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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2662/2015*, **

Communication submitted by:	F.A. (represented by counsel, Claire Waquet and Michel Henry)
Alleged victims:	The author
State party:	France
Date of communication:	18 June 2015
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 November 2015 (not issued in document form)
Date of adoption of Views:	16 July 2018
Subject matter:	Ban on wearing a headscarf in the workplace
Procedural issues:	
Substantive issues:	Freedom to manifest one's religion, discrimination on the grounds of religion and gender
Articles of the Covenant:	18 and 26
Article of the Optional Protocol:	2

1. The author of the communication is F.A., a Moroccan national born in 1969. She alleges violations by the State party of articles 18 and 26 of the Covenant. She is represented by counsel, Claire Waquet and Michel Henry. The Optional Protocol entered into force for the State party on 17 May 1984.

The facts as submitted by the author

2.1 The author had worked since 1991 as an early childhood educator in a childcare centre set up by a private association. Because of her religious beliefs, since 1994, she has

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee took part in the consideration of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Olivier de Frouville did not participate in the consideration of the communication.

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usually worn a scarf around her face, covering her hair. Just before she went back to work after parental leave in December 2008, the director of the childcare centre informed her that, in accordance with the centre's internal regulations, she would not be allowed to return to work wearing a headscarf.

2.2 On 9 December 2008, the day she had been asked to return to work, the author reported to the childcare centre wearing a headscarf, as was her habit. By a letter of 19 December 2008, the complainant was notified of her dismissal for insubordination, defined as serious misconduct. The grounds for dismissal were: violation of the centre's internal regulations for refusing to remove her "Islamic veil"; refusal to leave the centre, despite being suspended by the director; and the "altercation" which, according to the director, followed that refusal.

2.3 The author initiated proceedings before the domestic courts to have the dismissal recognized as discriminatory and as violating her freedom to manifest her religion. As part of the proceedings, the author challenged the legality of the clause in the internal regulations which specified that "the principle of the freedom of conscience and religion of each staff member may not hinder compliance with the principles of secularism and neutrality that apply to all [of the association's] activities". A judgment issued by the Mantes-la-Jolie labour tribunal on 13 December 2010 and a ruling of 27 October 2011 by the Versailles Court of Appeal upholding that judgment on appeal validated the clause of the internal regulations and the dismissal.

2.4 The author filed for a review of the ruling in cassation. By a ruling of 19 March 2013, the Labour Division of the Court of Cassation held that the principle of secularism established by article 1 of the Constitution is not applicable to employees in the private sector who do not manage a public service and that restrictions on religious freedom must be justified by the nature of the tasks to be performed, meet an essential and crucial professional requirement and be proportional to the intended objective. The Court concluded, contrary to the ruling of the Versailles Court of Appeal, that the clause in the childcare centre's internal regulations established a general and imprecise restriction on the religious freedom of its employees, meaning that the dismissal, imposed on discriminatory grounds, was null and void.

2.5 On 27 November 2013, the Paris Court of Appeal, ruling as a court of referral after cassation, again confirmed the judgment of the Mantes-la-Jolie labour tribunal of 13 December 2010. The Court's ruling relied on the concept of a "belief-based company", according to which a private-law corporation whose work is in the public interest may, in certain circumstances, constitute a belief-based company and adopt statutes and internal regulations that provide for an obligation of neutrality on the part of the staff in the performance of their duties. The Court also held that such an obligation of neutrality implies, inter alia, a ban on wearing any conspicuous religious symbols.

2.6 The author once again filed an appeal on points of law, which was considered in full court. By decision of 25 June 2014, the Court rejected the appeal. While recognizing that, in view of its social purpose, the association could not be regarded as a belief-based company, the Court was of the view that the Court of Appeal could infer that the restriction on the freedom to manifest one's religion was sufficiently specific, was justified by the nature of the tasks performed by the employees of the association and was proportionate to the intended objective, taking specific account of the operating conditions of the small association, whose 18 employees came into direct contact with the children and their parents.

The complaint

3.1 The author considers that the events of which she was victim constitute a violation of her rights under articles 18 and 26 of the Covenant.

3.2 The author alleges that the restriction imposed on her by the clause in the childcare centre's internal regulations constitutes a restriction that is not provided for in law. In this regard, the author considers that the legislation in force at the time of the events did not allow internal regulations to impose a restriction in the circumstances of the case in question. The principle of neutrality provided for in the French Constitution is applicable

only to State-run public services, not to a private childcare centre. Furthermore, the Labour Code applicable on the date of dismissal[1] provided, in its article L. 1121-1, that: "No one may impose on human rights and individual and collective freedoms any restrictions which are not justified by the nature of the task to be performed or proportionate to the intended objective"; and article L. 1321-3 stipulated that: "Internal regulations may not contain: … provisions imposing on human rights and individual and collective freedoms restrictions that are not justified by the nature of the task to be performed or proportionate to the intended objective." Lastly, the applicable Labour Code prohibited any discrimination, including on the basis of gender or religious beliefs. According to settled case law,[2] a restrictive clause may be legally provided for in internal regulations only if the regulations specify that "the obligations resulting therefrom should be assessed with reference to the nature of the functions performed by the staff members subject to them".[3] In the case in question, the childcare centre's internal regulations did not contain any such justification. The author therefore alleges that the interpretation made by the courts in her case is not in accordance with their own case law, making the law unpredictable and justice inaccessible in her case. The author concludes that she was subjected to a restriction that was not provided for in law, in contradiction with the requirements of article 18 (3) of the Covenant.

3.3 The author also maintains that the restriction to which she was subjected was not necessary in a democratic society, as it cannot be justified by the need to protect safety, order or public health. The author notes that, according to the jurisprudence of the Council of State, the wearing of a headscarf does not constitute an act of proselytism.[4] Only an act of pressure or proselytism may adversely affect the fundamental rights and freedoms of others. However, the fact of a member of the childcare centre's staff wearing a religious symbol does not in any way prohibit parents from freely guiding their children in the enjoyment of their freedom of conscience and religion. The author notes that article 18 (3) also requires that the restriction should be proportionate. In the present case, the author's refusal to remove her veil was the cause of her losing her job and was classified as serious misconduct, a particularly negative classification which removed any possibility of a severance payment. Moreover, the disputed clause is general, unspecific and therefore disproportionate.

3.4 The author also claims a violation of article 26 of the Covenant, as she did not benefit from the protection from discrimination provided by domestic law and was the subject of a discriminatory dismissal. She notes that the dismissal was based on a discriminatory ground related to her religious beliefs and that the clause of the internal regulations that was applied to her had an indirectly discriminatory effect, in that it affected Muslim women in a particularly disadvantageous and disproportionate way.

State party's observations on admissibility and the merits

4.1 By a note verbale dated 4 January 2016, the State party indicated that it did not wish to contest the admissibility of the communication. By a note verbale dated 3 May 2016, the State party submitted its observations on the merits of the communication.

4.2 The State party sets out the applicable law guaranteeing religious freedom and non-discrimination, referring to article 10 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, articles 1 and 2 of the Constitution of 4 October 1958, articles 9 and 14 of the European Convention on Human Rights and titles II and III of the Labour Code.

4.3 The State party notes that, in the private sector, the principle is the free manifestation of one's religion. Restrictions may, however, be imposed on this freedom

[1] The Labour Code in the version applicable on 19 December 2008.

[2] Council of State, Corona, 1 February 1980, as above No. 06361; Council of State, 25 January 1989, Société industrielle Teinture et apprêts, No. 64296; Court of Cassation, Labour Division, 9 June 1998, B. No. 315, appeal No. 95-45019; *Council of State, Minister of Labour, Employment and Health v. Caterpillar France*, 12 November 2012, No. 349365.

[3] Council of State, 20 July 1990, No. 85429; 23 July 1993, No. 99391.

[4] Council of State, 20 October 1999, No. 181486; 27 November 1996, No. 172989; 7 November 1996, No. 169522; and 6 April 2009, No. 2009-117, paras. 35 and 36.

when they are justified by the nature of the task to be performed and are in keeping with the intended objective. Decisions on whether such restrictions comply with the legislative provisions are closely monitored by the labour inspectorate and the judicial authorities. Even if a clause in internal regulations has not yet been applied in his or her specific case, an employee may request the labour inspectorate to examine its legality.

4.4 The State party notes that the freedom at issue in the present case is not that of having a religion, but the freedom to manifest one's religion and that this freedom is not absolute and may be subject to limitations in accordance with article 18 (3) of the Covenant. The State party also notes that the acts complained of by the author were committed by a private legal person, and thus the issue was to examine whether the State party had fulfilled its positive obligation to protect the right of individuals to freedom to manifest their religion. In the present case, it recalls that the author was able to have her arguments heard and has used all the remedies available in national law.

4.5 The State party contests the author's allegations that the restriction to which she was subjected was not provided for in law. It considers that the question of the legality of the clause in the childcare centre's internal regulations is irrelevant in view of the condition that the restriction must be provided for in law. The State party adds that the only issue of relevance is the existence of a legal framework governing the procedure that led the association to dismiss the author. The State party thus considers that the contested dismissal fell within a legal framework fully defined in articles L. 1121-1 and 1321-3 of the Labour Code, which allow employers to restrict an employee's freedoms if such restrictions are justified by the nature of the task to be performed and are proportionate to the intended objective.

4.6 With regard to the allegations concerning the accessibility and predictability of the legal framework, the State party recalls that, according to the Committee's Views in the case of *Ross v. Canada*: "It is not for the Committee to re-evaluate the findings of the Supreme Court on this point, and accordingly it finds that the restriction was provided for by law."[5] Furthermore, the State party submits that, at the time of the events, the national courts had already ruled in respect of the Islamic veil that an employer was justified in refusing to allow it on the basis of the nature of the task to be performed by a salesperson who was necessarily in contact with the general public, whose beliefs are varied.[6] The Court of Cassation had recognized that an employer may require employees who are in contact with clients to dress in a manner appropriate to the functions or products that they are mandated to sell.[7] The Court of Appeal of Saint-Denis de la Réunion[8] had also recognized that an employer may prohibit a style of clothing that was in "total contradiction with the image of the store". In the case in question, it was a small association, all of whose employees were or could be in contact with the children and their parents. The State party therefore considers that the Court of Cassation has complied with the criteria set out in its case law.

4.7 The State party further contends that the restriction to which the author was subjected had a legitimate purpose, namely to protect the rights and freedoms of others. It recalls that the European Court of Human Rights has previously found that the Islamic headscarf is not, in itself, a "passive symbol", but a "powerful external symbol" and that it has recognized the protection of the rights and freedoms of others as a legitimate objective of restrictions imposed by employers on the freedom to manifest religion within enterprises.[9] The object of the association managing the centre was to work in support of early childhood in deprived areas and to promote the social and professional integration of women regardless of political opinion or faith; to that end, it organized monthly meetings

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

[6] Court of Appeal of Paris, 16 March 2001, No. 99-31302.

[7] Labour Division of the Court of Cassation, 6 November 2001, No. 99-43.988; Labour Division of the Court of Cassation, 28 May 2003, No. 02-40.273.

[8] Court of Appeal of Saint-Denis de La Réunion, 9 September 1997, No. 1997-930234.

[9] European Court of Human Rights, *Leyla Şahin v. Turkey*, No. 44774/98, 29 June 2004; *Dahlab v. Switzerland*, No. 42393/98, ECHR 2001-V; *Eweida and others v. United Kingdom*, 15 January 2013, Nos. 48420/10 and three others, ECHR 2013 (extracts).

for local women to allow them to discuss the challenges they faced and to develop their own responses. The centre is thus a place that provides a warm welcome and social stability for young children, who are particularly impressionable and receptive to their environment and who should not be confronted with conspicuous displays of religious affiliation. Employees of the centre are in contact with a specific public: children and their parents. The particular vulnerability of children to any display, let alone expression of religion, by their educators therefore justifies the restriction imposed on the author. The State party therefore considers that the intention of the contested clause of the regulations was to protect the right of the children and that of their parents to see that the children were not exposed to any religious influence other than their own.

4.8 The State party also contests the author's allegations that the restriction to which she was subjected was not proportionate to the intended objective. It stresses that it is important that States parties enjoy a certain margin of appreciation in deciding whether and to what extent intervention is necessary. In the present case, the State party recalls that the restriction imposed relates only to the freedom to manifest one's religion, meaning that employees who are likely to come into contact with small children should act with caution in expressing their religious views. The restriction applies only within the scope of the activities of the childcare centre and only to those activities involving contact between staff and children. Given that the centre was not large, all the employees might come into contact with that group. The State party also recalls that, in a case where a Catholic complainant working in a Protestant childcare centre found herself in a similar situation, the European Court of Human Rights based its decision on freedom of contract in finding that there had been no violation of the right to freedom of religion.[10]

4.9 With regard to the author's allegations that her dismissal constituted discrimination in breach of article 26 of the Covenant, the State party maintains that the clause in the childcare centre's internal regulations does not create any discrimination because it was not aimed at any religion, philosophical belief or sex. The clause in the internal regulations could be regarded as leading to different treatment for employees who wish to manifest their religious beliefs and those who do not. However, the State party recalls that the Committee has consistently maintained that the right to equality before the law does not mean that all differences of treatment are discriminatory, and differentiation based on reasonable and objective criteria does not amount to discrimination within the meaning of article 26 of the Covenant. The difference in treatment resulting from the childcare centre's internal regulations was objective and was neither arbitrary nor unreasonable.

Author's comments on the State party's observations

5.1 By letter of 12 September 2016, the author submitted her comments on the State party's observations on the merits of the communication.

5.2 The author contests the State party's assertion that the only issue of relevance to the lawfulness of the restriction on the right to manifest one's religion is the existence of a legal framework governing the procedure that led the association to dismiss her. The author maintains that the clause in the internal regulations is at the heart of her dismissal. If it were declared unlawful, that would mean *ipso facto* that the severe disciplinary sanction imposed on her would be null and void. According to the principle laid down in the Labour Code, it is clear that freedom, including religious freedom, is the general rule; prohibition, which is the exception, is tightly circumscribed, being determined by the nature of the task to be performed and must be strictly proportionate to the intended objective. It cannot therefore be claimed that the clause of the internal regulations was in any way lawful; it was thus contrary to the applicable legislation. The author points out that the recent amendment to the Labour Code,[11] which makes it possible for internal regulations to contain provisions that enshrine the principle of neutrality, shows that such an option did not exist in the past. The author is of the opinion that the compliance of the new legislation with the Covenant and with the rights and freedoms guaranteed under the Constitution may be questioned, but the Constitutional Council has not, as yet, been seized of the matter.

[10] *Siebenhaar v. Germany*, No. 18136/02, 3 February 2011.

[11] Act No. 2016-1088 of 8 August 2016.

5.3 The author notes that, according to the State party, the Court of Cassation considered that the restriction imposed on the freedom to manifest one's religion satisfied the legislative criteria, having based its judgment on a criterion that had been applied previously in case law and taking specific note of the author's situation. In this regard, she recalls that the Court of Cassation is not a trial court, but that, in the present case, it found that the Court of Appeal was able to deduce, taking specific note of the conditions in which a small association operates, that all the employees might come into direct contact with the children and their parents, and thus justified the restrictions on the freedom to manifest one's religion. However, according to the author, the Court of Appeal did not consider either the size of the association, the number of its employees or the practical conditions in which it was operating, its decision being based on the legal classification of a belief-based company which, according to the case law of the European Court of Human Rights, would justify the imposition of a principle of neutrality applicable to all employees working there. The Court of Appeal also sought, against all the evidence, to restrict the ambit of the clause, considering that the wording was sufficiently precise for it to be understood as applying solely to early childhood development activities and care for children within and outside the business premises. However, the author's personal employment situation was never considered.

5.4 The author further expresses her disagreement with the State party's contention that there exists settled case law from which such a restriction of the right to manifest one's religion could be inferred. The author considers that the judgments cited by the State party concerned cases very different to her own, mainly related to individual restrictions justified by the nature of the task or the intended objective, rather than generalized restrictions similar to that imposed on her. Furthermore, the judgments of the Court of Cassation cited by the State party concern the freedom to dress as one wishes, a freedom that does not fall within the category of fundamental freedoms, in contrast to the freedom to manifest one's religion. The author adds that, although two of the judgments[12] referred to by the State party concern a religious symbol, they remained isolated, were highly criticized in the legal literature and were not endorsed by the Court of Cassation. The author recalls that the Court of Cassation decided to refer to the Court of Justice of the European Union[13] the question of whether a prohibition on wearing religious symbols could be justified, in the interests of the enterprise, by the wish of the customers, thereby demonstrating that the case law on the topic was not settled.

5.5 As to the legitimate objective of the restriction, the author considers that an urgent need for complete and permanent neutrality to safeguard the freedom of conscience of the children and the parents' educational choice cannot be demonstrated in the present case: the children aged 3 years and under who attend the childcare centre, who live in an ethnically and culturally diverse environment, are accustomed to seeing their parents and relatives wearing clothes that express the ethnic origin of the person concerned. For many of them, those clothes include a headscarf, it being irrelevant whether it is Islamic or not, given that a child of that age does not make that distinction. The author adds that the childcare centre accepts older children only on an exceptional or occasional basis and that the parents have never indicated or shown that they joined the association because of the neutrality required of its staff, that principle being mentioned in the centre's internal regulations, but not in the association's statutes. The author considers the implication in the State party's observations that children should not be approached by a woman wearing a veil to be deeply shocking.

5.6 With regard to the proportionality of the restriction to the intended objective, the author notes that the State party considers the restriction to be proportionate in view of the author's functions. She recalls, however, that that assertion is not reflected in the decisions of the French courts, which considered neither her functions nor her individual circumstances. The author was dismissed without any attempt at accommodation on the part of the employer, and without the headscarf having caused any problems.

[12] Court of Appeal of Paris, 16 March 2001, No. 99-31302; Court of Appeal of Saint-Denis de La Réunion, 9 September 1997, No. 1997-930234.

[13] Judgment of the Court of Cassation of 9 April 2015, appeal No. 13-19855.

5.7 With regard to the State party's argument that she had freely chosen to exercise her profession in the association and was aware of the provisions of the internal regulations, the author points out that the State party bases that contention on a decision of the European Court of Human Rights which is not relevant to the present case: the Court's judgment concerned a Protestant childcare centre, which is therefore a belief-based company, whereas the childcare centre in which the author worked did not fall within that category. She attaches a report on the impact of Islamophobia on women in France.[14]

Additional observations by the State party

6.1 By a note verbale of 1 December 2016, the State party submitted additional observations.

6.2 The State party contests the author's interpretation of the reform of the Labour Code pursuant to the Act of 8 August 2016. It maintains that the amendment is a logical continuation of the principles laid down in articles L. 1121-1 and 1321-3 of the Labour Code, which were applicable at the time of the events in question; those articles already allowed for restrictions to the expression of freedoms, including religious freedom, in certain cases. Hence, the restriction introduced by the clause in the association's internal regulations had a legal basis in the legal framework in force prior to the Act of 8 August 2016, as that Act only specified the circumstances in which internal regulations may contain such a clause.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

7.3 The Committee notes that the State party has not contested the admissibility of the communication. In addition, the Committee notes that the author submitted an appeal in cassation, which was rejected, and that she contends that she has therefore exhausted all available domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated her allegations. Accordingly, the Committee declares the communication admissible in that it raises issues relating to articles 18 and 26 of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's allegation that her dismissal for serious misconduct, based on her refusal to remove her Islamic headscarf when working in a childcare centre, violated her right to freedom to manifest her religion under article 18 of the Covenant, since it constituted a restriction which was neither provided for by law nor necessary in a democratic society nor proportionate. It notes that the State party considers that the restriction on the author's freedom to manifest her religion is provided for in law and is proportionate to the legitimate objective of protecting the fundamental rights and

[14] Report 2014/2015 of the Collective against Islamophobia in France: "*Être musulmane aujourd'hui en France : les femmes, premières victimes de l'islamophobie*" (Muslim in France today: women, the first victims of Islamophobia).

freedoms of others, that is, the freedom of conscience and religion of the children attending the childcare centre and their parents.

8.3 The Committee recalls that, as stated in paragraph 4 of its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, concerning article 18 of the Covenant, the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings. The Committee also notes that the wearing of a headscarf covering all or part of the hair is normal practice for many Muslim women, who see it as an integral part of the expression of their religious beliefs. The Committee notes that this is the case for the author, and therefore considers that the ban imposed on her wearing her headscarf in the workplace constitutes interference in the exercise of her right to freedom to manifest her religion.

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

8.5 In the present case, the Committee notes that, according to the author, the restriction to which she was subject was not provided for in law, since the applicable Labour Code did not permit the adoption in internal regulations of restrictive clauses such as the one that was applied to her. The Committee also notes the State party's argument that articles L. 1121-1 and 1321-3 of the Labour Code provided for the possibility of introducing restrictive clauses under certain conditions, which it considers to be met in the present case. The Committee also takes note of the fact that nothing in the case file indicates or makes it possible to conclude that the regulations were not adopted in accordance with the law in force. It is not possible, therefore, to conclude that the restriction to which the author was subjected was not provided for in law.

8.6 The question before the Committee is then whether the restriction to which the author was subjected can be considered as "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others", in accordance with article 18 (3) of the Covenant. In that regard, the Committee recalls that, in accordance with paragraph 8 of its general comment No. 22, "limitations … must be directly related and proportionate to the specific need on which they are predicated". It also refers to the criteria established by the Special Rapporteur on freedom of religion or belief in order to determine whether the principle of proportionality is respected when a restriction is found (see E/CN.4/2006/5, para. 58).

8.7 In the light of the foregoing, the Committee takes note of the State party's argument that the restriction to which the author was subjected had a legitimate objective, namely to protect the rights and freedoms of the children and their parents. The Committee understands this argument as referring to the protection of the fundamental rights and freedoms of others, as provided by article 18 (3) of the Covenant. The Committee also notes that, citing the European Court of Human Rights, the State party asserts that the Islamic headscarf is not "a passive symbol" but a "powerful external symbol"; that the childcare centre is a place that provides a warm welcome and social stability for young children, who are particularly impressionable and receptive to their environment, and who should not be faced with conspicuous displays of religious affiliation. The Committee also notes that, according to the author, only an act of pressure or proselytism could adversely affect the fundamental rights and freedoms of others, whereas the wearing of a headscarf does not constitute such an act and in no way prohibits parents from freely guiding their children in the exercise of their freedom of conscience and religion. The Committee also notes the author's argument that complete and permanent neutrality on the part of employees of the childcare centre was not necessary to safeguard the freedom of conscience

of the children and their parents' educational choices, as the parents had never indicated or shown that they had joined the association because of the neutrality required of its staff, particularly as the principle of neutrality of the employees was contained in the centre's internal regulations, but not in the association's statutes. Lastly, the Committee notes the author's view that the State party's observations seem to indicate that children should never be approached by a woman wearing a veil, and that she finds this premise shocking.

8.8 The Committee further observes that the State party does not explain in what way the wearing of a headscarf is incompatible with social stability and the warm welcome expected in the childcare centre. It also notes that the State party's arguments do not explain why the headscarf would be incompatible with the purpose of the association that manages the centre to work in support of early childhood in deprived areas and to promote the social and professional integration of local women, especially given that one of the association's objectives is "to promote the social and professional integration of women regardless of political opinion or faith". The integration of the author, regardless of her faith, fitted well with that objective. Lastly, the Committee considers that the State party has not provided sufficient justification that would allow the Committee to conclude that the wearing of a headscarf by an educator in the childcare centre would violate the fundamental rights and freedoms of the children and parents attending the centre.

8.9 As for the proportionality of the measure, the Committee takes note of the State party's arguments stressing that it is important that States parties enjoy a certain margin of appreciation in determining whether and to what extent an intervention is necessary and of the fact that the restriction applied only within the scope of the activities of the childcare centre and only to those activities involving contact between the staff and the children. The Committee considers, however, that the author had been wearing a headscarf since 1994, including at work. It further notes the author's claim that the restriction imposed on her was not proportionate since it gave rise, for no other reason than her refusal to remove her scarf, to her being dismissed for "serious misconduct", a particularly stigmatizing description which precludes her from receiving any severance payment. It notes that the information provided by the State party does not make it possible to conclude that, in the circumstances of the present case, the ban on wearing a headscarf would contribute to the objectives of the childcare centre or that it would ensure against the stigmatization of a religious community. Lastly, the Committee recalls that the wearing of a headscarf, in and of itself, cannot be regarded as constituting an act of proselytism. The Committee therefore considers that the restriction imposed and its application in the author's case are not proportionate to the intended objective. In the light of the above, the Committee considers that the obligation imposed on the author to remove her headscarf while present at the centre and her dismissal for serious misconduct following her refusal to do so cannot be considered to comply with the principles of article 18 (3) of the Covenant. It therefore concludes that the restriction established by the centre's internal regulations and its implementation constitute a restriction that infringes the author's freedom of religion, in violation of article 18 of the Covenant.

8.10 The Committee notes that the author also claims a violation of article 26 of the Covenant, in that her dismissal was based on a clause of the internal regulations that affected Muslim women who choose to wear a headscarf in a particularly disadvantageous and disproportionate manner and was therefore discriminatory. It also notes the arguments of the State party that the acts complained of by the author were committed by a private legal person; that the only issue to examine, therefore, is whether the State party has fulfilled its positive obligation to protect the right of individuals to freedom to manifest their religion; that the clause of the internal regulations did not create any discrimination because it did not target any religion, philosophical belief or gender and at most could lead to differential treatment between employees who wish to manifest their religious beliefs and those who do not. Lastly, the Committee notes that, according to the State party, such differential treatment was objective and was neither arbitrary nor unreasonable.

8.11 The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which "discrimination" is defined, in paragraph 7, as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which

has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". The Committee recalls that the prohibition of discrimination applies to both the public and the private sphere and that a violation of article 26 may result from a rule or measure that is apparently neutral or lacking any intention to discriminate but has a discriminatory effect.[15] Yet, not every differentiation based on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, financial status, birth or other status, as listed in the Covenant, amounts to discrimination, as long as it is based on reasonable and objective criteria in pursuit of an aim that is legitimate under the Covenant.

8.12 The Committee notes that, according to the State party, quoting the European Court of Human Rights, the Islamic veil is identified as a "powerful external symbol". However, it notes that it has not explained the criteria used to arrive at this conclusion. In the present case, the Committee observes that, according to a decision of the Paris Court of Appeal issued on 27 November 2013, the clause in the childcare centre's internal regulations "entails, inter alia, a ban on wearing any conspicuous religious symbols".[16] The Committee also notes the author's argument that the clause of the internal regulations that was applied to her had an indirectly discriminatory effect and that, according to a publication by the Ministry of National Education referred to in the report of the Collective against Islamophobia in France that was provided by the author, the distinction between "conspicuous" or "clearly visible" religious symbols and others was identified as disproportionately affecting Islamic headscarves and veils.[17] The Committee recalls that, in its concluding observations on the fifth periodic report of France, it referred to restrictions on the freedom to express one's religion or belief that have a disproportionate impact on members of specific religions and on girls and expressed concern that the effect of these laws on certain groups' feeling of exclusion and marginalization could run counter to the intended goals.[18] The Committee considers that the restriction in the internal regulations constituted differential treatment of those Muslim women who, like the author, choose to wear a headscarf.

8.13 Accordingly, the Committee must decide whether the differential treatment of the author has a legitimate aim under the Covenant and meets the criteria of reasonableness and objectivity. The Committee notes the State party's claim that the restriction imposed on the author and her dismissal were based on internal regulations governed by the Labour Code and that the internal regulations of the childcare centre were not discriminatory as they were not aimed at any religion, belief or sex, but intended to protect the children from exposure to any religious influence other than their own. The State party asserts in general terms that the differential treatment was based on objective criteria and was neither arbitrary nor unreasonable, without sufficiently explaining how the wearing of a headscarf would prevent the author from carrying out her functions and without examining the proportionality of the measure. The Committee notes, however, that the author was dismissed without any severance payment because she wore a headscarf, without sufficient justification being given as to how it would prevent her from performing her functions or any assessment being made of the proportionality of that measure. The Committee therefore considers that the State party has failed to establish how the author's dismissal for wearing a headscarf served a legitimate aim or was proportionate to that aim. The Committee thus concludes that the author's dismissal, based on the internal regulations of the childcare centre imposing neutrality on employees and the Labour Code, was not based on reasonable

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

[16] Court of Appeal of Paris, judgment of 27 November 2013, p. 3.

[17] Report 2014/2015 of the Collective against Islamophobia in France: "*Être musulmane aujourd'hui en France : les femmes, premières victimes de l'islamophobie*" (Muslim in France today: women, the first victims of Islamophobia); Ministry of National Education, Higher Education and Research: "*Application de la loi du 15 mars 2004 sur le port des signes religieux ostensibles dans les établissements d'enseignement publics*" (Application of the law of 15 March 2004 on the wearing of conspicuous religious symbols in public schools). According to the report, among the 639 "conspicuous" religious symbols recorded, 626 were Islamic headscarves, 11 were Sikh turbans and 2 were large crosses.

[18] See Human Rights Committee, Concluding observations on the fifth periodic report of France, 17 August 2015, CCPR/C/FRA/CO/5, para. 22.

and objective criteria and therefore constitutes intersectional discrimination based on gender and religion, in violation of article 26 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the information before it discloses a violation by the State party of articles 18 and 26 of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia: to provide adequate compensation and appropriate measures of satisfaction, including compensation for loss of employment without severance pay and the reimbursement of any legal costs, and for any non-pecuniary losses incurred by the author owing to the facts of the case. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.