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STEERING COMMITTEE FOR HUMAN RIGHTS
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**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

WORKING GROUP B

Report
Human rights in a multicultural society
The wearing of religious symbols in public areas

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Preliminary remarks

1. The overall aim of the activities carried out in connection with human rights in a multicultural society should always be to avoid any discrimination. This will imply keeping in mind the rights of persons belonging to certain sections of the population, such as faith communities, and avoiding indirect discrimination, for example, as a result of advocating general measures that affect persons belonging to such communities disproportionately, without objective or reasonable justification. In respect of the topic tackled by Working Group B, it should be recalled that restrictions on the wearing of religious symbols may induce interference with the right to manifest one's religion as protected by Article 9 of the European Convention on Human Rights (hereafter, ECHR or the Convention), the right not to be discriminated against as guaranteed by Article 14 ECHR and Protocol No. 12 and, in some instances, the right to education enshrined in Article 2 of Protocol No. 1. While the right to freedom of thought, conscience and religion as such (internal freedom or *forum internum*) is absolute, the right to manifest one's religion or beliefs (external freedom or *forum externum*) may be subject to certain limitations if those are prescribed by law, follow a legitimate aim and are proportionate to that aim (Article 9 para. 2 ECHR). The other rights potentially involved are also not absolute and can be restricted under certain conditions. The challenge for authorities is to strike a fair balance between the interests of individuals as members of a religious community to have their right to manifest their religion or their right to education respected and the general public interest (e.g. public order, safety or morals) or the rights and interests of others (e.g. others with different beliefs or religions).

2. In attempting to achieve a balance between individual rights and interests and those of others or the general public interest, a number of questions may be raised: are the rules imposed by certain religious beliefs always compatible with the principle of gender equality? In the context of schools, should the pupil's age be taken into account or are the parents' wishes more important than those of their child? Are stricter rules required for teachers and professors given that they have a duty to transmit "the message of tolerance, respect for others and, above all, equality and non-discrimination" in the words of the European Court of Human Rights (hereafter, the Court)?

3. As regards the general approach to the theme in question, the Working Group was of the view that due account should be taken of the fact that the relationship between state and religion differs according to states. Therefore, measures taken should be evaluated in the light of the national context as well as the time they were taken; the Working Group argued that measures taken in one place at a given time might not be valid elsewhere. Therefore, the margin of appreciation which states have in this matter should not be downplayed.

4. The Working Group was of the view that the work undertaken should lead to a descriptive document which should give an overview of the applicable international human rights instruments, the situation in member states and the case-law of the Court. It firmly opposed the idea of any normative instrument or indeed any recommendation on best practice.

5. As to the theme studied, the Working Group said that the notion of "public areas" should be seen in contrast with the notion of private sphere or "home".

6. With respect to the content of the document, the Working Group considered that it would focus on the Court's case-law. However, it also agreed that reference would usefully be made to other international instruments than the European Convention of Human Rights and to the work of other human rights mechanisms and fora. In addition, it found that examples of national practice intended to promote tolerance would be an invaluable asset to the document.

7. This document broadly follows the structure of the outline which the DH-DEV proposed for the Working Group's report (document DH-DEV(2006)008, Appendix V) with some slight adjustments which were felt appropriate by the Working Group:

- Competing rights and interests at stake;

- Applicable international human rights instruments;
- Relevant case-law of the European Court of Human Rights, position of the Human Rights Committee of the UN International Covenant on Civil and Political Rights and national practice in member states;
- Methods and factors taken into account when balancing the competing interests involved;
- Examples of national measures and initiatives promoting tolerance.

1. Competing rights and interests at stake

8. Insofar as the wearing of religious symbols in public areas is concerned, the Convention rights at stake are essentially the right to respect for freedom of religion, particularly to manifest one's religion (Article 9 ECHR) and more broadly the right to respect for freedom of expression (Article 10 ECHR). There may also be repercussions on the right to education (Article 2 Protocol No. 1 ECHR). The prohibition of discrimination may also be at stake (Article 14 ECHR and Protocol No. 12). Interests which may compete in a certain context (including within state schools, universities or the work environment) are often essentially those of persons belonging to a religious community versus those of others not belonging to that community or the general public interest.

2. Applicable international human rights instruments

9. A number of international human rights instruments, both legally binding and non-binding, are of direct relevance in connection with religious symbols in public areas. The table below indicates the relevant provisions of these instruments classified by rights concerned. Since not all legally binding instruments have been ratified by all member states, footnotes indicate wherever needed which member states have done so. The full text of these provisions is to be found in Appendix I to the document.

Relevant Rights Instruments	<i>Freedom of religion and to manifest one's religion</i>	<i>Prohibition of discrimination based on religion</i>	<i>Freedom of expression</i>	<i>Right to education</i>	<i>Respect for private life</i>
<i>Universal Declaration of Human Rights</i>	- Article 18 - Article 29 (conditions for limitations to be acceptable)	- Article 2 - Article 7	Article 19	Article 26	Article 12
<i>International Covenant on Civil and Political Rights</i> ¹	- Article 18 - Article 27	Article 26	Article 19		Article 17
<i>International Covenant on Economic, Social and Cultural Rights</i> ²				Article 13	
<i>European Convention on Human Rights</i> ³	Article 9	- Article 14 - Article 1, Protocol No. 12	Article 10	Article 2, Protocol No. 1	Article 8
<i>European Social Charter (revised)</i> ⁴		Article E			
<i>Framework Convention for the Protection of National Minorities</i> ⁵	- Article 5 - Article 7 - Article 8	Article 4	Article 9	Article 12	
<i>UN Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief</i>	- Article 1 - Article 6				

¹ The International Covenant on Civil and Political Rights is legally binding on all member states.

² The International Covenant on Economic, Social and Cultural Rights is legally binding on all member states.

³ Protocol No. 1 to the ECHR has been ratified by all member states except Andorra, Monaco and Switzerland. Protocol No. 12 to the ECHR has been ratified by the following member states: Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Netherlands, Romania, San Marino, Serbia, "the former Yugoslav Republic of Macedonia", Ukraine.

⁴ The European Social Charter (revised) has been ratified by the following member states: Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, Netherlands, Norway, Portugal, Romania, Slovenia, Sweden.

⁵ The Framework Convention on the Protection of National Minorities has been ratified by all member states except Andorra, Belgium, France, Greece, Iceland, Luxembourg, Monaco and Turkey.

3. **Relevant case-law of the European Court of Human Rights, position of the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) and national practice**

3.1. **Relevant case-law of the European Court of Human Rights**

10. In its first major case under Article 9, *Kokkinakis v. Greece*,⁶ the Court stated that freedom of thought, conscience and religion is one of the foundations of a democratic society. It asserted that the pluralism which is an integral part of a democratic society depended on it. Moreover, it underlined that paragraph 2 of Article 9 provides for limitations only with respect to freedom to manifest one's religion or belief. This indicates, according to the Court, that in democratic societies in which several religions coexist, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. This is instrumental where the wearing of religious symbols in public areas is concerned. In applying Article 2 of Protocol No. 1, which protects the right to education, in the *Köse and 93 Others v. Turkey*⁷ decision, the Court followed a similar pattern, considering that this right is not absolute and can be subject to certain restrictions.

11. The context in which the restrictions are imposed will influence the balancing of the interests at stake – individual interests versus the interests of others or general public interest – carried out by the Court. The Court and the former European Commission of Human Rights (hereafter, the Commission) have so far been faced with restrictions imposed by the authorities on schoolchildren and students in the context of state establishments (3.1.1.), restrictions on persons employed by the state or in the private sector (3.1.2.) and restrictions motivated by reasons of public security or health (3.1.3.).

3.1.1. *Restrictions imposed on schoolchildren and students in the state education system*

12. In the Grand Chamber's judgment *Leyla Şahin v. Turkey*,⁸ the Court, for the first time, considered whether a regulation prohibiting the wearing of the Islamic headscarf at Turkish universities was compatible with religious freedom as to the merits. It granted the authorities a wide margin of appreciation, relying, *inter alia*, on the lack of a European consensus in this sphere. The Court found that the applicant's freedom of religion had not been violated by the regulation forbidding her to wear a headscarf. According to the Court, the interference with her freedom of religion, based notably on the principles of secularism and equality, was justified by the political context in Turkey. The Court held that, in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith, imposing limitations on the wearing of the Islamic headscarf could be regarded as meeting "a pressing social need", especially since this religious symbol had, in recent years, taken on political significance in Turkey. In her dissenting opinion, Judge Tulkens expressed the view that there were no relevant and sufficient grounds for the prohibition, given that the applicant was a young woman who was of age and was undertaking a course of higher education. According to Judge Tulkens, her right to exercise her freedom of religion and to outwardly manifest that religion could not be fully justified by the need to protect public interests by combating extremism.

13. The Court has also recently delivered a decision of inadmissibility under Article 2 Protocol No. 1 in a case which concerned pupils of a religiously oriented state secondary school who were prohibited from wearing the Islamic headscarf on the school premises except during religious classes (*Köse and 93 others v. Turkey*)⁹:

⁶ *Kokkinakis v. Greece*, judgment of 25 May 1993.

⁷ *Köse and 93 others v. Turkey*, decision of 24 January 2006 (available in French only).

⁸ *Leyla Şahin v. Turkey*, judgment of 10 November 2005 (Grand Chamber).

⁹ *Köse and 93 others v. Turkey*, *ibid.*

- As to the first part of the complaint based on the first sentence of Article 2 Protocol No. 1, the Court considered that the measures taken against the pupils were foreseeable in that they were based on the school dress code which they had agreed to respect upon joining this school. The Court found that the fact that the headscarf had been tolerated by the school for a number of years did not equate to tacit approval since pupils and parents were expressly informed about the dress code upon the children's enrolment and the stricter application of the dress code regulations responded to a request of the Istanbul prefecture following the growing protest against the dress code regulation in order to preserve serenity in schools. Therefore it pursued a legitimate aim, that of protecting the freedom of others and order. As to the proportionality of the measure, the Court noted that the dress code in force in secondary schools was the same for all pupils without distinction and it did not constitute a full prohibition in the school in question in this case since it left open to pupils whether to wear the Islamic headscarf during religious classes or not. This regulation serves notably the legitimate aim of neutrality of secondary education which concerns teenagers more sensitive to pressure. The Court recalled that states enjoy a certain margin of appreciation where school regulations are concerned. It held that the measure at stake was only taken as a result of the unrest caused by this regulation forbidding the headscarf and after mediation steps taken with the families concerned had failed. It found that in the present case the prohibition was justified by the risks of unrest in the school posed by the growing hostility towards the impugned regulation in certain circles. Therefore, the Court concluded that the measures taken were justified and proportionate to the legitimate aims of protection of the rights and freedoms of others, of order and of the principle of neutrality of secondary education. It rejected this complaint as manifestly ill-founded.

- As regards the complaint based on the second sentence of Article 2 Protocol No. 1, the Court held that the aim of this provision was that states ensure that the information or knowledge which are part of the school curriculum be imparted in an objective, critical and pluralistic manner, calmly and free from any proselytism. The school at stake in this case although religiously oriented is not a confessional school and therefore the principle of secularity applied to it as to any other state school in Turkey. Parents as well as pupils were made aware of the consequences of a breach of the school regulations and the refusal to let the pupils on the school premises were not accompanied by any disciplinary measure (the simple fact of respecting the dress code would open the doors of the school to them and would allow them to attend the classes). In addition, the Court was of the view that the fact that headscarves were only permitted during Koran classes did not deprive them of the opportunity of carrying out a guiding role towards their children. It therefore concluded that this part of the complaint was equally manifestly ill-founded.

14. It should also be recalled that, in 1993, the European Commission of Human Rights examined two cases which concerned a university's refusal to issue a diploma because the photographs submitted by the applicants for their identity documents showed them with their heads covered.¹⁰ The Commission ruled that the authorities' refusal could not be considered as an interference with the applicants' freedom of religion on the ground that secular universities can regulate the display of religious rites and symbols with a view to ensuring harmonious coexistence between students of various faiths and protecting public order as well as the beliefs of others.

3.1.2. Restrictions in the context of employment

(i) Restrictions on civil servants

15. In the context of employment by the state, the Court has found that the principle of freedom of thought, conscience and religion also applies to civil servants. However, it also held that it is legitimate for a state to impose a duty of discretion on civil servants, on account of their status. It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a

¹⁰ *Karaduman v. Turkey*, No. 16278/90, and *Bulut v. Turkey*, No. 18783/91, decisions of 3 May 1993, European Commission of Human Rights.

fair balance has been struck between the fundamental right of the individual to freedom of to manifest one's religion and the legitimate interest of a democratic state in ensuring that its civil service properly furthers the purposes enumerated in Article 9 para. 2.¹¹

16. In the decision *Dahlab v. Switzerland*,¹² the Court found inadmissible the application lodged by a state primary school teacher who had been ordered to remove her headscarf to comply with the principle of denominational neutrality of the state school system. The Court held that it was difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children and that it could not be denied outright that the wearing of the headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which is hard to square with the principle of gender equality. It thus found that it appeared difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey. It allowed the Swiss authorities a wide margin of appreciation and, in view of the above, found that the outcome of balancing the teacher's right to manifest her religion against the need to protect the pupils - who, in view of their tender age, could easily be influenced - could not be considered unreasonable. The young age of the children was thus considered an important factor by the Court in its examination of the case.

17. In line with this jurisprudence, the Court has declared inadmissible the application of a university lecturer who was prohibited from wearing the Islamic headscarf at work (*Kurtulmuş v. Turkey*).¹³ The Court referred expressly to the *Leyla Şahin v. Turkey* judgment and to the *Dahlab v. Switzerland* decision (see above) in which it had focused on the importance of respecting the principles of neutrality of state education and secularity (*laïcité*) as applied in the states concerned. The Court first noted that the regulations on the dress code of civil servants apply in an equal manner to all civil servants, irrespective of their functions and their religious beliefs. The applicant should have been aware of the need for her as a university lecturer to be discreet about her religious beliefs in the exercise of her functions. It also noted that preserving the principle of secularity was one of the founding principles of the Turkish state. It recalled that it has found in a past case that a democratic state is entitled to require civil servants to be loyal to the constitutional principles on which it is founded. In addition, it stated that it took into account the margin of appreciation which states enjoy with regard to the obligations of teachers from the state education system, according to the level of education (primary, secondary and higher education). Bearing in mind the requirements of neutrality and secularity within the state education system and the margin of appreciation left to states in such matters, the Court decided that the interference was justified and proportionate and therefore found the application thus manifestly ill-founded.

18. In the particular context of the armed forces, the Court has found that a person who chooses to serve in the armed forces accepts a system of discipline which by nature implies the possibility of placing on certain rights and freedoms of members of the forces, including their freedom to manifest their religion, limitations incapable of being imposed on civilians (*Kalaç v. Turkey*).¹⁴

19. In the *Konttinen v. Finland* case,¹⁵ where an employee of the state railways had been dismissed for failing to respect his working hours because working after sunset on a Friday was forbidden by the Seventh-Day Adventist Church, of which he was a member, the Commission held that he had not been dismissed on the ground of his religion but for having refused to respect working hours. It considered that although the refusal was linked to his religious convictions, such a situation did not give rise to protection under Article 9 para. 1. Furthermore, it found that the applicant had failed to show that he

¹¹ *Kurtulmuş v. Turkey*, No. 65500/01, decision of 24 January 2006; *mutatis mutandis* *Vogt v. Germany*, judgment of 26 September 1995.

¹² *Dahlab v. Switzerland*, decision of 15 February 2001.

¹³ *Kurtulmuş v. Turkey*, No. 65500/01, decision of 24 January 2006 (available in French only).

¹⁴ *Kalaç v. Turkey*, judgment of 1 July 1997.

¹⁵ *Konttinen v. Finland*, No. 24949/94, decision of 3 December 1996, European Commission of Human Rights.

was pressured in changing his religious views or prevented from manifesting his religion or belief (he was, *inter alia*, free to resign).

(ii) *Restrictions in the private sector*

20. As regards employment in the private sector and positive obligations of states in respect of Article 9 – in circumstances similar to that of the aforementioned Konttinen decision – the Commission examined a case in which the applicant was dismissed for failing to agree to work certain hours rather than her religious belief as such and was free to resign, which she did.¹⁶ It considered that, had the applicant been employed by the state and dismissed in similar circumstances, such dismissal would not have amounted to an interference with her rights under Article 9 para. 1. It further held that “the United Kingdom cannot be expected to have legislation that would protect employees against such dismissals by private employers”. It concluded that in the absence of the dismissal itself constituting an interference with the applicant’s rights under Article 9, the fact the applicant was not able to claim unfair dismissal before a competent court, could not, of itself, constitute a breach of Article 9.

3.1.3. *Restrictions linked to public security or health reasons*

21. It is also worth mentioning an admissibility decision of the Court (*Phull v. France*)¹⁷ which concerned a Sikh who was asked to remove his turban at an airport security check, although he had agreed to pass through the security screen and to be checked with a hand-held metal detector. As regards the necessity in a democratic society of the interference with the applicant’s right to manifest his religion by wearing a turban, the Court held that security checks undoubtedly served the legitimate aim of public security and the related implementation measures came within the margin of appreciation of states, all the more so as they were only sporadic measures. Given that it was not contested that in the instant case this measure was provided by law and pursued a legitimate aim, the Court declared this aspect of the application manifestly ill-founded.

22. The Commission examined a case¹⁸ where the applicant, a Sikh by religion, was prosecuted, convicted and fined twenty times for failing to wear a crash helmet when riding his motor cycle. He complained that the requirement to wear a crash helmet, which obliged him to remove his turban, whilst riding his motorcycle interfered with his freedom of religion. The Commission considered that the compulsory wearing of crash helmets was a necessary safety measure for motorcyclists. The Commission was of the opinion therefore that any interference there may have been with the applicant’s freedom to manifest his religion was justified for the protection of health in accordance with Article 9 para. 2.

3.2. Position adopted by the Human Rights Committee of the ICCPR

23. The Human Rights Committee examined on one occasion whether there had been a violation of the right to freedom of religion of a student¹⁹ who had been prevented from wearing the Islamic headscarf at university.²⁰ However, no clear position can be inferred from this carefully drafted communication, in which the Committee finds a violation in the specific circumstances of the case, as well as from the dissenting and concurring opinions appended thereto. While it considered that “to prevent a person from wearing religious clothing in public or private may constitute a violation of Article 18 para. 2”, it ruled that “in the particular circumstances of the present case, and without either prejudging the right of a state party to limit expressions of religion and belief in the context of

¹⁶ *Stedman v. United Kingdom*, No. 29107/95, decision of 9 April 1997, European Commission of Human Rights.

¹⁷ *Phull v. France*, No. 35753/03, decision of 11 January 2005.

¹⁸ *X v. United Kingdom*, No. 7992/77, decision of 12 July 1978, European Commission of Human Rights.

¹⁹ Article 18 of the International Covenant on Civil and Political Rights.

²⁰ ICCPR Human Rights Committee, *Raihon Hudoyberganova v. Uzbekistan*, 18 January 2005, No. 931/2000.

Article 18 of the Covenant and duly taking into account the specifics of the context, or prejudging the right of academic institutions to adopt specific regulations relating to their own functioning, [it was] led to conclude, in the absence of any justification provided by the state party, that there [had] been a violation of Article 18 para. 2". It is worth noting that the circumstances of the case were unclear, the exact type of clothing at stake not having been determined, and also that the state party failed to justify the need for the restriction imposed within the meaning of Article 18 para. 3 as it merely invoked the applicant's refusal to respect the university's internal regulation.

24. In a similar fashion to the Commission in the above-mentioned case of *X. v. United Kingdom*, the Committee found no violation in another case where the applicant, a Sikh by religion, was dismissed after refusing to wear safety headgear during his work because his religion dictated that he wore a turban. It found that the legislation requiring that workers be protected from injury by the wearing of a helmet was reasonable and was aimed at objective purposes compatible with the Covenant.²¹

3.3. National practice in member states: legislation and case-law

25. The following subsections are based on the replies received from member states to some of the questions contained in a questionnaire on religious symbols in public areas prepared by the DH-DEV at its last plenary meeting (see questionnaire in document GT-DH-DEV B(2006)004 Addendum).

3.3.1. Specific national legislation or regulations governing the wearing of clothing or symbols which may express religious views

26. Most member states have no specific law or regulations restricting the wearing of clothing or symbols which may express religious views. Many states draw attention to the constitutional value of the freedom to manifest one's religion but at the same time to the fact that it is not an absolute right.

27. A number of states specify that restrictions do exist in respect of identity photographs and headwear, motivated by security reasons: in *Azerbaijan*, women are prohibited from wearing the headscarf on their identity photographs altogether, whereas in *Belgium*, *Estonia* and *Italy* headwear is tolerated as long as it leaves the face uncovered. In *Finland* police guidelines on passport photographs have been drawn up: headwear is not prohibited but the whole face must appear clearly. On the other hand, headwear is prohibited by *French* regulations on all identity and passport photographs.

28. As to the wearing of religious symbols in open public areas, in *Belgium*, some local authorities prohibit the wearing of garments covering the face for security reasons. A fine was imposed in a town in *Italy* on a woman wearing the burqa on the ground that it prevented her face from being seen (a similar fine was also imposed on someone who was wearing a crash helmet).

29. As regards civil servants, police uniforms in *Belgium* are incompatible with the wearing of religious symbols linked to clothing (e.g. kippa, burqa, Islamic headscarf). In contrast, in the *United Kingdom*, the Muslim hijab and the Sikh turban have been incorporated into police uniforms. In *Belgium*, teachers must respect strict neutrality and, in *France* and *Switzerland*, they are also prohibited from wearing religious symbols. In *Germany*, this matter is left to the Länder: a number of them have enacted regulations prohibiting teachers from wearing symbols or items of clothing expressing religious or ideological conviction which may instil doubt as to their neutrality. There is general legislation concerning the wearing of specific clothing for some categories of civil servants in the *Netherlands* (e.g. police and prison warden).

30. As regards schoolchildren, in a number of states the wearing of religious symbols by students is not prohibited (e.g. *Italy*) but certain restrictions can be imposed by school authorities (e.g. *Belgium*, *Germany*). School uniforms have existed for a long time in the *United Kingdom*: while schools have the statutory right to set and enforce school uniform policy, the government authorities issue guidance

²¹ ICCPR Human Rights Committee, *Karnel Singh Bhinder v. Canada*, 28 November 1989, No. 208/1986.

on this matter and, in developing their policy, schools are required to consider their legal obligations under all the relevant legislation such as laws on gender discrimination and race relations. Moreover, schools are expected, wherever possible, to consult with pupils, parents and the wider community, including relevant religious bodies, before deciding to introduce a dress code policy or to amend the existing one. In *Ireland*, the wearing of an Islamic scarf at school is not prohibited but it should be of the same colour as the compulsory school uniform, compulsory uniforms being usual in state schools. In *France*, by virtue of the prevailing principle of secularity in public areas, a law was enacted in March 2004 according to which schoolchildren should not wear conspicuous religious symbols or items of clothing. In a subsequent implementation circular, the examples of the Islamic headscarf, the kippa and a cross of a certain size were given, while it was specified that discreet religious symbols were authorised. The implementation of these regulations is left to school authorities. Before any disciplinary measure is taken, mediation between the school authorities and the student concerned should take place to defuse the problem. In *Sweden*, although there is no act prohibiting the wearing of religious symbols, the Swedish National Agency for Education decided that schools had the right to forbid the wearing of burqa if it obstructs pedagogical activities. In Norway, some schools have adopted regulations prohibiting the wearing of niqab in the classroom; it does not affect the hijab.

3.3.2. *Relevant national case-law*

31. Several states have national case-law on matters concerning the wearing of religious symbols or clothing.

(i) *State schools*

32. In *France*, the relevant national case-law concerns the implementation of the law prohibiting the wearing of conspicuous religious items of clothing at school. First instance courts have confirmed the schools' interpretation of the concept of "manifestly conspicuous signs" ("signes manifestement ostensibles"). Leave for appeal before the Court of Cassation is being examined. The lawfulness of the circular issued for the purpose of implementing the above-mentioned law has been confirmed by the Conseil d'Etat by a decision of 8 October 2004. In addition to these cases which concerned the headscarf, the Administrative Court of Appeals of Paris has delivered a judgment concerning the wearing of Sikh "under turbans" at school which it considered could not be considered as a discreet religious symbol.

33. In 2003 the *German* Federal Constitutional Court issued a judgment concerning the wearing of an Islamic headscarf during lessons. It found that there was no sufficient legal basis in the Land concerned for a prohibition on teachers wearing the Islamic headscarf and referred the case to the Supreme Administrative Court. The Stuttgart Administrative Court recently ruled in favour of a primary and secondary teacher prevented from wearing the Islamic headscarf.

34. The *Luxembourg* Supreme Court held that religious or philosophical beliefs cannot go against the fundamental right of the child to education and that freedom to worship cannot go as far as resulting in the disruption of the education teaching system. Administrative courts have recognised that pupils could now and again be excused for the purpose of attending religious ceremonies.

35. The *Swiss* Federal Tribunal has found that the exemption of a Muslim schoolgirl from swimming classes is covered by the protection of freedom of religion and so is the exemption of a Jewish schoolboy from attending school on Saturdays. At cantonal level, the Administrative Court of Neuchâtel found that a schoolgirl should not be excluded on the ground that she is wearing an Islamic headscarf at school.

36. In the *United Kingdom*, a recent case, *Shabina Begum v Denbigh High School*, concerned a pupil who had chosen not to attend the school unless she could wear the jilbab which did not comply with the school uniform policy. The Court ruled that in this particular set of circumstances the school was not acting unlawfully by requiring its pupils to adhere to a specific dress code nor was it acting in

breach of any provision in the European Convention on Human Rights. The judgment of the House of Lords of 22 March 2006 confirmed that current school uniform policy and practice is lawful. What an individual pupil should or should not wear in school is a matter for individual schools to decide in consultation with parents. The judgment handed down by the House of Lords overturned the Court of Appeal ruling which had found in favour of the claimant.

37. There are cases pending before the Belgian *Conseil d'Etat* on school regulations prohibiting any headwear. In a judgment of 14 June 2005, the Court of Appeal of Antwerp considered the prohibition of the headwear at school to be justified.

38. It is worth noting that in the *Netherlands*, whilst there have been no court decisions as yet, a number of non-binding opinions of the Equal Treatment Commission have been issued on the issue of the wearing of religious symbols at school. According to the Commission, the refusal of a state school to allow a student teacher to wear a headscarf at school constitutes unlawful direct discrimination on the ground of religion if it is only based on the assumption that the headscarf worn in a classroom shows a specific religious view which is regarded as undesirable by the school. It is for the school authority to ask the student teacher about her attitude towards ideological and social values (Equal Treatment Commission ruling 1999/18). However, the Commission accepts that certain requirements imposed on teachers might result in indirect discrimination. In such cases, there must be an objective justification. There must be a legitimate aim (which is both important and non-discriminatory in nature) and the means for achieving this aim must be appropriate and necessary. Clothing regulations for teaching staff must meet these criteria. The same applies to clothing regulations for pupils. A legitimate reason could be the promotion of dialogue, by being able to identify pupils in the classroom, security requirements during swimming and physical education lessons and the carrying out of some of the statutory tasks incumbent on the educational institution.

(ii) *Employment context*

39. In *Denmark* several court cases have dealt with the wearing of religious symbols and work relations. The first ruling of the High Court of Eastern Denmark in 2000 concerned a student who was turned down from working in a department store whose policy was to prohibit the wearing of any headscarf by employees. The High Court did not find that the department store had proven the existence of any special circumstances that could imply that the rejection had an objective and reasonable justification, and it was therefore ordered to pay the student compensation pursuant to the Discrimination Act. The second ruling of the High Court of Eastern Denmark was handed down in 2001 and concerned a chocolate factory which had informed a Muslim woman that she could not work on the production line if she wanted to wear a headscarf or any headwear since it was not compatible with the requirement made that workers wear a hairnet over their hair for hygienic and safety reasons. The High Court held that the clothing policy and the administration of the policy were objectively justified in the interest of the performance of the work. The High Court therefore held in favour of the chocolate factory. The parties have subsequently settled the dispute and have created headwear which takes both parties' interests into consideration. Finally, the Supreme Court issued a judgment in 2005 in a case where it considered that the dismissal of a Muslim woman for wearing a headscarf contrary to the dress code of the supermarket where she worked did not constitute unlawful indirect discrimination or contravene Article 9 ECHR. According to the Discrimination Act and as an example of lawful indirect discrimination, it is permitted to require employees to wear uniforms or specific clothing if this contributes to the company's image, and if it is a consistent requirement which applies to all employees in the same position.

40. In *Germany*, there have been many labour court judgments on the headscarf; dismissals based merely on the wearing of the Islamic headscarf are not considered lawful. In a judgment of 10 October 2002, the Federal Labour Court found that in the case of a dismissal an employer must demonstrate concrete facts indicating a real risk of operational disturbances or economic loss should an employee continue to wear the Islamic headscarf at work. Leave for appeal before the Federal Constitutional Court was not granted to the employer.

41. In *Norway*, the Gender Equality Tribunal has found that a hotel staff regulation prohibiting the wearing of headscarf at work was indirectly discriminatory towards women.

(iii) *Other circumstances of interest*

42. In *Italy*, the issue of the display of catholic symbols in government buildings, courtrooms and other public buildings has led to a number of court decisions. For instance, in April 2005, a court ruled that crucifixes did not have to be removed from polling stations. In November 2003, the Pescara Court of Appeal revoked a judicial ruling previously given which ordered that crucifixes be removed from classrooms. In December 2004, the Constitutional Court ruled that the display of crucifixes in classrooms is constitutional. In contrast, in *Germany*, the Federal Constitutional Court delivered a judgment on 16 May 1995 in which it found a school regulation whereby crucifixes were to be affixed in each classroom to be null and void. The *Swiss* Federal Tribunal also found that the affixing of crucifixes in classrooms does not comply with the requirement of neutrality of state schools.

43. The *Austrian* Constitutional Court held that preventing Jews held in custody from using their deposited prayer utensils was a violation of the freedom of religion and conscience.

44. In *Belgium*, the First Instance Court of Brussels indicated that freedom to manifest one's religion individually or collectively is not absolute and that restrictions may be imposed when religious practices can result in unrest. In June 2006, the police court of Maaseik confirmed the legality of the prohibition on wearing the burqa in open public areas ("sur la voie publique").

45. The Chamber of Appeals of the *Russian Federation* Supreme Court ruled in 2003 that, considering the constitutional right to freedom of religion and in the absence of any Federal Law prohibiting it, Muslim women who wished to do so could keep their headwear on their identity photographs.

46. The *Swiss* Federal Tribunal delivered a judgment on the compulsory wearing of a safety helmet by motorcyclists: the Federal Tribunal found that Sikhs were not in a worse position than others in having to comply with this security requirement.

47. In *Finland* the Supreme Court has found that the Roma dress can be seen as traditional and common amongst the ethnic group in question and there is therefore no reason to deny access to any establishment on the basis of this attire.

4. Methods and factors taken into account by the European Court of Human Rights and other bodies when balancing the competing interests and rights involved

4.1. Practice of the European Court of Human Rights

4.1.1. General introduction on restrictions permissible under the European Convention on Human Rights

48. Under the Convention, any restriction to freedom to manifest one's beliefs must fulfil the following requirements which are shared with Article 8 on respect of private and family life and the home, Article 10 on freedom of expression and Article 11 freedom of association:

- it must be prescribed by law. The aim is to ensure that when rights are restricted by public authorities, this restriction is not arbitrary and has some basis in domestic law. The Court has stated that for a restriction to meet the requirement it should be adequately accessible and its effects should be foreseeable.

- it must pursue one of the legitimate aims listed under the second paragraph of the relevant provisions. According to Article 9 para. 2, such legitimate aims are: public safety (e.g. airport security checks as in the *Phull v. France* decision – para. 21 above), the protection of public order (e.g. unrest in universities as in the *Leyla Şahin v. Turkey* judgment, see para. 12 above), public health (e.g. wearing a helmet for security reasons as in the *X. v. United Kingdom* decision, see para. 22 above) or morals, or for the protection of the rights and freedoms of others (e.g. protection of the best interests of the child as in the *Dahlab v. Switzerland* decision, see para. 16 above).

- it must be necessary in a democratic society, which implies that the measure is proportionate to the legitimate aims pursued. For this purpose, the Court balances individual interests against the community's interests to decide which prevail in particular circumstances and to what extent the rights encompassed in the Convention could be curtailed in the interests of the community. In this respect states enjoy a certain margin of appreciation, the Court considering that national authorities are better placed to evaluate the most appropriate measures in a given situation in order to reach the legitimate aim sought. However, this margin of appreciation goes hand in hand with a European supervision embracing both the law and the decisions applying it. The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate.

49. The right to education protected by Article 2 of Protocol No. 1 may be subject to certain limitations. As under Article 9, states enjoy a certain margin of appreciation in adopting measures limiting the full enjoyment of the right to education. In order to ensure that the restrictions imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that restrictions are foreseeable for those concerned and pursue a legitimate aim (in contrast with the position with respect to Article 9 – as well as Articles 8, 10 and 11 – the Court is not bound by an exhaustive list of legitimate aims). In addition, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable proportionality between the means employed and the aim sought to be achieved.

4.1.2. *Relevant principles identified in the Court's case-law*²²

50. The Court has underlined that not all acts motivated or inspired by a religion or belief are protected under Article 9 ECHR.²³ While the context can greatly influence the extent to which such acts will receive protection, there are also broader themes which need to be borne in mind irrespective of the context such as the relationship between the state and religions or the protection of pluralism. It should also be stressed that rather than being conclusive in their application, the factors should be seen as mere pointers. The wearing of religious symbols is a complex phenomenon, which does lend itself to generalisations. Each case must be seen in its particular context, and national particularities should be taken into account. Moreover, it should be noted that the Court's case-law is not as abundant on each aspect of the question at issue and is likely to evolve.

- Elements to be taken into account depending on the context in which restrictions are imposed

a. *Restrictions at school and university*

- i. There may be a need to protect pupils by preserving religious harmony, having regard, inter alia, to the tender age of the children for whom a teacher is responsible as a representative of the state;²⁴

²² See Appendix II for relevant excerpts from the Court's case-law.

²³ *Kalaç v. Turkey*, judgment of 1 July 1997, para. 27, *Refah Partisi v. Turkey*, judgment of 13 February 2003 (Grand Chamber), para. 92.

²⁴ *Dahlab v. Switzerland*, decision of 15 February 2001, page 13.

- ii. All teachers in a democratic society shall convey a message of tolerance, respect for others and, above all, equality and non-discrimination;²⁵
- iii. States must not pursue an aim of indoctrination that might be regarded as not respecting parents' religious and philosophical convictions. They must also ensure that information or knowledge included in the education curriculum is conveyed in an objective, critical and pluralistic manner in a calm atmosphere, free from any inopportune proselytism;²⁶
- iv. Measures taken by universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9 para. 2;²⁷
- v. The prohibition of religious symbols by a school's dress code may be justified under Article 9 para. 2;²⁸
- vi. In the context of schools and universities where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women are being taught and applied in practice, the Court has found it understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned and so consider it contrary to such values to allow religious attire, including the Islamic headscarf, to be worn.²⁹

b. Restrictions in the context of employment

- Civil servants

- i. A duty of discretion, extending to the public expression of their faith, may legitimately be imposed on civil servants on account of their status. A democratic state is entitled to require civil servants to be loyal to the constitutional principles on which it is founded;³⁰
- ii. The obligation for civil servants to observe normal working hours, which allegedly clash with attendance at prayers or other religious duties, may be justified under Article 9 para. 2;³¹
- iii. The obligation for a teacher not to wear a religious headscarf during school hours may be justified under Article 9 para. 2;³²
- iv. In choosing to pursue a military career an individual accepts of his own accord a system of military discipline that by its very nature implies the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians;³³

²⁵ *Leyla Şahin v. Turkey*, judgment of 10 November 2005, para. 111.

²⁶ *Köse and Others v. Turkey*, decision of 24 January 2006, pages 14 and 15 (available in French only).

²⁷ *Refah Partisi v. Turkey*, *ibid.*, para. 95; *Leyla Şahin v. Turkey*, *ibid.*, para. 111.

²⁸ *Köse and Others v. Turkey*, *ibid.*, page 15.

²⁹ *Leyla Şahin v. Turkey*, *ibid.*, para. 116.

³⁰ *Kurtulmuş v. Turkey*, decision of 24 January 2006 (available in French only).

³¹ *Refah Partisi v. Turkey*, *ibid.*, para. 92, with reference to *X v. the United Kingdom*, No. 8160/78, decision of 12 March 1981 and *Konttinen v. Finland*, decision of 3 December 1993, both decisions of the European Commission of Human Rights.

³² *Dahlab v. Switzerland*, *ibid.*; *Kurtulmuş v. Turkey*, *ibid.*

³³ *Kalaç v. Turkey*, judgment of 1 July 1997, para. 27.

- *Private sector*

- v. Working hours have to be respected regardless of religious convictions. States cannot *a fortiori* be expected to have legislation protecting employees against dismissal by private employers for failure to respect working hours on account of religious duties.³⁴

c. *Restrictions linked to public security or health reasons*

- i. An obligation to remove religious headwear (such as turban) at an airport security check can be imposed;³⁵
- ii. An obligation requiring a motorcyclist to wear a crash helmet, which in his view is incompatible with his religious duties, can be imposed.³⁶

- General principles to be taken into account irrespective of the context

a. *Pluralism and co-existence of various groups of different beliefs*

- i. Where several religions coexist within one and the same population, it may be necessary to place restrictions on freedom to manifest one's religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected;³⁷
- ii. Regulating the manifestation of the rites and symbols of a religion by imposing restrictions as to the place and manner of such manifestation with the aim of ensuring peaceful co-existence between persons of various faiths may be justified under Article 9 para. 2;³⁸
- iii. The role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other;³⁹
- iv. Pluralism and democracy must be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society;⁴⁰
- v. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position;⁴¹
- vi. As regards the right to education, the second sentence of Article 2 of Protocol No. 1 to the ECHR implies mainly that states, in fulfilling the functions assumed by them concerning education and teaching, must take care that information or knowledge included in the

³⁴ *Stedman v. United Kingdom*, decision of 9 April 1997, European Commission of Human Rights.

³⁵ *Phull v. France*, decision of 13 November 2003, page 3.

³⁶ *Refah Partisi v. Turkey*, *ibid.*, para. 92, with reference to *X v. the United Kingdom*, No. 7992/77, decision of 12 July 1978, European Commission of Human Rights.

³⁷ *Kokkinakis v. Greece*, judgment of 25 May 1993, para. 33; *Dahlab v. Switzerland*, *ibid.*, page 11; *Leyla Şahin v. Turkey*, *ibid.*, para. 106.

³⁸ *Refah Partisi v. Turkey*, *ibid.*, para. 95; *Leyla Şahin v. Turkey*, *ibid.*, para. 111.

³⁹ *Leyla Şahin v. Turkey*, *ibid.*, para. 107, with reference to *Metropolitan Church of Bessarabia v. Moldova*, judgment of 13 December 2001, para. 116.

⁴⁰ *Leyla Şahin v. Turkey*, *ibid.*, para. 108.

⁴¹ *Leyla Şahin v. Turkey*, *ibid.*, para. 108.

curriculum is conveyed in an objective, critical and pluralistic manner in a serene atmosphere, free from any inopportune proselytism.⁴²

b. The relationship between state and religions

- i. The role of a state is to organise in an impartial and neutral way the exercise of the different religions coexisting within a democratic society with a view to ensuring public order, religious harmony and tolerance;⁴³
- ii. Where questions concerning the relationship between state and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially in view of the diversity of the approaches taken by the national authorities on the issue;⁴⁴
- iii. The significance of religion in society and the meaning and impact of the public expression of a religious belief will differ according to time and context;⁴⁵
- iv. In delimiting the extent of the margin of appreciation enjoyed by national authorities the Court has regard to what is at stake, namely the need to protect the rights and freedoms of others, to preserve public order and to secure civil peace and true religious pluralism, which is vital to the survival of a democratic society.⁴⁶

c. Gender equality

Gender equality is one of the key principles underlying the Convention.⁴⁷

d. Best interests of the child

The best interests of the child must be protected by preserving religious harmony.⁴⁸

e. Non-discrimination

- i. Restrictions based on regulations must be imposed equally to all civil servants, irrespective of their functions or religion;⁴⁹
- ii. The wearing of religious symbols by a teacher should not go against the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.⁵⁰

⁴² *Köse and Others v. Turkey*, *ibid.*, page 15 (available in French only); *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 17 December 1976, para. 53.

⁴³ *Leyla Şahin v. Turkey*, *ibid.*, para. 107.

⁴⁴ *Leyla Şahin v. Turkey*, *ibid.*, para. 109.

⁴⁵ *Leyla Şahin v. Turkey*, *ibid.*, para. 109.

⁴⁶ *Leyla Şahin v. Turkey*, *ibid.*, para. 110.

⁴⁷ *Leyla Şahin v. Turkey*, *ibid.*, para. 115.

⁴⁸ *Dahlab v. Switzerland*, *ibid.*, page 13.

⁴⁹ *Kurtulmuş v. Turkey*, *ibid.*, page 7 (available in French only).

⁵⁰ *Dahlab v. Switzerland*, *ibid.*, page 14.

4.2. Relevant work within the United Nations

51. The UN Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir, has identified a number of pointers of relevance to religious symbols in her report of 9 January 2006:⁵¹

“(a) Aggravating indicators:

- The limitation amounts to the nullification of the individual’s freedom to manifest his or her religion or belief;
- The restriction is intended to or leads to either overt discrimination or camouflaged differentiation depending on the religion or belief involved;
- Limitations on the freedom to manifest a religion or belief for the purpose of protecting morals are based on principles deriving exclusively from a single tradition;
- Exceptions to the prohibition of wearing religious symbols are, either expressly or tacitly, tailored to the predominant or incumbent religion or belief;
- In practice, state agencies apply an imposed restriction in a discriminatory manner or with a discriminatory purpose, e.g. by arbitrarily targeting certain communities or groups, such as women;
- No due account is taken of specific features of religions or beliefs, e.g. a religion which prescribes wearing religious dress seems to be more deeply affected by a wholesale ban than a different religion or belief which places no particular emphasis on this issue;
- Use of coercive methods and sanctions applied to individuals who do not wish to wear a religious dress or a specific symbol seen as sanctioned by religion. This would include legal provisions or state policies allowing individuals, including parents, to use undue pressure, threats or violence to abide by such rules;

(b) Neutral indicators:

- The language of the restriction or prohibition clause is worded in a neutral and all-embracing way;
- The application of the ban does not reveal inconsistencies or biases vis-à-vis certain religious or other minorities or vulnerable groups;
- As photographs on ID cards require by definition that the wearer might properly be identified, proportionate restrictions on permitted headgear for ID photographs appear to be legitimate, if reasonable accommodation of the individual’s religious manifestation are foreseen by the state;
- The interference is crucial to protect the rights of women, religious minorities or vulnerable groups;
- Accommodating different situations according to the perceived vulnerability of the persons involved might in certain situations also be considered legitimate, e.g. in order to protect underage schoolchildren and the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

4.3. Some guidance from the Advisory Committee for the Framework Convention for the Protection of National Minorities

52. Although the Framework Convention for the Protection of National Minorities is not concerned with all aspects of freedom of religion, religion may be one of the essential elements of the identity of person belonging to national minorities that is relevant in the context of that treaty. According to

⁵¹ Document E/CN.4/2006/5. Ms Jahangir grouped indicators according to whether the national measures are manifestly contrary to international human rights standards (aggravating factors) or whether they do not automatically contravene these standards (neutral factors).

Article 5 of the Framework Convention for the Protection of National Minorities, states should refrain from policies or practices aimed at assimilation of persons belonging to religious minorities against their will, without prejudice to measures taken in pursuance of their general integration policy. Care must therefore be taken to ensure that these rules, which in principle appear to be impartial, do not lead to indirect discrimination by disproportionately affecting persons belonging to minorities, without objective and reasonable justification.

53. The right of persons belonging to national minorities to manifest and practice their religion may therefore be at the heart of the maintenance of their identity. According to Article 8, states shall “recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations”. This provision implies that persons belonging to national minorities must be allowed to practice their religion without discrimination, and differential treatment of various religious entities has been scrutinised by the monitoring bodies.

5. Examples of national initiatives and measures to promote tolerance

54. These examples were given by member states in response to the questionnaire which was drawn up by the DH-DEV at its last meeting. Two questions concerned more particularly initiatives taken by member states with regard to the display of religious symbols in public areas:

- question 2: methods, initiatives or reflection processes regarding issues that may arise in relation to the wearing of clothing or symbols which may express religious or cultural views;
- question 4: Measures and initiatives taken in member states to promote awareness and tolerance of religious and cultural diversity.

55. These examples cover a wide range of different initiatives from school education to thematic seminars or the creation of anti-discrimination bodies. Not all initiatives can be listed and only a few examples illustrating certain trends are given. The complete replies given by the member states can be found in the Addendum to this document (document GT-DH-DEV B(2006)004 Addendum).

5.1. Creation of institutes/bodies to promote intercultural dialogue

56. In *Belgium* a Commission for Intercultural Dialogue was set up following a round table which highlighted a number of concrete steps to be taken to promote intercultural dialogue within Belgian society. In *France*, the High Authority against Discrimination and for Equality (HALDE) has recently been established with a view to identifying and disseminating good practice regarding the fight against discrimination and to making recommendations to the government, parliament and public authorities, including on amendments which ought to be made to existing laws. In *Italy*, the National Racial Anti-Discrimination Office and the Committee against Discrimination and Anti-Semitism were set up in 2004; the latter body initiated a dialogue process with different religious bodies. The *United Kingdom* mentions the existence of a Commission for Racial Equality. *Denmark* refers to the establishment of the National Council for Ethnic Minorities which advises the Minister of Refugees, Immigration and Integration Affairs on issues of importance to immigrants and refugees and which comments on issues relating to minorities in general. In *Ireland*, an expert advisory body, the National Committee on Racism and Interculturalism, was established in 1998 by the government. It provides advice and develops initiatives linked to racism and promoting interculturalism and brings together representatives from government and non-government organisations.

57. The *French* Council for Muslim Worship has also recently been created with members elected by the Muslim community; this council, which is a private law association, is a privileged partner of the authorities in the same way as other similar associations representing other faiths. In the same way, the *Belgian* Commission for intercultural dialogue has supported the idea of the creation of a Belgian institute of Islam. The Belgian Commission for intercultural dialogue also calls for the setting-up of a

centre for interfaith studies to promote dialogue between faith communities. In *Germany*, certain Länder have established Islamic studies or Islamic religious education in state schools.

58. In *Switzerland*, in May 2006, the leaders of Christian, Jewish and Muslim faiths signed an act creating the Swiss Council of Religions. This council will promote better understanding between religions and will also be a partner for the authorities, providing them with advice. Nothing prevents the council from accepting other religions, such as Buddhism or Hinduism, in its midst. It will deal with religious and social issues, e.g. religious buildings, religious symbols in public areas (such as the Islamic scarf or Christian crosses), the training of religious ministers or the integration of children in state schools, rather than theology.

5.2. Appointment of an ombudsman or extension of his remit

59. *Norway* mentions the establishment in 2006 of the Equality and Discrimination Ombudsperson and the Equality and Discrimination Tribunal. The Ombudsperson will make decisions in individual cases of discrimination and the tribunal will be empowered to order measures to prevent discriminatory situations and impose coercive fines.

60. *Sweden* also refers to an Ombudsperson against ethnic discrimination who has expressed the view that “the right to wear religious clothing is a part of the freedom of religion in Sweden. To refuse an individual access to work or to treat an employee, a customer or a tenant in a discriminatory way due to religious clothing amounts to religious discrimination. The same applies if a student is denied the right to wear a headscarf in school. Discrimination on ethnic or religious grounds is illegal. It is not up to the [Ombudsperson against ethnic discrimination] or to the society in large to evaluate the symbolic meaning of a certain religious or ethnic dress. That is a personal decision for the individual using the dress to decide if his/her faith or culture so demands. There are however certain situations where e.g. a headscarf may be of a hindrance, i.e. for security or hygiene reasons”. This Ombudsperson has also identified vulnerable groups and will prepare measures to provide them with information on discrimination.

61. *Cyprus* specifies that the Commissioner for Administration may impose sanctions for discrimination contrary to the Law on Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin.

5.3. Legislative or normative measures

62. Several states indicated general anti-discrimination legislation as being of direct relevance for the topic at issue (e.g. *Belgium, Cyprus, Denmark, Germany, Ireland, Norway, Sweden, Switzerland*).

63. *Croatia* mentions the Act relating to Public, Religious and other Holidays and Memorial Days according to which members of the Orthodox community may choose at their discretion not to work on the Orthodox Christmas Day (7 January), members of the Muslim community on the final days of Ramadan and on Kurban Bayram and members of the Jewish community on the days of Rosh Hashanah and Yom Kippur. A similar law exists in *Serbia*. *France* mentions a circular addressed to public authorities reminding them every year that heads of departments can grant leave to staff wishing to follow certain religious celebrations, as long as this absence is compatible with the normal functioning of the department. *Austria* draws attention to an ordinance concerning the working hours of the staff employed in the Federal Ministry of Defence (*Zentralstelle*) which includes provisions regulating leave of absence with regard to religious holidays of different religious groups.

64. *Austria* also indicates that, in 2004, the Federal Ministry of Defence issued an ordinance regarding the treatment of members of religious minorities such as the Jewish Faith Community, the Islamic Faith Community, the Sikhs and the Seventh-Day Adventists, who are involved in basic military service or any other kind of military training. The ordinance regulates religious requirements like food, prayer times and rooms, and includes special provisions regarding obligatory times of prayer or

attendance at religious events and days-off for religious holidays. Furthermore, exemptions are guaranteed for the wearing of religious headwear, beards and shaved heads.

65. The *Netherlands* indicates that the Ministry for Education has drawn up “Guidelines for clothing regulations in schools”.

5.4. National seminars, conferences or round tables and long-term action plans

66. Many states mention the holding of seminars on related topics involving different actors concerned (e.g. *Azerbaijan, Bosnia and Herzegovina, Latvia, Norway*).

67. A number of states (e.g. *Estonia, Finland, Ireland, Lithuania, Norway, Russian Federation, Switzerland*) draw attention to the existence of long-term action plans to combat discrimination and promote tolerance, involving a number of practical steps (awareness-raising seminars, dissemination of targeted information, initiatives in schools, etc). By way of example the *UK* mentions a three-year project (Safe Community Initiative) of its Commission for Racial Equality which began in 2003 and was set up to provide information and advice on promoting good community relations and to help prevent and resolve disputes or tensions as early as possible. This included developing good practice in five cities and focused on six themes (including racial hatred, asylum and immigration, faith communities and media impact). In addition to conflict resolution, its aim was to promote interaction between people from different backgrounds and to overcome prejudices.

5.5. Initiatives promoting inter-faith dialogue

68. *Finland* indicates that an active dialogue is engaged between faith communities which meet on a regular basis several times a year. The first meeting was organised in 2001 at the President’s initiative.

69. The *Russian Federation* mentions a score of events aiming at strengthening mutual understanding between different religions organised in the framework of the Assembly of the Peoples of Russia, a public organisation, and involving representatives of Orthodox, Muslim, Buddhist, Jewish, Protestant and other faith communities.

70. The *Russian Federation* also draws attention to the international Conference “Dialogue of cultures and inter-confessional cooperation” organised by the Russian Chairmanship of the Committee of Ministers of the Council of Europe (Nizhni Novgorod, 7-9 September 2006). A Declaration was adopted at the Conference which supports cultural and religious diversity.

5.6. Training of judges and civil servants

71. *Austria* mentions that the training of candidate judges includes training on how to avoid any form of discrimination. Public prosecutors and lawyers are also offered basic and further training modules on anti-discrimination legislation.

5.7. Various initiatives in the education field

72. *France* mentions the existence of citizenship classes at school. *Greece* mentions a number of educational measures within a global framework aiming at promoting tolerance and diversity within the educational system and throughout the subjects taught at school. *Austria* also mentions a number of initiatives to promote human right values at school, included in the normal school curricula.

73. In *Latvia*, following the publication of a brochure prepared by the authorities on tolerance and interfaith dialogue, a series of postcards designed by famous artists was distributed in schools with logos and slogans on tolerance.

5.8. Initiatives in the media

74. *Croatia* mentions the existence of religious programmes for the different faith communities on public television. *Estonia* indicates the broadcasting of a programme on the different ethnic minorities present in the country. In *Serbia* the authorities launched a media campaign promoting tolerance towards the various faith communities.

* * *

Appendix I – Relevant provisions of international instruments (full text)

Universal Declaration of Human Rights

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

International Covenant on Civil and Political Rights

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Covenant on Economic, Social and Cultural Rights

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

European Convention on Human Rights

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

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

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 1, Article 2 – Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Protocol 12, Article 1– General prohibition of discrimination

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

European Social Charter (revised)

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Framework Convention for the Protection of National Minorities

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit

Article 12

- 1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
- 2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
- 3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

* * *

Appendix II – Quotes from relevant judgments and decisions of the European Court of Human Rights and the European Commission of Human Rights

General quotes on freedom of religion

- “As enshrined in Art. 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.”

Kokkinakis v. Greece, judgment of 25 May 1993, para. 31; *Dahlab v. Switzerland*, decision of 15 February 2001, page 11; *Refah Partisi v. Turkey*, judgment of 13 February 2003 (Grand Chamber), para. 90.

- “While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to “manifest [one’s] religion”. Bearing witness in words and deeds is bound up with the existence of religious convictions.”

Kokkinakis v. Greece, *ibid.*, para. 31; *Dahlab v. Switzerland*, *ibid.*, page 11.

- “Art. 9 does not protect every act motivated or inspired by a religion or belief.”

Kalaç v. Turkey, judgment of 1 July 1997, para. 27, *Refah Partisi v. Turkey*, *ibid.*, para. 92.

- Elements to be taken into account depending on the context in which restrictions are imposed

(a) Restrictions at school and university

- “In the Dahlab case, which concerned the teacher of a class of small children, the Court stressed among other matters the “powerful external symbol” which her wearing a headscarf represented and questioned whether it might have some kind of proselytising effect, seeing that it appeared to be imposed on women by a religious precept that was hard to reconcile with the principle of gender equality. It also noted that wearing the Islamic headscarf could not easily be reconciled with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society should convey to their pupils.”

Leyla Şahin v. Turkey, judgment of 10 November 2005 (Grand Chamber), para. 111.

- “Weighing the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony, the Court considers, in the circumstance of the case and having regard, above all, to the tender age of the children for whom the applicant was responsible as a representative of the State, the [...] authorities did not exceed their margin of appreciation and that the measure [prohibiting the applicant from wearing the Islamic scarf] they took was therefore not unreasonable.”

Dahlab v. Switzerland, *ibid.*, page 13.

- “In a country like Turkey, where the great majority of the population belong to a particular religion, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9 para. 2 of the Convention. In that context, secular universities may regulate manifestation of the rites and symbols of the said religion by imposing restrictions as to the place and manner of such manifestation with the aim of ensuring peaceful co-existence between students of various faiths and thus protecting public order and the beliefs of others.”

Refah Partisi v. Turkey, *ibid.*, para. 95; *Leyla Şahin v. Turkey*, *ibid.*, para. 111.

- “In such a context where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women are being taught and applied in practice, it is understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned [a state run university] and so consider it contrary to such values to allow religious attire, including, as in the present case, the Islamic headscarf, to be worn.”

Leyla Şahin v. Turkey, *ibid.*, para. 116.

- “The second sentence of Article 2 implies mainly that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is

conveyed in an objective, critical and pluralistic manner in a serene atmosphere, free from any inopportune proselytism.”

Köse and Others v. Turkey, decision of 24 January 2006, page 15 (unofficial translation, available in French only), *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 17 December 1976, para. 53.

- “It [Art. 2 of Prot. 1] enjoins the State to respect parents’ convictions, be they religious or philosophical, throughout the entire State education programme. Given the power of appreciation left to states in this matter, the aforementioned provision [second sentence of Article 2 of Protocol No. 1] forbids the State ‘to pursue an aim of indoctrination that might be regarded as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded’.”

Köse and Others v. Turkey, *ibid.*, page 14 (unofficial translation, available in French only).

- “According to the applicants, it is unacceptable that their daughters’ access to school would be prevented as a result of their respect of a religious duty [namely the wearing the Islamis shawl]. In this respect, the Court finds it sufficient to note that both the parents and pupils had been informed of the consequences in case she would not respect the school regulations as in force. It should also be noted that the refusal to give them access to the school precinct was not accompanied by disciplinary measures; provided they respected the clothing regulations, the pupils concerned could continue attending all classes. Moreover, the obligation on pupils to present themselves with a bear head at school, except during Koran classes, does not deprive their parents of their right ‘to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents’ own religious or philosophical convictions’ ”.

Köse and Others v. Turkey, *ibid.*, page 15 of the decision (unofficial translation, available in French only).

(b) Restrictions in the context of employment

- Civil servants

- “These principles [identified in *Kokkinakis* in respect of freedom of religion under Art. 9] apply also to civil servants. Although it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 9 of the Convention. It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of religion and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 9 para. 2.”

Kurtulmuş v. Turkey, decision of 24 January 2006, page 7 (unofficial translation, available in French only).

- “In exercising his freedom to manifest his religion, an individual may need to take his specific situation into account.” “In choosing to pursue a military career Mr Kalaç was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians.”

Kalaç v. Turkey, *ibid.*, para. 27.

- “The obligation for a teacher to observe normal working hours which, he asserts, clash with his attendance at prayers, may be compatible with freedom of religion.”

Refah Partisi v. Turkey, *ibid.*, para. 92 with reference to *X v. the United Kingdom*, No. 8160/78, decision of 12 March 1981, and *Konttinen v. Finland*, decision of 3 December 1993, European Commission of Human Rights.

- “The Commission recalls that in Application No. 24949/94, Dec. 3.12.96, [*Kantinen v. Finland*] unpublished, an employee of the Finnish State Railways was dismissed for failing to respect his working hours on the basis that to work after sunset on a Friday was forbidden by the Seventh-Day Adventist Church, of which he was a member. The Commission held in this case that the applicant was not dismissed because of his religious convictions but for having refused to respect his working hours. In these circumstances the Commission considered that although the refusal was motivated by religious convictions, such a situation did not give rise to protection under Article 9 para. 1. Further the Commission held in that case, that the applicant had failed to

show that he was pressured to change his religious views or prevented from manifesting his religion or belief (inter alia he was free to resign)."

Stedman v. UK, decision of 9 April 1997, European Commission of Human Rights.

- "Weighing the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony, the Court considers, in the circumstance of the case and having regard, above all, to the tender age of the children for whom the applicant was responsible as a representative of the State, the [...] authorities did not exceed their margin of appreciation and that the measure [prohibiting the applicant from wearing the Islamic scarf] they took was therefore not unreasonable."

Dahlab v. Switzerland, *ibid.*, page 13.

- "The Court recalls having always underlined that preserving the principle of secularity undoubtedly constituted one of the founding principles of the Turkish state [...]. In this respect, it recalls having accepted in the past that a democratic State is entitled to require civil servants to be loyal to the constitutional principles on which it is founded."

Kurtulmuş v. Turkey, *ibid.*, page 8 (unofficial translation, available in French only).

- Private sector

- "the applicant was dismissed for failing to agree to work certain hours rather than her religious belief as such and was free to resign and did in effect resign from her employment. The Commission thus considers that, had the applicant been employed by the State and dismissed in similar circumstances, such dismissal would not have amounted to an interference with her rights under Article 9 para. 1 (Art. 9-1). A fortiori the United Kingdom cannot be expected to have legislation that would protect employees against such dismissals by private employers. In the absence of the dismissal itself constituting an interference with the applicant's rights under Article 9 (Art. 9), the fact the applicant was not able to claim unfair dismissal before an Industrial Tribunal (who only had jurisdiction over employees of two years standing), cannot, of itself, constitute a breach of Article 9 (Art. 9) of the Convention."

Stedman v. the United Kingdom, *ibid.*

(c) Restrictions linked to public security or health reasons

- This case concerned a Sikh who was asked to remove his turban at an airport security check. The Court considered that it constituted an interference with his right to manifest his religion. As regards the legitimate aim pursued and the proportionality of the measures taken, the Court considered: "first, airport security checks are without doubt necessary for public security within the meaning of [Art. 9 para. 2]. Secondly, the modalities of their implementation in the instant case come within the margin of appreciation of the responding State, all the more so as they were of a punctual nature".

Phull v. France, decision of 13 November 2003, page 3.

- "The obligation for a teacher to observe normal working hours which, he asserts, clash with his attendance at prayers, may be compatible with the freedom of religion (see *X v. the United Kingdom*, No. 8160/78, Commission decision of 12 March 1981, Decisions and Reports (DR) 22, p. 27), as may the obligation requiring a motorcyclist to wear a crash helmet, which in his view is incompatible with his religious duties (see *X v. the United Kingdom*, no. 7992/77, Commission decision of 12 July 1978, DR 14, p. 234)."

Refah Partisi v. Turkey, para. 92 with reference to *X v. the United Kingdom*, No. 7992/77, decision of 12 July 1978, European Commission of Human Rights.

- General principles to be taken into account irrespective of the context

(a) Pluralism and co-existence of various groups of different beliefs

- Paragraph 2 of Art. 9 which provides limitations "refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected."

Kokkinakis v. Greece, *ibid.*, para. 33; *Dahlab v. Switzerland*, *ibid.*, page 11; *Leyla Şahin v. Turkey*, *ibid.*, para. 106.

- “In a country like Turkey, where the great majority of the population belong to a particular religion, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9 para. 2 of the Convention. In that context, secular universities may regulate manifestation of the rites and symbols of the said religion by imposing restrictions as to the place and manner of such manifestation with the aim of ensuring peaceful co-existence between students of various faiths and thus protecting public order and the beliefs of others.”

Refah Partisi v. Turkey, *ibid.*, para. 95; *Leyla Şahin v. Turkey*, *ibid.*, para. 111.

- “The Court has frequently emphasised the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed. Accordingly, the role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”

Leyla Şahin v. Turkey, *ibid.*, para. 107, on the basis of *Metropolitan Church of Bessarabia v. Moldova*, judgment of 13 December 2001, para. 116.

- “Pluralism, tolerance and broadmindedness are hallmarks of a “democratic society”. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position. Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society.”

Leyla Şahin v. Turkey, *ibid.*, para. 108.

- “The second sentence of Article 2 implies mainly that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner in a serene atmosphere, free from any inopportune proselytism.”

Köse and Others v. Turkey, page 15 of the decision (unofficial translation, available in French only), *Kjeldsen, Busk Madsen et Pedersen c. Denmark*, *ibid.*, para. 53.

(b) The relationship between the state and religions

- “The Court has frequently emphasised the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed. Accordingly, the role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”

Leyla Şahin v. Turkey, *ibid.*, para. 107, on the basis of *Metropolitan Church of Bessarabia v. Moldova*, *ibid.*, para. 116.

- “Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially in view of the diversity of the approaches taken by the national authorities on the issue. It is not possible to discern throughout Europe a uniform conception of the significance of religion in society and the meaning and impact of the public expression of a religious belief will differ according to time and context. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the domestic context concerned.”

Leyla Şahin v. Turkey, *ibid.*, para. 109.

- “This margin of appreciation goes hand in hand with a European supervision embracing both the law and the decisions applying it. The Court’s task is to determine whether the measures taken at national level were justified in principle and proportionate. In delimiting the extent of the margin of appreciation in the present case the Court

must have regard to what is at stake, namely the need to protect the rights and freedoms of others, to preserve public order and to secure civil peace and true religious pluralism, which is vital to the survival of a democratic society.”

Leyla Şahin v. Turkey, *ibid.*, para. 110.

(c) Gender equality

- “Gender equality [is] recognised by the European Court as a one of the key principles underlying the Convention and a goal to be achieved by member states of the Council of Europe [...]”

Leyla Şahin v. Turkey, *ibid.*, para. 115.

(d) Best interests of the child

- “Weighing the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony, the Court considers, in the circumstance of the case and having regard, above all, to the tender age of the children for whom the applicant was responsible as a representative of the State, the [...] authorities did not exceed their margin of appreciation and that the measure [prohibiting the applicant from wearing the Islamic scarf] they took was therefore not unreasonable.”

Dahlab v. Switzerland, *ibid.*, page 13.

(e) Non-discrimination

- “The Court notes that the rules regarding the civil servants’ dress code apply equally to all civil servants, irrespective of their functions or religious beliefs; [...] It is beyond doubt that the applicant has freely embraced the status of civil servant.”

Kurtulmuş v. Turkey, *ibid.*, page 7 (unofficial translation, available in French only).

- “it cannot be denied outright that the wearing of a headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which, as the Federal Court noted, is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.”

Dahlab v. Switzerland, *ibid.*, page 13.

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