers for the

academic year 1998-1999. From January 1999 onwards she wore a headscarf to school.

7. On seven occasions in January 1999 the applicant went to physical education and sports classes wearing her headscarf and refused to take it off despite repeated requests to do so by her teacher, who explained that wearing a headscarf was incompatible with physical education classes. The teacher sent two reports to the headmaster dated 22 January and 8 February 1999.

8. At a meeting on 11 February 1999 the school's pupil discipline committee decided to expel the applicant from the school for breaching the duty of assiduity by failing to participate actively in physical education and sports classes.

9. The applicant's parents appealed against that decision to the appeal panel.

10. In a decision of 17 March 1999 the Director of Education for Caen upheld the decision of the school's pupil discipline committee, after obtaining the opinion of the appeal panel which was based on four grounds:

i) the duty of assiduity (as defined in section 10 of the Education (General Principles) Act – Law no. 89-486 of 10 July 1989; Article 3-5 of Decree no. 85-924 of 30 August 1985 on Local State Schools; and the school's internal rules);

ii) the provisions of the school's internal rules stipulating that pupils must wear clothing that "complies with the health and safety rules" and attend physical education and sports classes in their sports clothes;

iii) a memorandum (no. 94-116 of 9 March 1994) on pupils' safety during school activities, which specified that "rigorous compliance with the rules governing teaching staff's liability shall not eclipse the very broad personal discretion left to the individual teacher when dealing with actual concrete situations" and that "while managing his or her class the teacher must be capable of identifying and putting a stop to any behaviour on the part of pupils – other than sudden or unforeseeable conduct – that may present a danger";

iv) a decision of the *Conseil d'Etat* dated 10 March 1995 in which it had held that wearing a headscarf as a sign of religious affiliation was incompatible with the proper conduct of physical education and sports classes.

11. The applicant indicated that she subsequently took correspondence courses in order to continue her school studies.

12. On 28 April 1999 the applicant's parents, acting on their own behalf and as their minor daughter's legal guardians, applied to the Caen Administrative Court to have the decision of the Director of Education set aside.

13. On 5 October 1999 the court rejected their application. It considered that, by attending physical education and sports classes in dress that would

not enable her to take part in the classes in question, the applicant had failed to comply with the duty to attend classes regularly. It also found that the applicant's attitude had created an atmosphere of tension within the school and that on the basis of all the factors involved her expulsion from the school had been justified, regardless of the proposal she had made at the end of January to wear a hat instead of her headscarf.

14. The applicant's parents appealed against that judgment. On 31 July 2003 the Nantes Administrative Court of Appeal dismissed their appeal, on the same grounds as the lower court, finding that the applicant, by behaving as she had done, had overstepped the limits of the right to express and manifest her religious beliefs on the school premises.

15. The applicant's parents lodged an appeal on points of law with the *Conseil d'Etat*, relying, *inter alia*, on their daughter's right to freedom of conscience and expression.

16. On 29 December 2004 the *Conseil d'Etat* declared the appeal inadmissible.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The concept of secularism in France

17. In France, the exercise of religious freedom in public society, and more particularly the issue of wearing religious signs at school, is directly linked to the principle of secularism on which the French Republic was founded.

18. Arising out of a long French tradition, the concept of secularism has its origins in the Declaration of the Rights of Man and of the Citizen of 1789, Article 10 of which provides that "No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law." It also appears in the key Education Acts of 1882 and 1886, which introduced state primary education on a compulsory and secular basis. The real keystone of French secularism, however, is the Act of 9 December 1905, known as the Law on the Separation between Church and State, which marked the end of a long conflict between the republicans, born of the French Revolution, and the Catholic Church. Section 1 provides: "The Republic shall ensure the freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order." The principle of separation is affirmed in section 2 of the Act: "the Republic may not recognise, pay stipends to or subsidise any religious denomination." A number of consequences flow from this "secular pact" both for public services and users. It implies an acknowledgement of religious pluralism and State neutrality towards religions. In return for

protection of his or her freedom of religion, the citizen must respect the public arena that is shared by all. The principle was then enshrined in the Preamble to the Constitution of 27 October 1946, which has had constitutional status since a decision of the Constitutional Council of 15 January 1975, which states: "The Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State." Lastly, the principle acquired actual constitutional status in Article 1 of the Constitution of 4 October 1958, which provides: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."

19. From the 1980s the French secular model was confronted with the integration of Muslims into society, particularly in schools.

20. The year 1989 saw the first of the "Islamic headscarf" cases. At the beginning of the school year a number of incidents occurred in secondary schools and in particular in Creil Lower Secondary School, in the *département* of the Oise, when three pupils were suspended for refusing to remove their headscarf despite being requested to do so by the teaching staff and the principal of the school. The case quickly became a highly topical issue. As there was no clear legal answer, and in accordance with a request from the Minister for Education, the *Conseil d'Etat*, in an advisory opinion of 27 November 1989 (see paragraph 26 below), stated the position that should be adopted when pupils manifested their religion.

21. Some ten years later more and more issues relating to the headscarf had arisen and the advisory opinion does not appear to have provided a lasting solution to the difficulties. According to a report prepared for the Minister for Education in July 2005, "the matter appears to have taken on considerable proportions because having started with three headscarves in Creil in 1989, the Minister referred to 3,000 such cases when addressing the Senate in 1994[1]." In France, the troubles have given rise to various forms of collective mobilisation regarding the question of the place of Islam in Republican society. It is in this context that, on 1 July 2003, the President of the Republic instructed a commission to study the application of the principle of secularism in the Republic. That commission, known as the "Stasi commission", after the name of its chairman, produced a report for the President of the Republic on 11 December 2003. The picture it presented of the threat to secularism bordered on the alarming. It said

> "instances of behaviour and conduct that run counter to the principle of secularism are on in the increase, particularly in public society. ... The reasons for the deterioration in the situation ... [are the] difficulties in integrating experienced by those who have arrived in

1. See the report of the National Education Inspectorate, submitted to the Minister in July 2005: "Application of the Act of 15 March 2004".

France during the past decades, the living conditions in many suburbs of our towns, unemployment, the feeling experienced by many people living in France that they are the subject of discrimination, or are even being driven out of the national community; these people explain that they thus lend an ear to those who incite them to fight what we call the values of the Republic. .... In this context it is natural that many of our fellow citizens demand the restoration of Republican authority and especially in schools. It is with these threats in mind and in the light of the values of our Republic that we have formulated the proposals set out in this report. ... [Regarding the headscarf, the report states that] for the school community ... the visibility of a religious sign is perceived by many as contrary to the role of school, which should remain a neutral forum and a place where the development of critical faculties is encouraged. It also infringes the principles and values that schools are there to teach, in particular, equality between men and women".

22. It is on the basis of these proposals that the Act of 15 March 2004 was enacted (see paragraph 30 below).

B. Section 10 of the Education (General Principles) Act (Law no. 89-486 of 10 July 1989 – new Article L. 511-1 and 2 of the Education Code)

23. Section 10 of the Act of 10 July 1989 provides:

> "Pupils must comply with the duties inherent in their studies. These include assiduity at school and compliance with the rules and community life of the school.
>
> In keeping with the principle of respect for pluralism and the principle that State education must be neutral, in lower and upper secondary schools pupils shall have freedom of information and freedom of expression. The exercise of these freedoms shall not interfere with teaching activities."

C. Decree no. 85-924 of 30 August 1985

24. Article 3-5 of the Decree of 30 August 1985 concerning local state educational establishments provides:

> "The duty of assiduity referred to in Article L. 511-1 of the Education Code requires pupils to adhere to the teaching periods determined in the school timetable. This applies to compulsory classes and to any optional classes in which pupils have enrolled. Pupils shall perform the written and oral work requested of them by their teachers, respect the content of the curriculum and sit any tests that are set them. Pupils cannot refuse to undergo health tests or check-ups organised for them. The school's internal rules shall specify the manner in which this Article is implemented."

D. The school's internal rules

25. The internal rules of Jean Monnet Lower Secondary School in force at the material time provided:

> " ...
>
> I *c)* Attendance. ... Any pupil who misses a lesson or study period without prior authorisation or leaves the school grounds without permission shall be punished for serious misconduct; ...
>
> II *b)* School dress. ... All pupils are required to dress discreetly and decently and in accordance with the rules of health and safety. ... Discreet signs manifesting the pupil's personal beliefs, such as their religious convictions, shall be accepted in the establishment, but conspicuous signs which are in themselves of proselytising or discriminatory effect shall be prohibited; ...
>
> IV *d*) All pupils must attend P.E. classes in sports clothes."

E. The opinion of the *Conseil d'Etat* (no. 346.893) of 27 November 1989

26. On 27 November 1989, at the request of the Minister for Education, the *Conseil d'Etat*, sitting in plenary, gave a ruling on the compatibility with the principle of secularism of wearing signs at school indicating affiliation to a religious community. It gave the following opinion:

> " ...
>
> 1. ...
>
> The principle of secularism in state education, which is one aspect of the secular nature of the State and the principle that all public services must be neutral, requires teachers and the school curriculum to respect both this neutrality and pupils' freedom of conscience. In accordance with the principles laid down in these same laws and with France's international commitments, it prohibits any discrimination in access to education on grounds of a pupil's religious convictions or beliefs.
>
> The freedom thus conferred on pupils includes the right to express and manifest their religious beliefs on the school premises, in compliance with the requirement of respect for pluralism and the freedom of others, without interfering with teaching activities, the content of the curriculum or the requirement of assiduity.
>
> The exercise of that freedom can be restricted if it hinders the public education service in the role devolved onto it by the legislation. In addition to providing the means whereby children can acquire a culture and preparing them for professional life and their responsibilities as men and citizens, that role consists of contributing to the development of the pupil's personality, inculcating respect for the individual, his or her origins and differences, and securing and promoting equality between men and women.

It follows from what has just been said that pupils wearing signs in schools by which they manifest their affiliation to a particular religion is not in itself incompatible with the principle of secularism in so far as it constitutes the exercise of the freedom of expression and manifestation of religious beliefs, but that this freedom should not allow pupils to display signs of religious affiliation, which, inherently, in the circumstances in which they are worn, individually or collectively, or conspicuously or as a means of protest, might constitute a form of pressure, provocation, proselytism or propaganda, undermine the dignity or freedom of the pupil or other members of the educational community, compromise their health or safety, disrupt the conduct of teaching activities and the educational role of the teachers, or, lastly, interfere with order in the school or the normal functioning of the public service.

2. The wearing of signs of religious affiliation in schools may, if necessary, be subject to rules designed to implement the principles set out above...

In secondary schools these rules fall within the province of the board of governors of the school which, ..., adopts, subject to scrutiny of the lawfulness thereof, the school's internal rules...

3. The disciplinary authorities shall decide, subject to the scrutiny of the administrative courts, whether the wearing by a pupil, on the premises of a state school or other educational establishment, of a sign of religious affiliation in breach of one of the conditions posited in point 1 of this opinion or the school's internal rules constitutes a breach justifying the institution of disciplinary proceedings and the application, after compliance with the safeguards instituted by such proceedings and the rights of the defence, of one of the penalties provided for in the applicable provisions, one of which may be suspension from the school.

Suspension from a primary or secondary school is an option, despite the fact that education is compulsory, provided that the child can be educated, ..., either in a state school or a freely accessible school or in the family by the parents, or one of them, or any other person of their choice, and, in particular, that the pupil can be enrolled in a state centre for correspondence courses ....

..."

F. The ministerial circulars

27. On 12 December 1989 a circular by the Minister for Education, entitled "Secularism, wearing of religious signs by pupils and compulsory education", was sent to the directors of education, school inspectors and school principals. The relevant parts read as follows:

"Secularism, a constitutional principle of the Republic, is one of the cornerstones of state education. At school, like anywhere else, an individual's religious beliefs are a matter of individual conscience and therefore free choice. At school, however, where young people mix without any discrimination, the exercise of the freedom of conscience, in keeping with the requirement of respect for pluralism and the principle that the public service shall be neutral, requires that the entire educational community be shielded from any ideological or religious pressure.

Having regard to a number of recent events, it is my intention, in compliance with the requirement that each and everyone's rights must be respected, to prevent infringements of the principle of secularism. ...

The controversies caused by certain young girls of the Islamic faith wearing the headscarf have prompted me, in view of the difficulties of interpretation of the relevant law, to refer the matter to the *Conseil d'Etat*. ...

Where a conflict arises regarding the wearing of religious signs, I would ask you and your teaching staff to adopt the following approach. A dialogue must immediately be sought with the pupil and his or her parents so that, in the interests of the pupil and out of concern for the proper functioning of the school, the pupil agrees to stop wearing the sign(s) in question. ...

Accordingly, pupils must refrain from displaying any conspicuous sign, whether in their dress or otherwise, that promotes a religious belief. Any proselytising behaviour that goes beyond mere religious beliefs shall be proscribed...

A pupil's dress must not in any circumstances prevent him or her from engaging in the normal way in the exercises inherent in physical education and sports classes or tutorials or workshops organised in certain subjects. Likewise, any dress that is liable to hinder the running of a class or the proper conduct of a lesson shall be banned.

Furthermore, the health and safety requirements shall be unequivocally binding on all pupils. Pupils must dress in such a way that they pose no danger to themselves or others in schools. ...

There shall be no interference with any teaching activities, the content of the curriculum or the pupils' duty to attend classes regularly. The freedom of expression conferred on pupils shall not contravene these obligations. ...

Pupils must follow all lessons corresponding to their school level. ... Accordingly, a pupil cannot in any circumstances refuse to study certain parts of the school curriculum or exempt him or herself from certain lessons. ...

Anyone who fails to comply with these obligations shall be liable to penalties."

28. On 20 September 1994 a further circular by the Minister for Education specified a number of points regarding the wearing of religious signs. The relevant parts were worded as follows:

"For a number of years now many incidents have been occurring in schools on the occasion of ostentatious demonstrations of affiliation to a particular religion or community.

School principals and teachers have repeatedly expressed their desire for clear instructions....

... there is an unacceptable presence, in ever growing numbers, of signs so ostentatious that their signification serves precisely to distance certain pupils from the school's common rules of conduct. Such signs are inherently of proselytising effect, especially if certain lessons or disciplines are challenged as a result, pupils' safety is jeopardised or the principle of coexistence at school is undermined.

I therefore ask you to propose to the boards of governors that, when drafting the internal rules, they impose a ban on such conspicuous signs, while remaining mindful that the presence of more discreet signs that merely denote an attachment to a personal belief cannot be subject to the same restrictions, as has been observed by the *Conseil d'Etat* and in the case-law of the administrative courts."

G. The subsequent case-law of the *Conseil d'Etat*

29. Since its opinion of 1989 the *Conseil d'Etat* has had an opportunity to rule in its judicial capacity and specify the scope of that opinion. It has, for example, annulled the internal rules of schools that have imposed a strict ban on the wearing of any distinctive religious sign in classes or on the school premises on the grounds that the terms used were too general (2 November 1992, no. 130394, *Kehrouaa,* and 14 March 1994, no. 145656, *Melles Yilmaz*). Likewise, penalties for merely wearing a headscarf in a school cannot be upheld if it is not established that the behaviour of the pupil in question amounted to an act of pressure or proselytism or interfered with public order in the school (27 November 1996, no. 169522, *Mlle Saglamer*, and 2 April 1997, no. 173130, *époux Mehila*). The administrative courts have, however, upheld expulsions from school based on failure to comply with the duty of assiduity, such as a pupil's refusal to remove her veil during physical education and sports classes (10 March 1995, no. 159981, *époux Aoukili,* and 20 October 1999, no. 181486, *Aït Ahmad*) or refusal to attend such classes (27 November 1996, no. 170209, *Chedouane and Wissaadane;* no. 170210, *Atouf*; and 15 January 1997, no. 172937 *Aït Maskour and Others*).

30. On 15 March 2004 Parliament enacted Law no. 2004-228, known as the Law "on secularism", regulating, in accordance with the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in State primary and secondary schools. The legislation inserted a new Article L. 141-5-1 in the Education Code which provides:

"In State primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited.

The school rules shall state that the institution of disciplinary proceedings shall be preceded by dialogue with the pupil."

31. As indicated in the circular of 18 May 2004, that Act concerns only "... signs ..., such as the Islamic headscarf, however named, the kippa or a cross that is manifestly oversized, which make the wearer's religious affiliation immediately identifiable."

32. According to the report on the application of the Law (see paragraph 21 above), a total of 639 religious signs were recorded in 2004-2005. That total of 639 is less than 50% of the signs recorded the year before. In 96 cases pupils opted for alternative solutions to the pupil

discipline committee (enrolment in a private school, correspondence classes) and in 47 cases the pupil was suspended. The report states that the remaining pupils decided to remove the religious sign in question. At the start of the school year 2005-2006, no incident of note was recorded. It has not, however, been possible to obtain relevant official statistics for the school years after 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

33. The applicant complained of an infringement of her right to manifest her religion within the meaning of Article 9 of the Convention, which reads as follows:

> "1. 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.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

34. The Government acknowledged that the restrictions imposed on the applicant regarding wearing the Islamic headscarf at school amounted to an interference with the exercise of her right to manifest her religion. They submitted, however, that as in the case of *Leyla Sahin v. Turkey* ([GC], no. 44774/98, ECHR 2005-XI) the requirements of legality, legitimacy and proportionality stipulated in paragraph 2 of Article 9 of the Convention were satisfied.

35. The Government pointed out, first of all, that the measure in question had a legal basis in French law. They observed that the events had occurred in January 1999, that is, ten years after the *Conseil d'Etat* had given its opinion of 27 November 1989, which had provided a very specific

legal framework regarding the wearing of the headscarf in State schools and had been the subject of much analysis by legal commentators, and of still wider coverage by the media, and the publication of circulars by the Minister for Education. The Government added that the established case-law of the administrative courts had confirmed and specified the rules thus defined. With regard to the duty of assiduity, they observed that the applicant could not have been unaware of this duty, as stipulated in the Decree of 30 August 1985 and section 10 of the Law of 10 July 1989. The Government also pointed out that the internal rules of the school that the applicant had attended were very specific on these points.

36. In the Government's submission, the measure in question had pursued a legitimate aim, namely, the protection of order and the rights and freedoms of others, in the present case compliance by pupils with the duty to wear clothes adapted to and compatible with the proper conduct of classes, both for safety reasons and on public-health grounds.

37. Lastly, the interference had been necessary in a democratic society. The Government referred in that connection to the case of *Leyla Sahin* (cited above), and recommended that the same solution be adopted in the present case, having regard to the fact that the measure in question had mainly been based on the constitutional principles of secularism and gender equality. In that connection they submitted that the French conception of secularism respected the principles and values protected by the Convention. It permitted the peaceful coexistence of people belonging to different faiths, while maintaining the neutrality of the public arena. Accordingly, religions benefited from a protection in principle, it being impossible to restrict religious practice other than by limitations enacted in laws applicable to all, and by the principle of respect for secularism and the neutrality of the State. The Government added that respect for religious freedom did not, however, mean that manifestations of religious beliefs could not be subject to restrictions.

38. They stressed that in the present case the exercise by the applicant of the right to manifest her religion did not prevent the disciplinary authorities from requiring pupils to dress in a manner compatible with the proper conduct of classes, and did not require them to demonstrate in every individual case the existence of a danger to the pupil or other users of the school premises. By refusing on seven occasions to remove her headscarf in physical education classes, the applicant had wilfully infringed the duty to dress appropriately for those classes.

39. The Government also submitted that the applicant's proposal to wear a hat or balaclava instead of her headscarf did not in itself constitute proof of her willingness to find a compromise solution or enter into dialogue. The school, however, had initiated a dialogue with the pupil before and during the disciplinary proceedings (ban limited to physical education classes alone, repeated explanations by the teachers, time for reflection granted and

extended, etc.). By way of example, the director for education had observed during the meeting of the appeal panel on 17 March 1999 that "the teachers having agreed, in the end, that she could wear the headscarf during classes demonstrated a conciliatory approach. They expected a gesture on the part of the pupil in the form of an agreement to abide by the rules commonly accepted in P.E. classes ... the words 'we're going to win' were illustrative of the family's refusal to compromise and their intention to confine themselves to the legal position." Apart from the disruption of physical education and sports classes, the authorities had legitimate grounds to fear that the pupil's behaviour would interfere with order in the school or the normal functioning of the State education service. The Caen Administrative Court had accordingly observed that her attitude had created a general atmosphere of tension in the school.

40. The Government also referred to the effects of this behaviour on the other pupils in the applicant's class, the applicant being only eleven years old at the time. In that connection the Government referred to the case of *Dahlab v. Switzerland* (no. 42393/98, ECHR 2001-V) in which the Court had pointed to the difficulty in assessing the impact that a powerful external symbol such as the wearing of a headscarf might have on the freedom of conscience and religion of young children, who were more easily influenced, and its proselytising effect, although admittedly in that case it was a teacher who had worn the headscarf and not a pupil and the children in question were aged between four and eight.

41. Lastly, the Government noted that, as in *Leyla Sahin* (cited above, § 120), the rules that the applicant had refused to obey had been the fruit of a broad debate within French society and the teaching profession. Their implementation had, moreover, been guided by the competent authorities (by means of circulars and internal rules) and accompanied by a series of court decisions on the subject.

42. The Government concluded that the applicant's conduct had overstepped the limits of the right to manifest her religious beliefs within the school premises and that, accordingly, the measures taken had been proportionate to the aim pursued and necessary in a democratic society.

2. The applicant

43. The applicant contested the Government's submissions. She alleged, first of all, that the interference in question had not been prescribed by law. It had mainly taken the form of an opinion of the *Conseil d'Etat*, ministerial circulars and judicial interpretations of the case-law, none of which had the status of a law or regulation in French law in that they were not binding on the courts applying the law. The applicant pointed out that individual freedoms, and particularly religious freedom, were essential freedoms that could be restricted only by provisions that were at the very least legally

binding; and that the French Government, well aware of that gap in the law, had considered it necessary to enact legislation on 15 March 2004.

44. The applicant alleged, lastly, that the restrictions in question had not pursued a legitimate aim that was necessary in a democratic society. Contrary to the Government's submissions, she had not failed to comply with her duty of assiduity but had been confronted with the teacher's refusal to allow her to take part in the class. Despite her proposal to wear a hat or balaclava instead of her headscarf, she had continually been refused permission to participate in sports classes. The teacher had refused to allow her to take part in the class on grounds of her safety. However, when the teacher had been asked, at the session of the pupil discipline committee, how wearing the headscarf or a hat during his classes would endanger the child's safety, he had refused to answer the question. The Government had not provided any further explanations on this point. The applicant also pointed out that wearing the headscarf had given rise to strike action by a number of teachers in the school on the pretext of defending the principle of secularism and that it was those very teachers who had started the unrest and disruption and not in any way the applicant, who had not engaged in any form of proselytism.

45. The applicant concluded that expelling her for wearing the headscarf had amounted to an interference with her religious freedom that did not satisfy the criteria set forth in paragraph 2 of Article 9 of the Convention.

B. The Court's assessment

1. Admissibiilty

46. The Court observes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. The merits

47. The Court reiterates that, according to its case-law, wearing the headscarf may be regarded as "motivated or inspired by a religion or religious belief" (see *Leyla Sahin*, cited above, § 78).

48. The Court considers that in the present case the ban on wearing the headscarf during physical education and sports classes and the expulsion of the applicant from the school on grounds of her refusal to remove it constitute a "restriction" on the exercise by the applicant of her right to freedom of religion, as is, moreover, undisputed by the parties. Such interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 9. The Court must therefore

determine whether it was "prescribed by law", was directed towards one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve the aims concerned.

a) "Prescribed by law"

49. The Court reiterates that the words "prescribed by law" require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among other authorities, *Maestri v. Italy* [GC], no.39748/98, § 30, ECHR 2004-I).

50. At the material time there was no legal provision explicitly prohibiting pupils from wearing the headscarf during physical education classes. The facts of the present case pre-date the enactment of Law no. 2004-228 of 15 March 2004 regulating, in accordance with the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in State schools. Accordingly, the legal basis for the penalty in question needs to be determined.

51. In the present case the Court notes that the domestic authorities justified the measures in question by a combination of three factors: the duty to attend classes regularly, the requirements of safety and the necessity of dressing appropriately for sports practice. These factors were based on statutory and regulatory provisions, internal documents (circulars, memoranda, internal rules) and decisions of the *Conseil d'Etat*. The Court must therefore determine whether the combination of these various factors was sufficient to amount to a legal basis.

52. According to the Court's settled case-law, the concept of "law" must be understood in its "substantive" sense, not its "formal" one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes (see, in particular, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 93, Series A no. 12) and the relevant case-law authority (see, *mutatis mutandis*, *Kruslin v. France*, 24 April 1990, § 29 Series A no.176-A).

53. Accordingly, the question must be examined on the basis of these different sources and in particular the relevant case-law.

54. With regard to the applicant's submission that individual freedoms, in particular religious freedom, can only be restricted by rules having legal force, the Court reiterates that it is not for it to express a view on the appropriateness of methods chosen by the legislature of a respondent State to regulate a given field. Its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see *Leyla Sahin*, cited above, § 94).

55. On that point it is observed that such legislative provisions did exist and were contained in particular in section 10 of the Education (General Principles) Act of 10 July 1989 in force at the time (codified as Articles L. 511-1 and L. 511-2 of the Education Code) since that Act states that "in secondary schools, in keeping with the principle of respect for pluralism and the principle that State education shall be neutral, pupils shall have freedom of information and of expression" and that "the exercise of these freedoms shall not interfere with teaching activities". The same section provides that pupils are under a duty to attend classes regularly and to comply with the rules and community life of the school. Article 3-5 of the Decree of 30 August 1985 specifies the terms of the duty of assiduity.

56. Subsequently, and in the light of that provision among others, the *Conseil d'Etat* gave an opinion on 27 November 1989 specifying the legal framework relating to the wearing of religious signs in schools. In that opinion the *Conseil d'Etat* laid down the principle that pupils were free to wear such signs on school premises, but specified the conditions in which they should be worn in order to be in conformity with the principle of secularism. The *Conseil d'Etat* observed that the acknowledged right of pupils to express and manifest their religious beliefs on school premises could not interfere with teaching activities, the content of the curriculum or the duty to attend classes regularly, or jeopardise their health or safety, disrupt teaching activities or the teachers' educational role, or, lastly, interfere with order in the establishment or the normal functioning of the public service. The *Conseil d'Etat* then left it to schools to determine in their internal rules how the principles thus defined would be applied. It indicated, lastly, that it was for the authority vested with disciplinary power to decide whether the wearing of a religious sign breached those rules and whether the breach justified a disciplinary penalty that could go as far as expulsion. The ministerial circulars of 1989 and 1994 accordingly gave school principals instructions regarding implementation of their disciplinary powers in this regard. The internal rules of Flers Lower Secondary School expressly banned "conspicuous signs which are in themselves of proselytising or discriminatory effect".

57. With regard to the application of these principles in practice by the authorities concerned, a certain difference of treatment can be perceived between pupils according to the school concerned in so far as the principles laid down by the *Conseil d'Etat* invited the school principals to make their assessment on a case-by-case basis. In that connection the Court reiterates that the scope of the notion of foreseeability depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. It must also be borne in mind that, however clearly drafted a legal provision may be, its application involves an inevitable element of judicial interpretation, since there will always be a need for clarification of doubtful points and for

adaptation to particular circumstances. A margin of doubt in relation to borderline facts does not by itself make a legal provision unforeseeable in its application. Nor does the mere fact that a provision is capable of more than one construction mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 65, ECHR 2004-I).

58. In the light of the relevant case-law of the domestic courts, the Court observes that, despite a case-by-case approach in the field, the administrative courts, exercising their powers of review of decisions by the disciplinary authorities, have faithfully applied the principles established in the opinion of 1989. They have thus systematically upheld disciplinary penalties imposed on pupils who have breached the duty to attend classes regularly by refusing to remove their headscarf during physical education and sports classes or refusing to attend these classes (see paragraph 29 above). The present case is therefore an application of the relevant case-law on the subject.

59. In these circumstances the Court concludes that the interference in question had a sufficient legal basis in domestic law. The relevant rules were accessible since they consisted mainly of provisions that had been duly published and of confirmed case-law of the *Conseil d'Etat*. The Court also points out that by signing the internal rules when she enrolled at the secondary school, the applicant was made aware of the content of those rules and undertook to comply with them, with her parents' agreement (see *Köse and Others* v. *Turkey* (dec.), no. 26625/02, ECHR 2006-...). The Court therefore considers that the applicant could foresee, to a degree that was reasonable, that at the material time the refusal to remove her headscarf during physical education and sports classes was liable to result in her expulsion from the school for failure to attend classes regularly. Accordingly, the interference can be regarded as having been "prescribed by law".

b) Legitimate aim

60. Having regard to the circumstances of the case and the terms of the decisions of the domestic courts, the Court can accept that the interference complained of mainly pursued the legitimate aims of protecting the rights and freedoms of others and protecting public order.

c) "Necessary in a democratic society"

61. The Court reiterates that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a

number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. It does not, however, protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in a manner governed by a religious belief (see *Leyla Sahin*, cited above, §§ 105 and 212).

62. The Court notes next that in a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Leyla Sahin*, cited above, § 106). It has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs and that it requires the State to ensure mutual tolerance between opposing groups (see *Leyla Sahin*, cited above, § 107). Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals which are justified in order to maintain and promote the ideals and values of a democratic society.

63. 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. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, in respect of which the approaches taken in Europe are diverse. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order (see *Leyla Sahin*, cited above, §§ 108-09).

64. The Court also reiterates that the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety (see *Leyla Sahin*, cited above, § 111, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 92, ECHR 2003-II). Accordingly, compelling a motorcyclist, who was a practising Sikh wearing a turban, to wear a helmet was a safety measure and any resulting interference with the exercise of his freedom of religion was justified on grounds of the protection of health (see *X v. the United Kingdom*, no. 7992/77, Commission decision of 12 July 1978, Decisions and Reports (DR) 14, p. 234). Likewise, security checks enforced at airports (see *Phull v. France* (dec.), no. 35753/03, ECHR 2005-I, 11 January 2005) or at the entrance to consulates (see *El Morsli v. France* (dec.),

no. 15585/06, 4 March 2008, ECHR 2008-...) and consisting in ordering the removal of a turban or a veil in order to submit to such checks do not constitute disproportionate interferences with the exercise of the right to religious freedom. Nor does the regulation of student dress or the refusal to provide administrative services, such as issuing a diploma, constitute a disproportionate interference where the individual concerned fails to comply with the rules (in the case in point requiring a student wearing the Islamic headscarf to appear with her head uncovered on a passport photo), regard being had to the requirements of the secular university system (see *Karaduman v. Turkey*, 16278/90, Commission decision of 3 May 1993, DR 74, p. 93). In the case of *Dahlab* (cited above), the Court held that prohibiting a teacher from wearing her headscarf while teaching a class of young children was "necessary in a democratic society", having regard, among other things, to the fact that secularism, which presupposes denominational neutrality in schools, is a principle laid down in the Constitution of the canton of Geneva. The Court stressed the "powerful external symbol" represented by wearing the headscarf and also considered the proselytising effect that it might have seeing that it appeared to be imposed on women by a religious precept which was hard to square with the principle of gender equality.

65. In the cases of *Leyla Sahin* and *Köse and Others* in particular, the Court examined complaints similar to the one in the present case and concluded that there had been no appearance of a violation of Article 9 having regard, among other things, to the principle of secularism.

66. In the case of *Leyla Sahin*, after analysing the Turkish context, the Court found that the Republic had been founded on the principle that the State should be secular, which had acquired constitutional value; that the constitutional system attached prime importance to the protection of women's rights; that the majority of the population of the country were Muslims; and that for those who favoured secularism the Islamic headscarf had become the symbol of a political Islam exercising a growing influence. It thus held that secularism was undoubtedly one of the fundamental principles of the State which were in harmony with the rule of law and respect for human rights and democracy. The Court thus noted that secularism in Turkey was the guarantor of democratic values and the principle that freedom of religion is inviolable and the principle that citizens are equal, that it also served to protect the individual not only against arbitrary interference by the State but also from external pressure from extremist movements and that freedom to manifest one's religion could be restricted in order to defend those values. It concluded that this notion of secularism was consistent with the values underpinning the Convention. Upholding that system could be considered necessary to protect the democratic system in Turkey (see *Leyla Sahin*, cited above, § 114).

67. In the case of *Köse and Others* (cited above), the Court also considered that the principles of secularism and neutrality at school and respect for the principle of pluralism were clear and entirely legitimate grounds justifying refusing pupils wearing the headscarf admission to classes when they refused – despite the relevant rules – to remove the Islamic headscarf while on the school premises.

68. Applying those principles and the relevant case-law to the present case, the Court observes that the domestic authorities justified the ban on wearing the headscarf during physical education classes on grounds of compliance with the school rules on health, safety and assiduity which were applicable to all pupils without distinction. The courts also observed that, by refusing to remove her headscarf, the applicant had overstepped the limits on the right to express and manifest religious beliefs on the school premises.

69. The Court also observes, more generally, that the purpose of that restriction on manifesting a religious conviction was to adhere to the requirements of secularism in state schools, as interpreted by the *Conseil d'Etat* in its opinion of 27 November 1989 and its subsequent case-law and by the various ministerial circulars issued on the subject.

70. The Court next notes that it transpires from these various sources that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have.

71. In that connection the Court refers to its earlier judgments in which it held that it was for the national authorities, in the exercise of their margin of appreciation, to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion (see *Köse and Others*, cited above). In the Court's view, that concern does indeed appear to have been answered by the French secular model.

72. The Court also notes that in France, as in Turkey or Switzerland, secularism is a constitutional principle, and a founding principle of the Republic, to which the entire population adheres and the protection of which appears to be of prime importance, in particular in schools. The Court reiterates that an attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one's religion and will not enjoy the protection of Article 9 of the Convention (*see Refah Partisi (Prosperity Party) and Others*, cited above, § 93). Having regard to the margin of appreciation which must be left to the member States with regard to the establishment of the delicate relations between the Churches and the State, religious freedom thus recognised and restricted by

the requirements of secularism appears legitimate in the light of the values underpinning the Convention.

73. In the present case the Court considers that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety is not unreasonable. It accepts that the penalty imposed is merely the consequence of the applicant's refusal to comply with the rules applicable on the school premises – of which she had been properly informed – and not of her religious convictions, as she alleged.

74. The Court also notes that the disciplinary proceedings against the applicant fully satisfied the duty to undertake a balancing exercise of the various interests at stake. In the first place, before proceedings were instituted, the applicant refused on seven occasions to remove her headscarf during physical education classes, despite her teacher's requests and explanations for those requests. Subsequently, according to the information provided by the Government, the authorities concerned made many unsuccessful attempts over a long period of time to enter into dialogue with the applicant and a period of reflection was granted her and subsequently extended. Furthermore, the ban was limited to the physical education class, so cannot be regarded as a ban in the strict sense of the term (see *Köse and Others*, cited above). Moreover, it can be seen from the circumstances of the case that these events had led to a general atmosphere of tension within the school. Lastly, the disciplinary process also appears to have been accompanied by safeguards – the rule requiring conformity with statute and judicial review – that were apt to protect the pupils' interests (see, *mutatis mutandis*, *Leyla Sahin*, cited above, § 159).

75. As regards the choice of the most severe penalty, it should be pointed out that, where the ways and means of ensuring respect for internal rules are concerned, it is not within the province of the Court to substitute its own vision for that of the disciplinary authorities which, being in direct and continuous contact with the educational community, are best placed to evaluate local needs and conditions or the requirements of a particular training (see, *mutatis mutandis*, *Valsamis v. Greece*, 18 December 1996, § 32, *Reports of Judgments and Decisions* 1996-VI). With regard to the applicant's proposal to replace the headscarf by a hat, apart from the fact that it is difficult for the Court to judge whether wearing a hat instead would be compatible with sports classes, the question whether the pupil expressed a willingness to compromise, as she maintains, or whether – on the contrary – she overstepped the limits of the right to express and manifest her religious beliefs on the school premises, as the Government maintain and appears to conflict with the principle of secularism, falls squarely within the margin of appreciation of the State.

76. The Court considers, having regard to the foregoing, that the penalty of expulsion does not appear disproportionate, and notes that the applicant

was able to continue her schooling by correspondence classes. It can be seen that the applicant's religious convictions were fully taken into account in relation to the requirements of protecting the rights and freedoms of others and public order. It is also clear that the decision complained of was based on those requirements and not on any objections to the applicant's religious beliefs (see *Dahlab*, cited above).

77. Accordingly, having regard to the circumstances of the case, and taking account of the margin of appreciation that should be left to the States in this domain, the Court concludes that the interference in question was justified as a matter of principle and proportionate to the aim pursued.

78. Accordingly, there has been no violation of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

79. The applicant alleged that she had been deprived of her right to education, within the meaning of the first sentence of Article 2 of Protocol No. 1, which provides:

> "No person shall be denied the right to education ..."

80. The Government considered, firstly, that the applicant had not properly exhausted domestic remedies in so far as she had not raised the complaint before any of the national courts dealing with the case. They pointed out, secondly, that the measure in question had not impaired the very essence of the right to education, since she had been able to continue her schooling despite having been expelled.

81. The applicant submitted that she had been deprived of her right to education in so far as she had had to take correspondence courses whereas the penalty was based on the obligation to attend classes regularly which she had not sought to circumvent.

82. The Court notes that the complaint is related to the one examined above and must therefore also be declared admissible.

83. The Court reiterates that the right to education does not, in theory, exclude resorting to disciplinary measures, including temporarily or definitively suspending someone from an establishment in order to ensure compliance with the internal rules. The imposition of disciplinary penalties is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils (see, *inter alia*, *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 33, Series A no. 48; see also, regarding the suspension of a pupil from a military school, *Yanasik* v. *Turkey*, no. 14524/89, Commission decision of 6 January 1993, DR 74, p. 14, or suspension of a student for fraud, *Sulak*

v. Turkey, no. 24515/94, Commission decision of 17 January 1996, DR 84-B, p. 98).

84. In the present case the Court considers that no separate question arises under this provision relied on by the applicant, the relevant circumstances being the same as for Article 9. Accordingly, there is no need to examine the complaint based on Article 2 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 9 of the Convention;

3. *Holds* that there is no need to examine the complaint based on Article 2 of Protocol No. 1.

Done in French and in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President