



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1852/2008

#### Views adopted by the Committee at its 106th session (15 October–2 November 2012)

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| <i>Submitted by:</i>                     | Bikramjit Singh (represented by counsel, Mr. Stephen Grosz)   |
| <i>Alleged victim:</i>                   | The author  |
| <i>State party:</i>                      | France  |
| <i>Date of communication:</i>            | 16 December 2008 (initial submission)   |
| <i>Document references:</i>              | Special Rapporteur's rule 97 decision, transmitted to the State party on 22 December 2008 (not issued in document form) |
| <i>Date of adoption of Views:</i>        | 1 November 2012   |
| <i>Subject matter:</i>                   | Expulsion of the author from a public school for wearing a <i>keski</i>   |
| <i>Substantive issues:</i>               | Right to manifest one's religion; right to privacy; non-discrimination  |
| <i>Procedural issues:</i>                | Failure to exhaust domestic remedies  |
| <i>Articles of the Covenant:</i>         | 2, 17, 18, 26   |
| <i>Article of the Optional Protocol:</i> | 5, paragraph 2 (b)  |

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session)**

concerning

#### **Communication No. 1852/2008\***

*Submitted by:* Bikramjit Singh (represented by counsel, Stephen Grosz)

*Alleged victim:* The author

*State party:* France

*Date of communication:* 16 December 2008 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 1 November 2012,

*Having concluded* its consideration of communication No. 1852/2008, submitted to the Human Rights Committee by Bikramjit Singh under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication is Bikramjit Singh, an Indian national of the Sikh faith, born in India on 13 August 1986. He claims to be a victim of violations by France of articles 2, 17, 18 and 26 of the Covenant. He is represented by counsel, Stephen Grosz. The Covenant and its Optional Protocol entered into force for the State party on 4 February 1981 and 17 May 1984, respectively.

1.2 On 20 March 2009, the Human Rights Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the case separately.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

### The facts as submitted by the author

2.1 The facts are related to Act No. 2004-228 of 15 March 2004, which, in conformity with the principle of secularism, covers the wearing in public primary schools, secondary schools and lycées of symbols and clothing manifesting a religious affiliation. This Act has led to the introduction of article L.141-5-1 in the Education Code, under which: “In public primary schools, secondary schools and lycées, the wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner is forbidden. Under the rules of procedure, disciplinary procedures shall be preceded by a dialogue with the pupil.”

2.2 The circular of 18 May 2004 concerning the implementation of Act No. 2004-228 explicitly states that “the Act does not call into question pupils’ right to wear discreet religious symbols”. It also establishes that “whenever a pupil who is enrolled at a school arrives with a symbol or clothing which may be prohibited, it is important that dialogue be initiated immediately with the pupil. The school principal shall conduct the dialogue in collaboration with the management team and pedagogical teams, in particular calling upon teachers who know the pupil in question and will be able to help resolve the problem. This is a priority but in no way excludes any alternative which the school principal may deem appropriate in the specific case.”

2.3 The author started his studies at the lycée Louise Michel in 2002. He was initially given permission to wear the *patka* and then, after September 2003 at the age of 17, he wore the *keski*. The *keski* is a small light piece of material of a dark colour, often used as a mini-turban, covering the long uncut hair considered sacred in the Sikh religion. It is frequently worn by young boys as a precursor or alternative to a larger turban. The wearing of the turban is a categorical, explicit and mandatory religious precept in Sikhism. It is an essential component of the Sikh identity: to be Sikh is not to cut one’s hair and, consequently, to wear a turban. Asking a Sikh to remove his turban is therefore tantamount to asking him to perform an impossible act. The *keski* (like the turban for adult men) is not meant as an external display of faith but is rather intended to protect the long uncut hair, which is considered as a sacred, inherent and intrinsic part of the religion. The turban is not worn with a view to proselytize – a concept which is foreign to the Sikh religion.

2.4 In September 2004, before the start of the academic year, discussions took place between the Schools Inspectorate of Seine-Saint-Denis and representatives of the Sikh community on how the Act of 15 March would apply to Sikh pupils. In September 2004, the author arrived at school in his *keski* as he had done the previous year. The author and his family considered the *keski* as a compromise between, on the one hand, the requirements of his ethnic and religious traditions, and on the other hand, the principle of secularism.

2.5 At first, the principal of the lycée formally prohibited the author from entering the classroom wearing the *keski*. This exclusion was decided without recourse to a disciplinary board. Subsequently, on 11 October 2004, the author was allowed to continue his studies but sitting apart. He was sent to the school canteen, where he studied on his own and where a teaching assistant provided him with school books on request. He received no teaching during the three weeks that he spent in the canteen. This separation was apparently due to continue while the school conducted the dialogue referred to in article 141-5-1, paragraph 2, of the Education Code.

2.6 On 18 October 2004, the author applied to Cergy-Pontoise Administrative Court for interim measures allowing him to attend class normally or, at least, to appear before a disciplinary board. In a ruling dated 21 October 2004, the court ordered the principal of the lycée to convene a disciplinary board. The board was duly convened on 5 November 2004 and issued a ruling for the immediate and permanent expulsion of the author. The reason

for the expulsion was given as follows: “Breach of Act No. 2004-228 of 15 March 2004, insofar as, after the dialogue phase, the pupil refused to remove the head covering which completely covered his hair, thereby manifesting his religious affiliation in a conspicuous manner”.

2.7 The author appealed against the disciplinary board’s decision before the rector of the Créteil education authority. He contested the legality of the decision and the attendant consequences, particularly the lack of a dialogue phase in the sense understood by the law; the improper application of the law and its interpretation as regards removing head coverings, in the sense that the latter could be considered compatible with the terms of the law; and lastly the fact that the school applies the law in such a way that the author is compelled to act contrary to his freedom of conscience. On 10 December 2004, the rector confirmed the permanent expulsion of the author on the ground that his clothing belonged to the category of items which it was prohibited to wear on the premises of public schools under article L.141-5-1.

2.8 On 5 February 2005, the author applied to the Melun Administrative Court to annul the decision of 10 December 2004. The application was rejected on 19 April 2005. He then lodged an appeal before the Administrative Court of Appeal of Paris, which was rejected on 19 July 2005. The author filed for an appeal in cassation before the Council of State, which rejected it in a ruling of 5 December 2007. The Council invoked articles 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, stating that “in view of the importance attached to the principle of secularism in public schools, the penalty of permanent expulsion against a pupil who does not comply with the legal prohibition to wear external symbols denoting religious affiliation is not a disproportionate infringement of the freedom of thought, conscience and religion provided for by article 9 ... nor is the penalty, the aim of which is to encourage compliance with the principle of secularism in public schools without discrimination between pupils’ faiths, opposed to the principle of non-discrimination set forth in the provisions of article 14 of the European Convention”. The Council of State also found that “the arguments whereby the contested decision constitutes discrimination against the Sikh community in France, an ethnic minority and in breach of article 14 of the European Convention ... and violating article 8 of that Convention, are new in cassation and are therefore not admissible”.

2.9 The year following his expulsion, the author continued his studies through a correspondence course with the National Centre for Distance Learning, and then enrolled at the University of Paris Est, where he was allowed to wear the *keski*.

### **The complaint**

3.1 The author alleges violations of articles 17 (arbitrary or unlawful interference in one’s private life) and 18 (freedom of religion), either taken separately or in combination with articles 2 and 26 of the Covenant, on the grounds that he has been subject to discriminatory treatment on account of his religion and/or ethnic origin.

3.2 With regard to the violation of article 18, the author submits that his expulsion from the school for wearing the *keski* constitutes a clear and unjustifiable infringement of his right to freedom of religion, and in particular of his right to manifest his religion. This is clear in the wording of the motives for the expulsion: “Non-compliance with Act No. 2004-228 of 15 March 2004, the pupil having refused to remove the head covering which covered his hair, thereby manifesting his religion in a conspicuous manner”.

3.3 The author maintains that the application of Act No. 2004-288, which resulted in his expulsion from school, was not justified according to any of the legitimate aims recognized in article 18, paragraph 3. The two reasons put forward by the minister before the Council of State were: (a) the law was a response to a worrying increase in tension connected to the

claims of communities, after the Stasi Commission had indicated that identity-related conflicts could become a factor of violence in schools; (b) the law also met the objective of protecting the rights and freedoms of others, so that it aimed to protect students, and particularly younger ones, from the pressures that could be brought to bear on them to oblige them to wear items of clothing that would make them identifiable first and foremost by their religious affiliation.

3.4 The author accepts that, should these concerns be well established, they could be said to pursue the legitimate aims of protecting public order and the fundamental rights and freedoms of others. For an aim to be legitimate, it must be based on objective considerations, such as public order and the freedoms of others, and not on the State's desire for its citizens to profess their faith through specific symbolic gestures to which the State attributes official value. Even if the interference had a "legitimate aim", however, it was not "necessary" as required under article 18, paragraph 3, since it did not meet any pressing social need. The reasons given by the French authorities to justify this interference are not relevant in view of the small number of Sikhs in France, and consequently are not sufficient to justify the interference. Ultimately, the interference is totally disproportionate to the legitimate aim pursued.

3.5 The principle of secularism cannot breach the essence and spirit of the rights and freedoms protected by the Covenant. Although the State inevitably has a certain margin of appreciation when evaluating the need to apply such a principle, the matter must fall within the Committee's purview. The principle of secularism may be considered as a legitimate aim, though not an end in itself, and only to the extent that it serves one or more of the aims set out exhaustively in article 18, paragraph 3, if strictly interpreted.

3.6 There are no more than around 10,000 people in the Sikh community in France. It has historically been peacefully integrated in the country. There is nothing to suggest that there are extreme political movements or unrest in France attributable to Sikhs. There have been no concerns regarding Sikh fundamentalist or militant activities in schools, nor any community-related tensions affecting or involving the Sikh community. The Sikhs have simply found themselves embroiled in a problem that is not of their own making. Forcing a Sikh to remove his *keski* makes his religious affiliation all the more conspicuous in that he will then be displaying his long uncut hair, which clearly reveals his Sikh identity as well as his religious beliefs. In the circumstances, the *keski* is a more discreet measure and amounts to a compromise, in contrast to the traditional full turban.

3.7 Wearing the *keski* can in no way be considered as an act of proselytism. The Sikh community is not involved in any attempt to provoke, proselytize, upset or obstruct the rights of members of their own community, or those of the French community at large.

3.8 Although the *keski* may be worn by either women or men, it is uncommon and not compulsory for it to be worn by women. The issue of using the *keski* for the protection of young girls therefore does not arise. On the other hand, it has not been shown that young Sikh boys (let alone young boys of other religions) feel under pressure when they see other boys wearing the *keski*. It has not been claimed or demonstrated that Sikh students have been forced or obliged to wear the *keski*. The author chose to wear it of his own free will. Nor has it been claimed or demonstrated that allowing Sikh students to wear the *keski* at school (or elsewhere) represents a danger to public safety, order, health or the morals of the population. The French authorities have not argued this to be the case before the courts. Nor has it ever been suggested that the *keski* was a source of tension in any school in France.

3.9 The school administration made no attempt at a concession or reconciliation, unlike the Ministry of Education and the schools inspectorate of Seine-Saint-Denis, which appear to have entered into a constructive dialogue in order to find a compromise that would allow Sikhs to cover their hair with a light, discreet black material (which they would find

acceptable). In addition, the exclusion was total, with no exceptions for certain types of lessons, such as physical education.

3.10 The author feels naked and degraded without his turban. Asking a Sikh to unveil his hair fully in public is akin to constantly reminding him of a feeling of betrayal and dishonour. The context and implementation of Act No. 2004-228 show that the corresponding bill did not mention the Sikh community and that the aims of the law are not in the least related to French Sikh students. The Stasi report was intended above all as a response to the pressure placed on young Muslim girls, who are forced to wear the headscarf or veil against their will, and to the schools which were unsure as to what measures to take in view of the awkward situation. The aim of the report was not to outlaw all manifestations of religious belief, which is why the law allows discreet religious symbols to be worn. Far from promoting peaceful coexistence in schools, however, the law has had the effect of humiliating and alienating certain minorities.

3.11 The application of the law to the author amounted to a substantial and indiscriminate prohibition of religious symbols that was both disproportionate and unnecessary. Following a dialogue with members of the Sikh community, the schools inspectorate of Seine-Saint-Denis recognized the possibility of a proportionate response (such as wearing a discreet accessory made of a light, black material allowing pupils to tie up their hair but uncover their ears, forehead and back of the neck to ensure security in the classroom). The application of the law in this case has had extremely serious consequences for the author, who was expelled from school and was refused training. Moreover, he was denied access to any other academic instruction in the French public school system.

3.12 With regard to article 17 of the Covenant, the author affirms that the application of Act No. 2004-228 in his case constituted a breach of his right to respect for his privacy, honour and reputation, including respect for his identity as a member of the Sikh community. It was a breach of his right to respect for his privacy since it did not recognize, facilitate or allow him to display important aspects of his identity and his Sikh religious and ethnic tradition. He refers back to the argument given above concerning interference and necessity.

3.13 The author considers that he has been a victim of both direct and indirect discrimination on the grounds of his Sikh religion or ethnic identity, in violation of article 2, of his rights under articles 17 and 18 and in violation of article 26 of the Covenant. He was not treated in the same way as the other students wearing discreet articles of faith, as stipulated in the circular. The author wears a discreet article of faith, just as others might wear crosses of a reasonable size, etc. Act No. 2004-228 was also applied more favourably to other students who allegedly wore other (non-religious) symbols. The burden of proof that this less favourable treatment is objectively and reasonably justified rests with the State. The Government of France has not proved in any way whatsoever that it was justified to apply the law to the author or to Sikh students in France. Speculation not founded on any evidence that wearing the *keski* would affect or disturb the educational community in the school cannot constitute an objective and reasonable justification of such treatment. The position of the Government of France therefore constitutes indirect discrimination in violation of articles 2 and 26.

3.14 In addition and from a different angle, it was indirectly discriminatory to apply Act No. 2004-228 to the author. Even if the law is applied to everyone, the right to equal treatment is also violated when, without an objective and reasonable justification, States fail to provide different treatment for persons whose circumstances are substantially different. Although the law did not specifically target Sikh students, it was likely that it would have a disproportionately harmful effect on Sikhs if interpreted in such a way as to prevent Sikh students from wearing the *keski* at school. Forcing a Sikh student to keep his hair uncovered does not do away with the external symbols linking him to his religious, cultural and ethnic

identity, since his uncut hair equally symbolizes this affiliation. In these circumstances, and given that the *keski* is worn as a compromise instead of the full turban, it cannot objectively and reasonably be justified to deny permission to wear it. In this case, the Government of France has failed to introduce appropriate exceptions to the rule for Sikhs, despite the assurances given to the Sikh community.

3.15 The author recalls that in its concluding observations on the fourth periodic report of France, the Committee referred to Act No. 2004-228 in the following terms:

The Committee is concerned that both elementary and high school students are barred by Act No. 2004/228 of 15 March 2004 from attending the public schools if they are wearing so-called ‘conspicuous’ religious symbols. The State party has made only limited provisions – through distance or computer-based learning – for students who feel that, as a matter of conscience and faith, they must wear a head covering such as a skullcap (or *kippah*), a headscarf (or *hijab*), or a turban. Thus, observant Jewish, Muslim, and Sikh students may be excluded from attending school in company with other French children. The Committee notes that respect for a public culture of *laïcité* would not seem to require forbidding wearing such common religious symbols. (arts. 18 and 26)

The State party should re-examine Act No. 2004/228 of 15 March 2004 in light of the guarantees of article 18 of the Covenant concerning freedom of conscience and religion, including the right to manifest one’s religion in public as well as private, as well as the guarantee of equality under article 26.<sup>1</sup>

3.16 The author also cites, among others, the concluding observations on the second periodic report of France, in which the Committee on the Rights of the Child notes:

The Committee is also concerned that the new legislation (Law No. 2004-228 of 15 March 2004) on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results ...

The Committee recommends that the State party, when evaluating the effects of the legislation, use the enjoyment of children’s rights, as enshrined in the Convention, as a crucial criteria in the evaluation process and also consider alternative means, including mediation, for ensuring the secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation. The dress code of schools may be better addressed within the public schools themselves, encouraging participation of children.<sup>2</sup>

3.17 The author refers to paragraph 10 of Human Rights Committee general comment No. 22 (1993) on the right to the freedom of thought, conscience and religion,<sup>3</sup> which states that: “If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.” The author argues that in the current case, the State party’s ideology, namely secularism, should not be imposed in such a way that it impairs, restricts or

<sup>1</sup> CCPR/C/FRA/CO/4, para. 23.

<sup>2</sup> CRC/C/15/Add.240, paras. 25 and 26.

<sup>3</sup> *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex VI.*

obstructs the rights of citizens with religious beliefs if it is disproportionate and unnecessary to do so.

3.18 The author requests the Committee to: (a) express the view that his rights under articles 17, 18, 2 and 26 of the Covenant have been violated; (b) recommend that the State party take appropriate measures to address the violations, including the amendment or repeal of Act No. 2004-228 and the payment to the author of compensation for material and moral damages and a sum to cover legal fees incurred both in the domestic courts and in the procedure before the Committee.

#### **State party's submission on the admissibility of the communication**

4.1 On 13 March 2009, the State party submitted its observations on the admissibility of the communication. It points out that the author had never raised the issue of any violations of the provisions of the Covenant before the domestic courts. Although it is true that the Committee does not require the author of a communication to refer to specific articles of the Covenant, it is nevertheless important that he should avail himself of one of the fundamental rights enshrined in the Covenant. The case brought by the author before the domestic courts concerned only an alleged violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms but, after the Council of State's decision to dismiss the case, the author did not bring the matter before the European Court of Human Rights. He therefore evidently believed that the European Court's case law would not be in his favour. The State party refers in this respect to the Court's rulings on 4 December 2008 in the *Dogru and Kervanci* cases.<sup>4</sup> If the author believes that the Covenant is different, and especially article 18, which is admittedly worded slightly differently from article 9 of the European Convention and the Committee's case law on the issue, he should have mentioned that fact before the domestic courts under the subsidiarity principle. In these circumstances, the State party requests the Committee to declare the communication inadmissible under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 With regard to the complaint of a violation of article 17 of the Covenant, the State party considers that the author has not exhausted all domestic remedies considering that he is filing the complaint before the Committee for the first time. The author did not give the domestic courts the opportunity to rule on the possible violation of his private life, despite the fact that he was represented by counsel. Before the trial courts, he merely alleged that the sanction against him violated articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention, claims which were dismissed both by the Melun Administrative Court and the Paris Administrative Court of Appeal. The complaint of a violation of article 8 of the European Convention protecting the private life of individuals, taken separately or in combination with article 14, was first raised before the Council of State, which deemed it inadmissible. It is indeed established legal practice that, in principle, parties can only take up issues before a court of cassation which they have already raised before the trial courts. In addition, the arguments regarding a lack of knowledge of the European Convention are not mandatory and therefore do not have to be raised ex officio by the court judging the abuse of authority. Such arguments are therefore inadmissible if they are invoked for the first time before the court of cassation. Consequently, the State party requests the Committee to declare this part of the communication inadmissible under article 2 of the Optional Protocol.

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<sup>4</sup> Cases of *Dogru v. France* (application No. 27058/05) and *Kervanci v. France* (application No. 31645/04), judgments of 4 December 2008.

4.3 The author also contends, without in fact referring to any specific clause of the Covenant, that his permanent expulsion from the lycée denied him the right to education. Assuming that he had been intending to raise this argument, the State party believes that this part of the communication should also be declared inadmissible on the grounds that domestic remedies have not been exhausted, since the complaint has not been raised before the domestic courts.

4.4 Lastly, the State party calls on the Committee to consider the author's submissions regarding the payment of damages inadmissible. He never made such requests to the domestic courts and has therefore not exhausted domestic remedies. Furthermore, these requests, which do not even come with supporting documents, in any case fall outside the Committee's competence, since, under article 5 of the Optional Protocol, "the Committee shall forward its views to the State Party concerned and to the individual". This is a way for the Committee to invite States parties in principle to take steps to provide compensation for the victim. The rare occasions it actually requested compensation for the victim of a violation arose in very specific cases unlike the present one (such as enforced disappearances), and even then the Committee did not specify either the amount or the specific terms of compensation, which were left to the discretion of the State.

#### **State party's submission on the merits of the communication**

5.1 On 23 June 2009, the State party submitted its observations on the merits of the communication. It pointed out that since the passing of the Act of 9 December 1905, France is governed by the separation of the church and the State, which enables the State to guarantee the free practice of religion and, hence, the right of each person to worship and to join cultural associations, but without the State recognizing any particular religion. This concept of separation, or secularism, allows people from different faiths to coexist peacefully, while preserving the neutrality of the public domain. Religions are therefore in principle protected, because the only restrictions on religious practices are those imposed by laws that apply equally to everyone, and by respect for secularism and the neutrality of the State.

#### *Complaint of violation of article 18*

5.2 Act No. 2004-228 was passed following a national debate, as a means of putting an end to the tensions and incidents sparked by the wearing of religious symbols in public primary and secondary schools and to safeguard the neutrality of public education, in the interest of pluralism and the freedom of others. Its scope and purpose are strictly limited. Firstly, the prohibition is not general but only applies to pupils aged from around 6 to 18 years, who are enrolled in a public school, and exclusively for the period of time that they are on the school premises. It does not apply to private education institutions or to higher education. Secondly, the prohibition is not systematic but affects only symbols and clothing worn for a religious reason and which conspicuously display this religious affiliation. The prohibition therefore applies to symbols which are immediately recognizable as being worn to show religious affiliation, such as the Islamic veil, whatever name it comes under, the *kippa*, crosses of clearly excessive size and symbols whose religious character can be inferred from the pupil's behaviour. The prohibition does not extend, however, to discreet religious symbols, such as a small cross, medallion, Star of David or a hand of Fatima. The law neither stigmatizes nor favours any particular religion and does not contain lists of prohibited religious symbols. The implementing circular merely cites a few examples as guidelines of religious symbols manifesting a religious affiliation in a conspicuous manner and should not be regarded as an exhaustive and restrictive list of such symbols. The fact that only the Islamic veil, the *kippa* and crosses of clearly excessive size are enumerated does not mean to say that the Sikh turban should be excluded from the list. In the case law of the Council of State, decisions are made on a case-by-case basis to verify the enactment

of the law by school administrations and to monitor compliance with the principle of equality of all before the law.

5.3 The law establishes that a phase of dialogue with the offender is a mandatory preliminary step before any disciplinary procedures may be instituted against him or her. Lastly, pupils suspended under this law are not denied access to education and training. Their cases must be notified to the rector or the education inspector so that they may be enrolled in another school or public distance learning centre. Pupils always have the possibility of pursuing a private, even religious, form of education, and local authorities will contribute to the cost of this from public funds.

5.4 During the Committee's consideration of the State party's periodic report, the State party stated that the results of Act No. 2004-228 had been generally positive and had not given rise to any serious incidents. The number of pupils who had sought contentious remedies had gradually diminished. The main problem therefore turns out not to be so much the number of incidents but the amount of tension and claims originating from a given religious group.

5.5 The State party cites the case law of the European Court of Human Rights. This case law, which allows States parties to the European Convention some room for manoeuvre, reflects the Court's intention to take account of choices, particularly constitutional and legislative choices, made by States attached to the principle of secularism, while monitoring observance of the rights and freedoms protected by the Convention.

5.6 The State party considers that the terms of article 18, paragraph 3, of the Covenant have been met in the present case.

(a) *The contested measure complies with the law*

5.7 The contested measure had a due legal basis. Before the law was adopted, a national debate took place in which religious authorities and educationalists took part. The Act was implemented by the competent authorities using circulars and rules of procedure, and implementation was preceded and followed by the relevant case law.

(b) *The contested measure pursued a legitimate aim*

5.8 The ban on the author wearing the Sikh mini-turban was intended, in pursuit of the constitutional principle of secularism, as a means of preserving respect for neutrality in public education and peace and order in schools, subject to respect for pluralism and the freedom of others. The legitimacy of this principle cannot seriously be challenged. If the author did not identify with French secularism, he was free to pursue his education in a private or even denominational school, where the Sikh *keski* would cause no problem. It was not a matter of imposing a viewpoint on the author, but only of enforcing the secularist law on public school premises. The 2004 Act helped to defuse the tensions which might potentially have arisen in public primary schools, secondary schools and lycées. The number of incidents reported since it has come into force has decreased, which reflects broad acceptance. The dialogue procedure is working well since the vast majority of cases are settled at that stage. It would run counter to the principle of the equality of all before the law and therefore be discriminatory to treat children belonging to the Sikh religion differently.

(c) *The contested measure was proportionate to its purpose*

5.9 The intention of Act No. 2004-228 in prohibiting symbols or clothing conspicuously manifesting a religious affiliation does not express a response to unrest or a desire to proselytize. On the contrary, the very purpose of the Act was to relax the law as it stood before, which, because it depended to a large extent on the assessment of a pupil's

behaviour or the occurrence of threats to public order, was particularly difficult to apply and led to interpretations which tended to vary from one school to the next. The measure was proportionate to its purpose. Firstly, it applies only to public schools. Secondly, it requires dialogue to be initiated. In this particular case, several interviews were conducted by the principal of the lycée, the rector and the schools inspector. On 6 September 2004, the decision was taken to place the author in a study room under the supervision of a tutor. Thirdly, the decision to expel him permanently was taken as a last resort. No compromise solution could be found since the author persistently refused to stop wearing a turban or mini-turban during compulsory school activities. The author himself put an end to the dialogue phase by filing an application to the Administrative Court on 18 October 2004 requesting readmission to school or, failing this, the holding of a disciplinary board. In the circumstances, the judge could only acknowledge the lack of agreement and order the principal of the lycée to bring the case before the school's disciplinary board. Of the hundred or so Sikh pupils attending school in the Créteil educational area, which includes people of different religious denominations, only three pupils, including the claimant, had lodged an appeal after refusing to stop wearing the turban. In view of the continued disagreement, the schools inspector had drawn up three proposals: (a) enrolment at the National Centre of Distance Learning combined with home tutoring; (b) enrolment in a private school under contract with the State and with similar schooling and teaching conditions to those of a public school; (c) enrolment in a private school with no contract. The families of the three pupils concerned opted for distance learning. The author was able to continue his studies, including at university, according to the official programme without needing to change his dress code. It cannot, therefore, be maintained that the application of the law has had serious and irreversible consequences on his situation.

5.10 In the light of the above, the State party concludes that the author was not a victim of a violation of article 18 of the Covenant, since he must have been aware of the risk of expulsion due to wearing the illegal *keski*, the legislation was justified on the basis of the constitutional principle of secularism and the fundamental freedoms of others in public education, and the means used were proportionate to the ends sought.

*Complaint of violation of article 17*

5.11 The State party reiterates that the contested measure was neither arbitrary nor illegal. Moreover, the school administration and the teaching staff never disputed the "sanctity" of his hair for the author, nor questioned his right to keep it intact. The State party cannot follow the author's reasoning that Sikh pupils should be treated any differently from Muslim, Jewish or Catholic students. Besides the fact that such an approach would be contrary to the principle of equality before the law and thus discriminatory, it would lead the State to depart from its neutrality and express an opinion on the legitimacy of religious beliefs and their forms of expression. In the case in hand, the administration and then the judge merely provided an objective assessment as to whether or not the symbol denoting religious affiliation worn by the author was conspicuous. Their assessment did not entail any interference with his faith or any judgement regarding the wearing of a turban or mini-turban. The State party therefore concludes that the author was not a victim of a violation of article 17 of the Covenant.

*Complaint of violation of articles 2 and 26*

5.12 The State party contends that the author was not a victim of a violation of articles 2 and 26 of the Covenant. The author did not suffer any form of discrimination since the law concerns all conspicuous religious symbols, regardless of the religion to which they belong. He does not show evidence that there was any indirect discrimination arising under Act No. 2004-228. The State party cannot therefore accept his arguments that would imply the need to allow an exception on the basis of affiliation to a particular religion, in breach of the

provisions of the Covenant. It is not up to the Committee to determine whether the Sikh turban has “more” religious significance than the Islamic veil or the *kippa* and whether the law should therefore exempt only pupils belonging to the Sikh religion. Contrary to what the author maintains, no assurance to that effect was ever given to the Sikh population. The Government has discussed the matter with representatives of the Sikh population, as well as representatives of other religions, in order to clarify the terms and scope of the law and find compromise solutions.

#### **Author’s comments on the State party’s submission**

6.1 On 28 August 2009, the author submitted comments on the State party’s observations on the admissibility and merits of the communication.

6.2 Regarding the State party’s observations alleging the non-exhaustion of domestic remedies, the Council of State ruled as the court of last instance. There were therefore no other legal remedies possible. The author had essentially already filed before the domestic courts all the complaints which he has brought before the Committee since the start of legal proceedings. If there have been any omissions in this respect, they are minor and trivial, given that the substantive issues, on which the proceedings are based, have never been in any doubt. The facts as submitted by the author in his communication are hardly contested. It is unimportant that the author specifically mentioned his rights under the European Convention during the domestic proceedings rather than the equivalent rights enshrined in the Covenant. They are substantially identical. The right to education has always been at the heart of his application.

6.3 Lastly, there is no obligation to initiate proceedings if they are bound to fail. In the light of the ruling by the Council of State, it cannot really be suggested – and the State party does not suggest this – that there would have been a different outcome if the author had raised questions which according to the State party he did not raise.

6.4 Pursuant to article 2, paragraph 3, of the Covenant, the State party has the obligation to guarantee the author an effective remedy, including compensation. The appeal before the domestic courts was administrative and was designed to invalidate the contested measure. Once the domestic courts had confirmed the lawfulness of the author’s permanent expulsion, it was no longer possible to claim for damages.

6.5 Concerning the State party’s observations on the merits, the author argues that the State party’s ideology, namely secularism, should not be imposed in such a way that it impairs, restricts or obstructs the rights of citizens holding different religious beliefs whenever it is disproportionate and unnecessary to do so. European case law has not considered the necessity and the proportionality of Act No. 2004-228 as applied in the case of *Jasvir Singh v. France*.<sup>5</sup> The State party has failed to provide real justifications, either in the *Jasvir Singh* case before the European Court or in the current case.

6.6 With regard to the complaints under article 18, the author does not dispute that the measures are prescribed by law. He also agrees that they would be justified provided that they had a legitimate aim and were proportionate to this aim. However, the State party has not established such justifications in the specific circumstances of this case. The State party has not produced any evidence that the Sikh community posed a threat to public safety, order or health, or that the fundamental rights of others were affected in any way, through the wearing of a turban, *keski* or other head covering. A State cannot declare that a principle or official policy is a legitimate aim when there is no evidence of an objective and tangible impact, such as civil disorder, criminality or the violation of the rights of others. The

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<sup>5</sup> European Court of Human Rights, application No. 25463/08, decision of 30 June 2009.

principle of freedom of religion has not been offset against that of secularism. Secularism prevails regardless of any consideration of how it may be applied in accordance with article 18. The total absence of any threats to public order, health and safety or to the fundamental rights of others must be given due weight when the need for measures under article 18, paragraph 3, is assessed. The only unrest affecting the Sikh community in France is that which has arisen because of Act No. 2004-228.

6.7 When there are no specific risks as a result of an author manifesting his religion or beliefs, the Committee should be careful before concluding that there is a need to interfere in such matters. The State party tries to show that the interference is limited in three ways: it occurs exclusively in public schools; it affects only pupils aged between 6 and 18; and it is restricted to symbols which manifest a religious affiliation in a conspicuous manner. Yet in this case, the State party has not demonstrated that the intervention is necessary. Since the author's uncut hair reveals that he is a Sikh, there is only one conceivable obligation, namely that the hair should be covered discretely, as was done with a light material of a dark colour in the form of a *keski*. This compromise has not been properly appreciated.

6.8 The State party places too much emphasis on the dialogue requirement stipulated by the Act. This requirement is unimportant since the Government's position is clearly that no compromise is possible. The assessment report published a year after the law came into effect shows that it had a considerable impact on the small Sikh community in France. Five children were expelled. The students who were not suspended were considerably younger and were prepared to wear clothing over their hair, while others either went to school bare-headed, took correspondence courses or cut their hair. If there have been fewer cases filed by Sikh pupils since the adoption of the law, it is probably because the law restricted their right to a French education if they did not cut their hair, or because they had no other viable alternative (since private education is not affordable by all) than to obey a draconian law. In this particular case, distance learning proved difficult for the author and not at all as good as the education at the school from which he had been excluded. As a result, he had to repeat his final year at a Catholic school, thus in effect losing one year of study.

6.9 Addressing the complaints under article 17, the author argues that the very fact that his hair which, according to his faith, must be kept clean and tidy as a sign of respect and not simply left loose and dishevelled, is uncut, renders his affiliation with the Sikh religion apparent regardless of whether the hair is covered or not.

6.10 With regard to the complaints under articles 2 and 26, the author contends that the law has had a damaging effect on Sikhs and certain other religions. Unlike Sikhism (or Judaism or Islam), Christianity (the main religion in France) does not require symbols to be worn. In fact, the law is therefore prejudicial only to the Sikhs and the followers of other non-Christian religions that require symbols to be worn which the law characterizes as conspicuous. The Committee is invited to conclude that Act No. 2004-228, although apparently neutral, is in reality indirectly discriminatory. The State must therefore justify this discriminatory effect. It must establish that the law pursues a legitimate aim and that the discriminatory effect is proportionate to this aim. In the present case, the discriminatory measure was neither objective nor reasonable.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the question of the exhaustion of domestic remedies, the Committee takes note that the author has sought legal remedy before all the competent administrative and judicial authorities, including the Council of State. The latter concluded that the decision under appeal did not misinterpret articles 9 and 14 of the European Convention. The Committee recalls that for the purposes of the Optional Protocol, an author is not required to cite specific articles of the Covenant before domestic courts, but need only invoke the substantive rights protected under the Covenant. The Committee notes that, in the domestic courts, the author alleged violations of the right to freedom of religion and of the principle of non-discrimination, which are protected under articles 2, 18 and 26 of the Covenant. The Committee is therefore not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering the case on its merits.

7.4 With regard to the complaint of a violation of article 17 of the Covenant, the Committee observes that the author raised the issue of the violation of his right to privacy only during the appeal in cassation before the Council of State. In accordance with domestic law, the Council thus declared the remedy inadmissible. In the circumstances, the Committee considers that the domestic remedies regarding the alleged violation of article 17 of the Covenant have not been exhausted and therefore declares the complaint inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.5 The Committee considers that the author's claims under articles 18 and 26 met all admissibility criteria and proceeds to their examination on the merits.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee must rule on the author's allegation that his expulsion from school for wearing the *keski* is an infringement of his rights to freedom of religion, and in particular, his right under article 18 of the Covenant to manifest his religion. In the author's view, this measure would not be justified as the State party has not produced any evidence that the Sikh community posed a threat to public safety, order, health or morals, or that the fundamental rights of others were affected in any way through the wearing of a turban, *keski* or other head covering. In this regard the Committee takes note of the State party's assertion that Act No. 2004-228 was passed following a national debate as a means of putting an end to the tensions and incidents sparked by the wearing of religious symbols in public primary and secondary schools and to safeguard the neutrality of public education in the interest of pluralism and the freedom of others. The purpose of the Act was to modify the previous state of the law, which, because it depended to a large extent on the assessment of a pupil's behaviour or the occurrence of threats to public order, was particularly difficult to apply and led to interpretations which tended to vary from one school to the next. The Committee also notes the State party's view that the contested measure therefore pursued a legitimate aim, namely, in pursuit of the constitutional principle of secularism (*laïcité*), to preserve respect for neutrality in public education and peace and order in schools. The Committee further notes the State party's affirmation that the contested measure was proportionate to its aim, insofar as it applied only to public schools and required a dialogue to be initiated between the pupil and the school authorities. In this particular instance, several interviews were conducted by the principal of the lycée, the rector and the schools inspector before the author was definitively expelled.

8.3 The Committee refers to its general comment No. 22 concerning article 18 of the Covenant and considers that the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings. The fact that the Sikh religion requires its male members to wear a turban in public is not contested. The wearing of a turban is regarded as a religious duty for a man and is also tied in with a person's identity. The Committee therefore considers that the author's use of a turban or a *keski* is a religiously motivated act, so that the prohibition to wear it under Act No. 2004-228 constitutes a restriction in the exercise of the right to freedom of religion.

8.4 For the purpose of determining the present communication, the Committee focuses on the compatibility with article 18 of the Covenant of the application of the Act in the particular circumstances of this communication.

8.5 The Committee must determine whether the limitation of the author's freedom to manifest his religion or beliefs (art. 18, para. 1) is authorized under article 18, paragraph 3, of the Covenant. In particular it is the responsibility of the Committee to decide whether that limitation is necessary and proportionate to the end that is sought, as defined by the State party. The Committee reaffirms that the State may restrict the freedom to manifest a religion if the exercise thereof is detrimental to the stated aim of protecting public safety, order, health or morals or the fundamental rights and freedoms of others.

8.6 The Committee recognizes that the principle of secularism (*laïcité*) is itself a means by which a State party may seek to protect the religious freedom of all its population, and that the adoption of Act No. 2004-228 responded to actual incidents of interference with the religious freedom of pupils and sometimes even threats to their physical safety. The Committee therefore considers that Act No. 2004-228 serves purposes related to protecting the rights and freedoms of others, public order and safety. Moreover, the Committee notes that the State party does not contend that secularism (*laïcité*) inherently requires that recipients of Government services avoid wearing conspicuous religious symbols or clothing in Government buildings generally, or in school buildings in particular. Rather, the regulation was adopted in response to certain contemporary incidents.

8.7 In the present case the Committee notes the author's statement, not challenged by the State party, that for Sikhs males, wearing a *keski* or turban is not simply a religious symbol, but an essential component of their identity and a mandatory religious precept. The Committee also notes the State party's explanation that the prohibition of wearing religious symbols affects only symbols and clothing which conspicuously display religious affiliation, does not extend to discreet religious symbols and the Council of State takes decisions in this regard on a case-by-case basis. However, the Committee is of the view that the State party has not furnished compelling evidence that, by wearing his *keski*, the author would have posed a threat to the rights and freedoms of other pupils or to order at the school. The Committee is also of the view that the penalty of the pupil's permanent expulsion from the public school was disproportionate and led to serious effects on the education to which the author, like any person of his age, was entitled in the State party. The Committee is not convinced that expulsion was necessary and that the dialogue between the school authorities and the author truly took into consideration his particular interests and circumstances. Moreover, the State party imposed this harmful sanction on the author, not because his personal conduct created any concrete risk, but solely because of his inclusion in a broad category of persons defined by their religious conduct. In this regard, the Committee notes the State party's assertion that the broad extension of the category of persons forbidden to comply with their religious duties simplifies the administration of the restrictive policy. However, in the Committee's view, the State party has not shown how the sacrifice of those persons' rights is either necessary or proportionate to the benefits achieved. For all these reasons, the Committee concludes that the expulsion of the author

from his lycée was not necessary under article 18, paragraph 3, infringed his right to manifest his religion and constitutes a violation of article 18 of the Covenant.

8.8 Having ascertained that a violation of article 18 of the Covenant occurred, the Committee will not examine the claim based on a separate violation of the principle of non-discrimination guaranteed by article 26 of the Covenant.<sup>6</sup>

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 18 of the Covenant.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future and should review Act No. 2004-228 in the light of its obligations under the Covenant, in particular article 18.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>6</sup> Communication No. 1876/2009, *Singh v. France*, Views adopted on 22 July 2011, para. 8.5.