EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

Two Chamber judgments in respect of France on wearing the headscarf in school

The European Court of Human Rights has today notified in writing its Chamber judgments[1] in the cases of ***Dogru v. France*** (application no. 27058/05) and ***Kervanci v. France*** (no. 31645/04).

The Court held unanimously in both cases that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the European Convention on Human Rights.

(The judgment in the case of ***Dogru*** is available in English and French. The judgment in the case of ***Kervanci*** is only available in French.)

1. Principal facts

The applicants, Belgin Dogru and Esma-Nur Kervanci, are French nationals who were born in 1987 and 1986 respectively and live in Flers (France).

The two cases concerned the applicants' exclusion from school as a result of their refusal to remove their headscarves during physical education and sports classes.

Ms Dogru, then aged eleven, and Ms Kervanci, aged twelve, both Muslims, were enrolled in the first year of a state secondary school in Flers for the 1998-1999 academic year.

On numerous occasions in January 1999 the applicants went to physical education and sports classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher, who explained that wearing a headscarf was incompatible with physical education classes.

In February 1999 the school's discipline committee decided to expel the applicants from the school for breaching the duty of assiduity by failing to participate actively in physical education and sports classes.

In March 1999 the Director of Education for Caen upheld the decision of the school's discipline committee, after obtaining the opinion of the appeal panel. The panel had justified

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

the prohibition on wearing the headscarf during physical education classes on the basis of compliance with schools' internal rules, such as those governing safety, health and assiduity.

On 5 October 1999 the Caen Administrative Court rejected applications lodged by the applicants' parents seeking to have the Director of Education's decision set aside. The court held that, by attending physical education and sports classes in dress that would not enable them to take part in the classes in question, the applicants had failed to comply with the duty to attend classes; that their attitude had created an atmosphere of tension within the school and that, on the basis of all the factors involved, their expulsion from the school had been justified, regardless of the proposal they had made at the end of January to wear a hat instead of a headscarf.

The Nantes Administrative Court of Appeal subsequently upheld those judgments, noting that the applicants had overstepped the limits of the right to express and manifest their religious beliefs on the school premises. Finally, the *Conseil d'Etat* declared inadmissible an appeal on points of law submitted by the applicants' parents.

The applicants indicated that, subsequent to their exclusion, they have continued their schooling by correspondence classes.

2. Procedure and composition of the Court

The application in the ***Dogru*** case was lodged with the European Court of Human Rights on 22 July 2005 and that in the ***Kervanci*** case was lodged on 22 July 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Danish), ***President***,
Jean-Paul **Costa** (French),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Renate **Jaeger** (German),
Mark **Villiger** (Swiss),
Isabelle **Berro-Lefèvre** (Monegasque), ***judges***,

and also Claudia **Westerdiek**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

Relying on Article 9 (right to freedom of thought, conscience and religion), the applicants complained of an infringement of their right to practice their religion. They also alleged that they had been deprived of their right to education within the meaning of Article 2 of Protocol No. 1 (right to education).

[1] This summary by the Registry does not bind the Court.

Decision of the Court

Article 9

The Court observed that the purpose of the restriction on the applicants' right to manifest their religious convictions was to adhere to the requirements of secularism in state schools.

On the basis of the decisions by the *Conseil d'Etat* and the ministerial circulars issued on this question, the Court noted that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have.

In that connection the Court referred to earlier judgments in which it had held that the national authorities were obliged to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion. In the Court's view, that concern did indeed appear to have been answered by the French secular model.

In the applicants' cases the Court considered that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was merely the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

The Court also noted that the disciplinary proceedings against the applicants fully satisfied the duty to undertake a balancing exercise of the various interests at stake and were accompanied by safeguards that were apt to protect the pupils' interests.

As to the choice of the most severe penalty, the Court reiterated that, where the ways and means of ensuring respect for internal rules were concerned, it was not the Court's role to substitute its own vision for that of the disciplinary authorities which, being in direct and continuous contact with the educational community, were best placed to evaluate local needs and conditions or the requirements of a particular training.

The Court therefore considered that the penalty of expulsion did not appear disproportionate, and noted that the applicants had been able to continue their schooling by correspondence classes. It was clear that the applicants' religious convictions were fully taken into account in relation to the requirements of protecting the rights and freedoms of others and public order. It was also clear that the decision complained of was based on those requirements and not on any objections to the applicants' religious beliefs.

Accordingly, the Court concluded that the interference in question had been justified as a matter of principle and had been proportionate to the aim pursued. There had therefore been no violation of Article 9.

Article 2 of Protocol No. 1

The Court held that no separate question arose under Article 2 of Protocol No. 1, as the relevant circumstances were the same as for the complaint already examined under Article 9.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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