

July 2009

Aktas v. France (dec.) - 43563/08

Decision 30.6.2009 [Section V]

Article 9

Article 9-1

Manifest religion or belief

Expulsion of pupils from school for refusing to remove conspicuous symbols of religious affiliation during lessons: *inadmissible*

Article 14

Discrimination

Expulsion of pupils from school for refusing to remove conspicuous symbols of religious affiliation during lessons: *inadmissible*

[This summary also covers the following decisions of 30 June 2009: *Bayrak v. France* (no. 14308/08), *Gamaleddyn v. France* (no. 18527/08), *Ghazal v. France* (no. 29134/08), *Jasvir Singh v. France* (no. 25463/08) and *Ranjit Singh v. France* (no. 27561/08)]

At the start of the school year 2004-2005 some Muslim girls went to school wearing headscarves to cover their hair, while some young men wore the Sikh keski or under-turban. The headmasters considered these accessories to be in breach of a French law passed in 2004 prohibiting the wearing of all conspicuous signs of religious faith during lessons. When the pupils refused to remove them they were denied access to the classroom and some were placed in a separate study room. Then three girls changed their headscarves for bonnets. After discussions with their families, however, the schools' disciplinary bodies finally expelled the pupils. The area schools directors concerned upheld that decision while seeking solutions to enable the pupils to continue their studies. The pupils challenged the expulsions before the administrative courts. Their applications were dismissed at first instance and on appeal. In the cases of *Aktas*, *Bayrak* and *Gamaleddyn*, requests for legal aid to appeal to the *Conseil d'Etat* on points of law were rejected for lack of serious grounds of appeal. Miss *Aktas* and the fathers of the *Singh* boys nevertheless lodged appeals with the *Conseil d'Etat*, but to no avail.

Inadmissible under Article 9: In all of these cases, prohibiting the pupils from wearing conspicuous signs of their religious beliefs in class was a restriction on their freedom to manifest their religion. The restriction was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of others and public order. This was why the pupils had been expelled, not because of any objection to their religious convictions. The ban was also meant to protect the constitutional principle of secularity, an aim in keeping with the values underlying the Convention and the Court's case-law. In addition, the permanent

wearing of a bonnet instead of a headscarf was also a conspicuous manifestation of religious beliefs. The 2004 Act had anticipated the appearance of new symbols of religious beliefs, as well as possible attempts to circumvent the law. In these circumstances, and having regard to the margin of appreciation left to the national authorities in this area, the expulsions had been justified and proportionate to the aim pursued. Moreover, the pupils had been able to continue their studies in other schools: *manifestly ill-founded*.

(See *Dogru and Kervanci v. France*, nos. 31645/04 and 27058/05, Information Note no. 114)

Concerning the procedure followed by the school until Miss Gamaleddyn was expelled, while ensuring that the regulations were correctly applied, the school authorities had continued to teach the girl during the period of dialogue provided for in the law. The situation during the transition period had therefore been neither illegal nor arbitrary: *manifestly ill-founded*.

Inadmissible under Article 14 in conjunction with Article 9: In the cases of Aktas, Ghazal and J. and R. Singh the impugned legal provisions did not affect the children's religious beliefs but pursued the legitimate aim of protecting public order and the rights and freedoms of others. Their purpose was to preserve the neutrality and secularity of teaching establishments and they applied to all conspicuous religious symbols: *manifestly ill-founded*.

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