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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 2921/2016*, **

Submitted by:	Naïma Mezhoud (represented by counsel, Sefen Guez Guez)
Alleged victim:	The author
State party:	France
Date of communication:	1 November 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 December 2016 (not issued in document form)
Date of adoption of Views:	14 March 2022
Subject matter:	Ban on wearing a headscarf at a training site
Procedural issues:	Admissibility *ratione materiae*
Substantive issues:	Freedom to manifest one's religion; discrimination on the basis of religion and gender
Article(s) of the Covenant:	18 and 26
Article(s) of the Optional Protocol:	2

1. The author of the communication is Naïma Mezhoud, a national of France, born in 1977. She claims that the State party has violated her rights under articles 18 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 17 May 1984. The author is represented by counsel, Sefen Guez Guez.

The facts as submitted by the author

2.1 The author is a Muslim and, because of her religious beliefs, wears a headscarf to cover her hair. As part of her vocational training, she enrolled at Greta Tertiaire 94 – a group

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not take part in the examination of the present communication.

of public establishments for adults' lifelong learning – in order to study for an advanced vocational training certificate (*brevet de technicien supérieur* (BTS)) to qualify as a management assistant for small and medium-sized businesses and industries. As a person who already held several qualifications, the author hoped that this Greta training course would help her find viable employment.

2.2 On 14 May 2010, her file was received and she was called to the Greta Tertiaire 94 headquarters for an individual interview. The author maintains that she came to the interview wearing her headscarf. After passing the interview and the entrance test, she was invited through a letter dated 30 August 2010 to enrol at the Greta for her management assistant training. On 6 September 2010, she arrived at the Saint-Exupéry secondary school in Créteil, where the training was to take place. However, she was unable to enter the establishment because the school director verbally denied her entry owing to the ban on wearing religious symbols in a public educational establishment. This verbal refusal was confirmed in writing on 18 September 2010 by the director of the Greta, who stated that the author's entry to the establishment was conditional on her removing her headscarf.

2.3 On 20 September 2010, the author reiterated her request to take part in the training course and submitted an initial appeal to the higher-level authority of the Greta, the Créteil education authority. In a letter of 25 January 2011, the Créteil education authority confirmed the decision of the director of the establishment.

2.4 The author filed an application with the Melun Administrative Court, in which she claimed religious discrimination within the meaning of the Criminal Code and articles 9 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). On 19 November 2013, the Court rejected her claim, clarifying that article L 141-5-1 of the Education Code, as modified by Act No. 2004-228 of 15 March 2004 governing, in application of the principle of secularism, the wearing of symbols or clothes indicating religious affiliation in public primary, middle and secondary schools and which prohibits the students of public education centres from wearing conspicuous religious symbols, did not apply to the author. The Court found that no risk of disturbance of public order had been demonstrated in the case; however, it found that since the Greta training was a full-time course delivered on the school premises and that the layout of the site necessarily meant that the trainees and the secondary school students (who were subject to the ban on conspicuous religious symbols) would mix, the need for proper functioning of the establishment in question justified the restriction on the author and the administration would have made the same decisions based only on those grounds. The Court concluded that no excessive interference with the author's freedom of expression and freedom to manifest her religious beliefs had been demonstrated, in view of the public interest aim.

2.5 The author appealed against this decision before the Paris Administrative Court of Appeal. On 12 October 2015, the Court rejected the author's appeal. The Court found that the Greta trainees would meet secondary school students who were subject under the Education Code to the ban on conspicuous religious symbols, that their presence at the same time as a Greta trainee wearing such a symbol was likely to disturb order in the establishment and that that reason alone was sufficient to justify the decision. The Court also found that, since the decision was well founded, it did not excessively infringe the author's freedom to manifest her religion in view of the public interest aim pursued and did not constitute discrimination. Finally, the author applied to the Council of State, which declined to admit her appeal in a decision of 2 May 2016.

2.6 The author states that she has not submitted a complaint on this matter to any other procedure of international investigation or settlement.

The complaint

3.1 The author claims a violation of her right to education under article 13 of the International Covenant on Economic, Social and Cultural Rights, because she was refused access to vocational training owing to her Muslim faith.

3.2 The author also alleges that the denial of her access to training while wearing a headscarf violated her right to freely manifest her religion under article 18 of the International

Covenant on Civil and Political Rights. She considers that such denial constitutes a limitation not permitted by the provisions of article 18 (3) of the Covenant and recalls that, in a very similar case, the Committee found that exclusion from a school for wearing a religious symbol was neither necessary nor proportionate to the intended purposes and constituted a violation of article 18 of the Covenant.[1] Firstly, the author asserts that the ban on her wearing a headscarf, which she does for religious reasons, cannot be considered to be "prescribed by law". There is no legal provision prohibiting Greta students from wearing religious symbols. There is a restrictive law, the Act of 15 March 2004; however, its purpose is to ban students of public primary, middle and secondary schools from wearing conspicuous religious symbols. The Act does not apply to other groups, such as Greta students, who are adults by definition. Moreover, the implementing circular of the Act of 15 March 2004 rules out the Act's applicability to parents of students and to candidates who come to a public educational establishment to sit an examination and who do not thereby become students in public education.[2]

3.3 The limitation imposed on the author results in interference with her freedom to manifest her religious beliefs that is disproportionate to the alleged disturbance of public order that would be caused by her presence on the premises of the Greta, especially as factual analysis of the situation shows that the risk is minor: owing to their hours and spatial concentration, very few Greta trainees would meet secondary school students in the shared school premises and a very low percentage of Greta trainees would wear a headscarf. In numerical terms, the risk of disturbance of public order would be minimal, assuming it exists.

3.4 Moreover, the limitation is not necessary in a democratic society because the State party has not demonstrated that wearing a headscarf would really disturb public order. The author considers that the national courts are using a legal fiction to find that her presence alongside a group subject to a measure of legal prohibition is likely to result in such disturbance. This reasoning prejudges the possibility of negative reactions from other users of the secondary school. However, the author states that there are other cases which result in a similar simultaneous presence without the least disturbance being caused. Firstly, her case can be compared with that of parents who accompany students on school trips, whose right to express their religious beliefs, for example by wearing a headscarf, has been recognized by the courts.[3] Secondly, there are other Greta establishments in which such simultaneous presence occurs without causing any disturbance of public order: the author provides evidence of other Gretas functioning well despite the presence of women wearing Islamic headscarves in secondary schools. The author also argues that, in an official communication of 3 June 2014, the director of Hollerith middle school stated that "after consultation with the legal unit of the local education authority and in the light of the instruments referred to, it appears that the trainees are absolutely entitled to wear" an Islamic headscarf.[4] Moreover, the author refers to a decision of the Council of State of 26 September 2016, in which it overturned the order issued by the mayor of a coastal municipality, banning access to the beach with religious symbols (commonly referred to as anti-burkini orders).[5] The Council of State had found that the mayor's limitations of freedoms were not justified with respect to the proven risks of disturbance of public order, and the fact that an altercation between a family with two members wearing burkinis and other beach users had taken place did not entail proven risks of disturbance of public order of a kind that would justify the ban. The author considers that, in her own case, the alleged risk of disturbance of public order was also not real.

3.5 The author argues that her rights under article 26 of the Covenant have been violated, as she did not benefit from the protection from discrimination to which she was entitled and

[1] *Singh v. France* (CCPR/C/106/D/1852/2008).

[2] France, Circular of 18 May 2004 on the implementation of Act No. 2004–228 of 15 March 2004 governing, in application of the principle of secularism, the wearing of symbols or clothes indicating religious affiliation in public primary, middle and secondary schools, *Journal officiel de la République française*, No. 118, 22 May 2004, art. 2.3.

[3] See Nice Administrative Court, fifth chamber, decision No. 1305386, 9 June 2015. See also Amiens Administrative Court, third chamber, decision No. 1401806, 15 December 2015.

[4] A copy of the communication was provided by the author.

[5] Council of State, decision No. 403578, 26 September 2016.

was subjected to discriminatory treatment. She considers that the refusal to allow her to access her training is based on a reason related to her religion and religious beliefs, recalling that wearing a headscarf has been recognized by the European Court of Human Rights and the Committee as an act motivated or inspired by a religious belief.[6, 7]

3.6 The author urges the Committee to find that the State party is obliged to provide her with an effective remedy, compensate her for the harm suffered, take the necessary measures to prevent similar violations from occurring in future and publish the Committee's Views.

State party's observations on admissibility

4. By a note verbale dated 22 February 2017, the State party indicated that it did not wish to contest the admissibility of the communication. However, the State party wishes to note that the author is alleging a violation of article 13 of the International Covenant on Economic, Social and Cultural Rights and that the Committee is not competent to consider alleged violations of that Covenant.

State party's observations on the merits

5.1 By a note verbale dated 22 June 2017, the State party submitted its observations on the merits of the communication.

5.2 The State party sets out the applicable law guaranteeing religious freedom and non-discrimination, referring to article 10 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 and articles 1 and 2 of the Constitution of 4 October 1958.

5.3 The State party explains that the issue of balancing the exercise of freedom of religion with the requirements resulting from the neutrality of public services in education has been arising increasingly often and that the neutrality of public services is a constitutional imperative.[8]

5.4 Regarding students' freedom to manifest their religion, the Council of State issued an opinion on 27 November 1989 followed by a decision on 2 November 1992 in which it specified that the principle of secularism requires that "education be provided with respect both for neutrality on the part of curricula and teachers and for students' freedom of conscience".[9] The Council of State thereby recognized students' freedom to wear religious symbols, which, however, is not absolute. The exercise of this freedom must not interfere with "teaching activities, the content of curricula and the obligation of regular attendance". It may therefore be limited when it would undermine the requirements inherent in the functioning of public services, which the Council of State considers to be the case in four types of situation:

(a) when the manifestation of religion constitutes an act of pressure, provocation, proselytism or propaganda;

(b) when the manifestation would result in infringement of the dignity, pluralism or freedom of students or any members of the educational community or would endanger their health or safety;

(c) when the manifestation would be likely to disturb educational activities or the educational role of teachers;

(d) when the manifestation would be likely to disturb the order of the establishment or the normal functioning of the service.

5.5 The Act of 15 March 2004 amending the Education Code was introduced to regulate the wearing of symbols or clothing indicating religious affiliation in public primary, middle

[6] European Court of Human Rights, *Leyla Şahin v. Turkey*, application No. 44774/98, judgment 10 November 2005, para. 78; *Kervanci v. France*, application No. 31645/04, judgment 4 December 2008, para. 47; and *Dogru v. France*, application No. 27058/05, judgment 4 December 2008, para. 47.

[7] *Singh v. France*, para. 8.7.

[8] See Constitutional Council, decision no. 86–217 DC, 18 September 1986.

[9] Council of State, decision no. 130394, 2 November 1992.

and secondary schools, in keeping with the principle of secularism. As stated in the Act's explanatory memorandum:

> "Schools must be protected so that they can provide equality of opportunity, equal acquisition of values and knowledge, equality between girls and boys and co-education in all subjects, including physical education and sports. This does not mean moving the borders of secularism. Neither does it mean turning schools into places of uniformity and anonymity, where religion is ignored. It means allowing teachers and school directors to perform their duties calmly, with the assertion of a clear rule that has long been part of our customs and practices. While students at public primary, middle and secondary schools are of course free to practise their faith, this must be done while observing the secularism of the national public school system. Neutrality in schools ensures that students' freedom of conscience will be respected and that all beliefs will be respected equally."

Accordingly, article L 141-5-1 of the Education Code provides that: "In public primary, middle and secondary schools, students are prohibited from wearing symbols or clothing that conspicuously demonstrates a religious affiliation. The internal rules and regulations shall recall that any disciplinary procedure must be preceded by a conversation with the student." The expression "conspicuously demonstrates a religious affiliation" refers to symbols such as a yarmulke, large cross or headscarf. However, the State party clarifies that the Act is applicable to the students of public primary, middle and secondary schools, while the decisions of the Council of State remain the applicable legal framework in other education services, such as universities.[10]

5.6 The State party notes that the freedom at issue in the present case is not that of having a religion but the freedom to manifest one's religion, and that this freedom is not absolute and may be subject to limitations in accordance with article 18 (3) of the Covenant.[11] General comment No. 22 on article 18 of the Covenant sets out the provisions of article 18 (3) regarding the restrictions that a State may place on the freedom to manifest one's religion. In paragraph 8, the Committee recalls that such limitations are subject to strict conditions: they must be legal (in the broad sense of the term), necessary and proportionate in the light of the aims pursued (public safety, order, health or morals and the fundamental rights and freedoms of others). The Committee goes on to specify that "limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated" and that "restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner". The State party notes that these three criteria are the same as those used by the European Court of Human Rights to consider potential violations under article 9 (2) of the European Convention on Human Rights.

5.7 The State party does not deny that the author's wearing of a headscarf falls under her freedom to manifest her religion and that refusing her access to the site of her vocational training because she was wearing it constitutes a restriction of that freedom. However, the State party contends that the restriction in question is compatible with article 18 of the Covenant, as it is prescribed by law, was imposed in pursuit of a legitimate aim and is proportionate to the legitimate aim pursued.

5.8 The State party submits that the restriction is prescribed by law. It does not deny that, as asserted by the author, article L 141-5-1 of the Education Code (as amended by the Act of 15 March 2004) does not apply in her case. However, the State party submits that there is a sufficiently well-defined and precise legal basis for the refusal given to the author. The Melun Administrative Court and the Paris Administrative Court of Appeal have ruled in the present case, rejecting the application of the Act of 15 March 2004 but recalling the applicable principles set out by the Council of State in its opinion of 1989 and then in its decision of 1992. These applicable principles have been constantly reaffirmed by the Council of State and all administrative courts.[12] The State party further notes that the Committee, in assessing

[10] See Council of State, decision No. 170106, 26 July 1996.

[11] *Hudoyberganova v. Uzbekistan* (CCPR/C/82/D/931/2000) and *Prince v. South Africa* (CCPR/C/91/D/1474/2006).

[12] See, in particular, Council of State, decision no. 145656, 14 March 1994; and Council of State, decision No. 170106, 26 July 1996.

the condition requiring the predictability of law, in the case of *Ross v. Canada* found that despite the vague criteria of the provisions that were applied in the case, the Supreme Court considered all aspects of the case and found that there was sufficient basis in domestic law for the parts of the Order which it reinstated.[13] The Committee also took into account the fact that the author had been heard in all proceedings and that he had had, and had availed himself of, the opportunity to appeal the decisions against him. Lastly, it stated that it was not for the Committee to re-evaluate the findings of the Supreme Court on the point in question and so found that the restriction was provided for by law. In the refusal given to the author by the director of the Greta, then by the head of the Créteil education authority, it is expressly stated that the decisions in her case were not based on article L 141-5-1 of the Education Code, as noted by the administrative court and then the administrative court of appeal. Furthermore, the author was effectively able to submit her observations throughout the administrative and then judicial proceedings. Accordingly, the Government considers that the restriction imposed on the author was indisputably prescribed by law.

5.9 The State party argues that the aims of the restriction on the author's freedom to manifest a religion are to protect the rights and freedoms of others and to protect order, which are legitimate within the meaning of article 18 (3) of the Covenant. In this regard, the Minister of National Education, in a response to a parliamentary question, explains that "regulation of the wearing of conspicuous religious symbols by vocational training students in educational establishments may be justified by public interest considerations related to the need to ensure the proper functioning of such establishments", given the "simultaneous presence in the same establishment of basic education and vocational training users who are subject to different rules, which [can] only give rise to the risk of disturbances of public order".[14] The report of the commission reviewing the application of the principle of secularism in France, which was issued prior to the adoption of the Act of 15 March 2004, recalled that the issue of the expression of freedom of religion took a very specific form in school settings, where "students enrolled for long periods of time must learn and live together in a situation where they remain vulnerable and susceptible to outside influence and pressure".[15] The Committee has already found that the Act of 15 March 2004 "served purposes related to protecting the rights and freedoms of others, public order and safety".[16] Although the Act is not applicable in the present case, the State party considers that there is no objective reason to depart from this analysis, given that the restriction imposed on the author had the same purposes. Indeed, the training course in question takes place from 8:30 a.m. to 5:30 p.m. from Monday to Friday, on the premises of a public secondary school, where the author is thus brought into contact with secondary school students, who are subject to the limitations of the Act of 15 March 2004; it is therefore necessary to reconcile the freedom to manifest one's religion, which the author enjoys, with the need to preserve order and the proper functioning of the public school concerned.

5.10 The State party submits that the restriction is also proportionate to the aims pursued. The State party recalls that the recent cases put forward by the author, in which the courts overturned municipal orders banning the wearing of clothing conspicuously demonstrating religion on French beaches, are in no way related to the present case, which concerns freedom of religion and the necessities of maintaining order and proper functioning in a public school. The State party further recalls that the principle applicable outside of public primary, middle and secondary schools is the free manifestation of beliefs, including religious beliefs. The Committee has already noted these points in its Views on the above-mentioned case of *Singh v. France*, noting that the State party did not contend that secularism (*laïcité*) inherently required that recipients of Government services avoid wearing conspicuous religious symbols or clothing in Government buildings generally, or in school buildings in particular"[17] The State party considers that the restriction in the present case is justified by the specific

[13] *Ross v. Canada* (CCPR/C/70/D/736/1997), para. 11.4.

[14] Response by the Minister of National Education to parliamentary question No. 81700 of 22 June 2006, available at: https://questions.assemblee-nationale.fr/q13/13–81700QE.htm.

[15] Commission reviewing the application of the principle of secularism, Report to the President of the Republic, 11 December 2003, p. 28.

[16] *Singh v. France*, para. 8.6.

[17] Ibid.

context of the author's training course. The course was held at a time and place where secondary school students would mix with trainees, and both secondary school students and trainees were fully able to go to all the places accessible to them, such as common spaces and passageways. In such circumstances, only identical rules imposed on all users of the same establishment would seem able to guarantee both the maintenance of public order and the normal functioning of the service. It therefore seems fully justified for the internal rules and regulations of a Greta to take that circumstance into consideration and be able to ban the wearing of religious symbols by its trainees. This ban is naturally limited to cases in which the trainees actually mix with school students, meaning cases in which the working hours of the Greta coincide with the secondary school's hours, as was indicated by the Minister of National Education in his reply to a parliamentary question on the subject.[18] The State party recalls that the Committee, in *Singh v. France*, accepted that the ban in question concerned only symbols and clothing which conspicuously displayed religious affiliation, that it did not extend to discreet religious symbols and that the Council of State took decisions in this regard on a case-by-case basis.[19] The State party also recalls that the European Court of Human Rights has found that the ban on wearing conspicuous religious symbols pursues "legitimate aims of protecting the rights and freedoms of others and protecting public order" and that the "interference in question was justified as a matter of principle and proportionate to the aim pursued".[20] The European Court of Human Rights also took into account the "period of dialogue" that preceded the applicant's expulsion from school, finding that the expulsion was not disproportionate.[21] It also noted that the applicant "could continue his schooling in a distance educational establishment or private educational establishment".[22] The State party notes that, in the present case, a dialogue was instituted between the author, the director of Saint-Exupéry secondary school and the director of the Greta. The author was also able to appeal to a higher-level body by presenting her position before the head of the local education authority, before lodging an appeal with the administrative court. Therefore, many safeguards accompanied the disputed measures, which were subject to effective judicial control before the administrative courts. Lastly, the penalty imposed on the author was the only possible outcome of a fruitless dialogue between the parties concerned that would ensure proper functioning of the school. Moreover, the author was in vocational training and not basic education; she is free to complete her training course in another establishment or by correspondence, for example through the National Centre for Distance Learning, which offers a course for the advanced vocational training certificate for management assistants in small and medium-sized enterprises or small and medium-sized industries. Accordingly, in the particular circumstances of the case, the State party considers that the limitation imposed on the author's freedom to manifest her religion was necessary and proportionate to the aims pursued. It therefore fully meets the requirements of article 18 (3) of the Covenant.

5.11 Regarding the claim under article 26 of the Covenant, the State party submits that the rules determined by the case law of the Council of State do not result in any discrimination, since no particular religion or particular sex is targeted. The rules arising from this case law are applied in the same way, irrespective of the religion concerned. Thus, the author cannot claim that the refusal she faced, based on these rules, was discriminatory. It is true that, in this case, persons who do not wish to manifest their religion or who manifest it in a way compatible with the normal functioning of the service and the maintenance of order in the establishment are likely to be treated differently from persons who manifest their religion in an incompatible way. However, this difference is based on reasonable and objective criteria and thus cannot be considered indirect discrimination within the meaning of article 26 of the Covenant. The current legal framework in no way prohibits a person from manifesting his or her religious affiliation. However, this manifestation must be limited in the situations

[18] See footnote 14 above.

[19] *Singh v. France*, para. 8.7.

[20] See European Court of Human Rights, *Dogru v. France*, application No. 27058/05, judgment 4 December 2008; and *Kervanci v. France*, application No. 31645/04, judgment 4 December 2008. These two cases concern the expulsion of two students from their public middle school owing to their refusal to remove a headscarf during physical education and sports classes.

[21] European Court of Human Rights, *Singh v. France*, application No. 27561/08, decision on admissibility, 30 June 2009.

[22] Ibid.

established by the case law of the Council of State and set out above. The fact that persons who wish to adopt behaviours based on their beliefs, whether religious or otherwise, cannot do so owing to a restriction imposed by the legal framework established by the Council of State cannot in itself be considered to constitute discrimination as long as the prohibition has a reasonable basis and is proportionate to the legitimate aim pursued, as has been shown in the present case.

The author's comments on the State's party's submission

6.1 By letter of 4 November 2019, the author submitted her comments on the State party's observations on the merits of the communication.

6.2 The author submits that the State party has not demonstrated the existence of a legal framework justifying the restriction imposed on her, given that the Act of 15 March 2004 is not applicable.

6.3 The author considers that, in its observations, the State party does not show that the restriction on the freedom to manifest her religion was necessary and proportionate to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. In particular, the State party has not shown how the author's presence at the secondary school would obviously result in a disruption of order and the proper functioning of the establishment. On the contrary, the State party has not provided any evidence to contradict the evidence submitted by the author, consisting in several statements from other Greta trainees who were accepted in secondary schools wearing their Islamic headscarves without their presence resulting in any particular reaction. In the absence of evidence that wearing a headscarf inside a secondary school would constitute a threat, all the characteristics for a violation of article 18 of the Covenant are in place.

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 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee notes that the State party has challenged the Committee's competence to receive claims related to rights contained in the International Covenant on Economic, Social and Cultural Rights. The Committee recalls that article 1 of the Optional Protocol provides that a State party to the International Covenant on Civil and Political Rights who becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. Accordingly, the Committee considers that it is not competent to consider the claim relating to article 13 of the International Covenant on Economic, Social and Cultural Rights and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.4 The Committee notes that the State party has not contested the admissibility of the rest of the communication. It further notes that the author filed an appeal with the Council of State, which rejected it in a decision of 2 May 2016. Accordingly, the Committee finds that it is not prevented by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

7.5 The Committee also considers that, for the purposes of admissibility, the author has sufficiently substantiated her claims regarding her right to freedom of religion, including to manifest her religion, and the prohibition of any discrimination based on religion and religious beliefs. Accordingly, the Committee declares the communication admissible in that it raises issues relating to articles 18 and 26 of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

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

8.2 The Committee notes the author's claim that being denied access to her training course while wearing a headscarf violated her right to freely manifest her religion under article 18 of the Covenant, since it constituted a limitation that was not prescribed by law, not necessary in a democratic society and not proportionate.

8.3 The Committee recalls that, as stated in paragraph 4 of its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, concerning article 18 of the Covenant, the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings. The Committee also notes that the wearing of a headscarf covering all or part of the hair is normal practice for many Muslim women, who see it as an integral part of the expression of their religious beliefs. The Committee further notes that the State party does not deny that the author's wearing of a headscarf falls under her freedom to manifest a religion and that denying her access to a training course while wearing a headscarf constitutes a restriction on that freedom. The Committee therefore considers that the prohibition on the author constitutes a restriction on the exercise of her right of freedom to manifest her religion.

8.4 The Committee must therefore determine whether the restriction on the author's freedom to manifest her religion or beliefs (article 18 (1) of the Covenant) is consistent with the conditions set forth in article 18 (3) of the Covenant, namely to be prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The Committee observes that, as indicated in paragraph 8 of its general comment No. 22 (1993), paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

8.5 The first question for the Committee is therefore to determine whether the restriction faced by the author can be considered as prescribed by law, in accordance with article 18 (3) of the Covenant. This poses the principle of legality, akin to the requirement that limitations must be "provided by law" in other articles of the Covenant.[23] The norm in question must be made accessible to the public, must be formulated with sufficient precision to enable individuals to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with its execution.[24]

8.6 In the present case, the Committee notes that, according to the author, the restriction she faced was not prescribed by law because the Act of 15 March 2004, which imposes such a restriction, does not apply to her but to the students of public primary, middle and secondary schools. The State party recognizes that the Act of 15 March 2004 does not apply to the author but considers that the restriction was prescribed by the law contained in the Council of State opinion of 27 November 1989 and decision of 2 November 1992, in which it specified that the exercise of the freedom to manifest a religion may be restricted when it would undermine the requirements inherent in the functioning of public services, which the Council of State considers to be the case in four types of situation. The Committee observes that neither the decision of the Melun Administrative Court nor the decision of the Paris Administrative Court of Appeal refers to this decision of the Council of State, although they repeat part of its content. The Court and the Court of Appeal consider that the restriction on users' freedom to wear symbols showing their affiliation to a religion is derived from the principle of secularism, which follows from article 10 of the Declaration of the Rights of

[23] Human Rights Committee, general comment No. 37 (2020), para. 39.

[24] Human Rights Committee, general comment No. 34 (2011), para. 25.

Man and of the Citizen and article 1 of the Constitution of 4 October 1958. The Committee notes that no other directly applicable provision is indicated in these decisions.

8.7 The Committee notes that article 10 of the Declaration of the Rights of Man and of the Citizen 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", while article 1 of the Constitution establishes that: "France shall be an indivisible secular, democratic and social republic. It shall ensure the equality of all citizens before the law, without distinction on grounds of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis." The Committee notes that the above-mentioned judicial decisions, using the same reasoning as the Council of State in its decision of 2 November 1992, derive from these two provisions situations in which the freedom to manifest a religion may be restricted, considering that the author's case corresponds to one of these situations (when such manifestation would disrupt educational activities). However, the Committee considers that the content of these two articles, which are very broadly applicable provisions, is not sufficiently precise to enable an individual to regulate his or her conduct accordingly or to enable those charged with their execution to ascertain what sorts of manifestation of religion or beliefs are properly restricted and what sorts are not. Moreover, the Committee notes that, according to the information submitted by the author and not challenged by the State party, the rule apparently derived from these two provisions has been interpreted differently by different persons charged with applying the law, since there are apparently other education centres similar to the one in the present case where the administration considers that the applicable law allows vocational training students to wear an Islamic headscarf, as shown by the communication from the director of Hollerith middle school and the statements of two women provided by the author.

8.8 In view of the above, the Committee considers that neither the decisions of the Council of State indicated by the State party nor the provisions of the Constitution and the Declaration of the Rights of Man and of the Citizen are sufficiently precise to enable an individual to regulate his or her conduct accordingly or to enable those charged with their execution to ascertain what sorts of manifestation of religion or beliefs are properly restricted and what sorts are not. Accordingly, the Committee considers that the restriction faced by the author was not prescribed by law within the meaning of article 18 (3) of the Covenant.

8.9 Regarding the requirement for the restriction to be considered necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, in line with article 18 (3) of the Covenant, the Committee recalls that, in accordance with paragraph 8 of its general comment No. 22 (1993), restrictions must be directly related and proportionate to the specific need on which they are predicated. The Committee takes note of the State party's argument that the restriction imposed on the author had a legitimate aim, namely to protect the rights and freedoms of others and to protect order, since the restriction was necessary for the proper functioning of the educational establishment, given the "simultaneous presence in the same establishment of basic education and vocational training users, who are subject to different rules, which is likely to result in the disruption of public order".[25] The reasoning would thus consist in considering that the law applied to school students must by extension be applied to the author, in order to avoid disrupting the proper functioning of the establishment. The Committee also notes that the author has provided statements, not challenged by the State party, in which other trainees were able to attend training while wearing an Islamic headscarf and mixing with school students subject to the restriction imposed by the Act of 15 March 2004, without that causing a disruption of public order or impeding the proper functioning of the establishment. The Committee also recalls that it has expressed its concern about the application of the law on the wearing of religious symbols considered "conspicuous" in public schools and found that this law infringes the freedom to express one's religion or belief and has a disproportionate impact on members of specific religions and on girls.[26] Given that, on the one hand, no example of disruption of public order or impediment to the proper functioning of an educational establishment has

[25] Made by the Minister of National Education in response to parliamentary question No. 81700 of 22 June 2010 (see footnote 14 above).

[26] CCPR/C/FRA/CO/5, para. 22.

been provided and that, on the other hand, the Committee has already considered that in at least one case the application of the Act of 15 March 2004, which is applied to the school students with whom the author must share space, constituted a violation of article 18 of the Covenant, the Committee considers that it has not been shown that the restriction was necessary to protect public order or the rights and freedoms of others.[27]

8.10 The Committee therefore concludes that the restriction imposed on the author, prohibiting her from participating in her vocational training course while wearing a headscarf, constitutes a restriction interfering with her freedom of religion in violation of article 18 of the Covenant.

8.11 The Committee notes that the author also claims a violation of article 26 of the Covenant because she considers that her access to the training course was denied based on a reason related to her religion and religious beliefs. The Committee also notes that, according to the State party, the provision does not result in any discrimination because no particular religion or sex is targeted.

8.12 The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which discrimination is defined in paragraph 7 as any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. The Committee recalls that a violation of article 26 of the Covenant may result from a rule or measure that is apparently neutral or lacking any intention to discriminate, when it has a discriminatory effect.[28] However, not every differentiation based on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as listed in the Covenant, amounts to discrimination, as long as it is based on reasonable and objective criteria in pursuit of an aim that is legitimate.

8.13 The Committee must therefore consider whether this distinction constitutes discrimination in violation of article 26 of the Covenant. The Committee recalls that on another occasion it has already found that banning the wearing of conspicuous religious symbols may constitute intersectional discrimination based on gender and religion.[29] The Committee further recalls that it has already expressed its concern that the effect of the Act of 15 March 2004 on certain groups' feeling of exclusion and marginalization could run counter to the intended goals.[30] The Committee notes that the effect of the restriction imposed on the author was to extend the application of the Act of 15 March 2004 to the author, in order not to create a situation of inequality with the secondary school students. The Committee also notes that, in accordance with a publication of the Ministry of National Education, the distinction between "conspicuous" or "clearly visible" religious symbols and others has a markedly greater effect on Muslim women wearing an Islamic headscarf.[31] The Committee concludes that the application of the Act of 15 March 2004 to the author as a Muslim woman who chooses to wear a headscarf constitutes differential treatment.

8.14 Accordingly, the Committee must decide whether the differential treatment of the author has a legitimate aim under the Covenant and meets the criteria of reasonableness and objectivity. The Committee notes that the State party submits that, while persons who do not wish to manifest their religion or who manifest it in a way compatible with the normal functioning of the service and the maintenance of order in the establishment are likely to be treated differently from persons who manifest their religion in an incompatible way, this difference is nonetheless based on reasonable and objective criteria and thus cannot be

[27] *Singh v. France*, para. 8.7.

[28] *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2.

[29] *F.A. v. France* (CCPR/C/123/D/2662/2015 and CCPR/C/123/D/2662/2015/Corr.1), para. 8.13.

[30] CCPR/C/FRA/CO/5, para. 22.

[31] *F.A. v. France*, para. 8.12; and Hanifa Chérifi, "Application de la loi du 15 mars 2004 sur le port des signes religieux ostensibles dans les établissements d'enseignement publics" paper prepared for the Ministry of National Education, Higher Education and Research, July 2015), p. 34 ("The total number of religious signs counted during [the] year 2004–2005 is 639, which includes two large crosses, eleven Sikh turbans, and the remaining signs [626], all of which are Islamic veils.")

considered indirect discrimination within the meaning of article 26 of the Covenant. However, the Committee notes that this differential treatment led to the author being prevented from attending a vocational training course on which she had been accepted. Having already found that such a prohibition was not prescribed by law and did not have a legitimate aim under the Covenant, the Committee concludes that this differential treatment does not have a legitimate aim under the Covenant and does not meet the criteria of reasonableness and objectivity. The Committee therefore concludes that the refusal to allow the author to participate in the training course while wearing a headscarf constitutes intersectional discrimination based on gender and religion, in violation of article 26 of the Covenant.

9. The Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 18 and 26 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obligated, inter alia, to: provide adequate compensation and appropriate measures of satisfaction to the author, including readmission to the training course if the author so wishes, compensation for the lost opportunity to take the training course and the reimbursement of any legal costs, and for any non-pecuniary losses incurred by the author owing to the facts of the case. The State party is also under an obligation to ensure that similar violations do not occur again.

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 or 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.