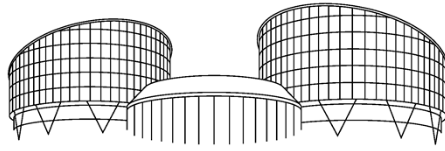

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF EBRAHIMIAN v. FRANCE

(Application no. 64846/11)

JUDGMENT

STRASBOURG

26 November 2015

FINAL

26/02/2016

This judgment is final.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ebrahimian v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Ganna Yudkivska,
Vincent A. de Gaetano,
André Potocki,
Helena Jäderblom,
Aleš Pejchal,
Síofra O'Leary, *judges*,
and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 64846/11) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Ms Christiane Ebrahimian ("the applicant"), on 12 October 2011.

2. The applicant was represented by Mr W. Word, a lawyer practising in Paris. The French Government ("the Government") were represented by their Agent, Mr François Alabrune, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged that the failure to renew her employment contract as a social worker, on the ground that she refused to stop wearing her veil, amounted to a violation of Article 9 of the Convention.

4. On 10 June 2013 notice of the complaint concerning Article 9 was given to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Paris.

6. The applicant was recruited on a three-month fixed-term contract, from 1 October to 31 December 1999, extended for one year from 1 January to 31 December 2000, as a contracted employee of the hospital civil service,

to carry out the duties of a social worker in the psychiatric unit of Nanterre Hospital and Social Care Centre ("the CASH") a public health establishment administered by the City of Paris.

7. On 11 December 2000 the Director of Human Resources informed the applicant that her contract would not be renewed with effect from 31 December 2000. The reason given for the decision – which had been taken following complaints by certain patients being treated at the CASH – was that the applicant refused to stop wearing her head covering.

8. On 28 December 2000, in response to a letter from the applicant alleging the illegality of the refusal to renew her contract in that it was motivated by her convictions and her affiliation to the Muslim faith, the Director of Human Resources indicated that at the meeting of 30 November 2000 which had preceded the administration's decision, she had not been criticised for her religious beliefs, but merely reminded of the rights and duties of public employees, namely the ban on manifesting such beliefs. He continued as follows.

> "I emphasised that I had been required to have a meeting with you following complaints made to Ms M., manager of the welfare and education unit, both by patients who were refusing to meet you on account of this display [of your beliefs] and by social workers for whom it was becoming increasingly difficult to operate in this very delicate situation. It should be noted that Ms M. raised these difficulties with you and tried to persuade you not to manifest your religious beliefs, even before the complaints reached HR. Indeed, it was only shortly before the meeting with you on 30 November that the unit managers were officially informed of the problem created by the fact of your head covering.
>
> With regard to your head covering at the time of recruitment: as you are aware, the recruitment interview lasts, at the most, one hour. Individuals attend wearing ordinary "street" clothes, and do not necessarily have to remove their coats or scarves. The fact that your head was covered during that interview was not interpreted as a possible sign of [religious] affiliation, but simply as a form of attire.
>
> The termination of your contract has a legal basis, and does not result from a discriminatory situation."

The Director of Human Resources further reminded the applicant in this letter of the Opinion issued by the *Conseil d'État* on 3 May 2000. That Opinion stated that the principle of freedom of conscience, the principle of State secularism and the principle that all public services must be neutral prevented employees in the public sector from enjoying the right to manifest their religious beliefs; lastly, it pointed out that the wearing of a symbol intended to indicate their religious affiliation constituted a breach by employees of their obligations (see paragraph 26 below).

9. By an application registered on 7 February 2001, the applicant asked the Paris Administrative Court to set aside the decision of 11 December 2000.

10. By letters of 15 and 28 February 2001, the applicant was informed of the decision of the Director of Human Resources at the CASH to include

her on the list of candidates for a recruitment test for social workers and to permit her to take part. This decision was taken on the basis of the decree of 26 March 1993 granting special status to social workers employed by State hospitals. That text stated that the social worker's task was to assist patients and their families who were experiencing difficulties in their dealings with social services, by helping to draw up and implement the relevant programme in the establishment to which they were attached and also other social and educational programmes, in coordination, *inter alia*, with other institutions or social services. The applicant did not take part in the recruitment test.

11. By a judgment of 17 October 2002, the Administrative Court held that the decision not to renew the contract had been compatible with the principles of secularism and the neutrality of public services.

> "...
>
> In view of Law no. 83-634 of 13 July 1983 [laying down the rights and duties of civil servants, see paragraph 25 below]
>
> ...
>
> Although civil-service employees, like all citizens, enjoy the freedom of conscience and of religion laid down in the constitutional, legislative and convention texts, which prohibit any discrimination based on their religious beliefs or their atheism, particularly in terms of access to positions, career progress and the disciplinary system, the principles of the secular nature of the State and the bodies to which its powers are delegated and of neutrality in public services preclude those employees, in the exercise of their duties, from being entitled to manifest their religious belief, especially through external sartorial expression; this principle, which is intended to protect the users of the service from any risk of influence or of interference with their own freedom of conscience, concerns all public services and not only the education service; this obligation must be applied with particular stringency in those public services where the users are in a fragile or dependent state;"

It dismissed the applicant's action, pointing out that the decision not to renew her contract had been taken on account of her refusal to remove her veil "following complaints submitted by certain patients in the care centre and in spite of repeated warnings by her line managers and friendly advice from her colleagues". The court considered that on the basis of the above-mentioned principles concerning the expression of religious opinions within the public services, the administrative authorities had not committed an error of assessment in refusing to renew the contract on the implied ground of her wearing of "attire manifesting, in an ostensible manner, allegiance to a religion". It concluded "thus, even though [the applicant's] employer tolerated the wearing of this veil for several months and [her] conduct cannot be considered as deliberately provocative or proselytising, the hospital has not acted illegally in deciding not to renew the contract following her refusal to stop wearing the veil".

12. By a judgment of 2 February 2004, the Paris Administrative Court of Appeal held that the contested decision was disciplinary in nature, in that "it

transpires from both the letter of 28 December from the CASH's Director of Human Resources and the hospital's defence pleadings that [the decision] was taken on account of [the applicant's] persistence in wearing a veil for religious reasons during her working hours". It therefore quashed the decision on procedural grounds, given that the applicant had not been informed of the reasons for the envisaged measure prior to its adoption, nor given an opportunity to consult her case file.

13. In execution of the Court of Appeal's judgment, the Director of the CASH invited the applicant to inspect the case file. By a reasoned judgment of 13 May 2005, he confirmed that her contract would not be renewed in the following terms.

> "As a result of the judgment of the Paris Administrative Court of Appeal dated 2 February 2004, which held that the non-renewal of your fixed-term contract which expired on 31 December 2000 had been disciplinary in nature, we invited you again to inspect your administrative file on 10 May 2005, in order to bring the procedure into line with the regulations.
>
> As required in execution of the same judicial decision, we hereby inform you that the disciplinary basis for the non-renewal of your contract is your refusal to remove your veil, in that it ostensibly manifests your religious affiliation.
>
> In application of the principles of the secular nature of the State and the neutrality of public services, which underlie the duty of discretion imposed on every State employee, even those employed under contract, your refusal to remove your head covering when carrying out your duties effectively amounts to a breach of your obligations, thus exposing you to a legitimate disciplinary sanction, as the *Conseil d'État* held, with regard to the principle, in its Opinion concerning Ms Marteaux, dated 3 May 2000.
>
> Our decision not to renew the contract is all the more justified in the present case in that you were required to be in contact with patients when carrying out your duties."

14. By a letter of 29 June 2005, the Administrative Court of Appeal informed the applicant that the CASH had taken the measures required by the judgment of 2 February 2004. It advised her that, where a decision was set aside on procedural grounds, the administrative body could legally take new decisions that were identical to those that had been set aside, provided that they complied with the relevant procedure, and that the new decision of 13 May 2005 could be challenged before the administrative court.

15. In January 2006 the applicant asked the Versailles Administrative Court to set aside the decision of 13 May 2005. She argued, in particular, that the *Conseil d'État*'s Opinion of 3 May 2000, relied upon by her employer, was intended to apply only to teachers.

16. By a judgment of 26 October 2007, the court dismissed her request, basing its decision on the principles of State secularism and the neutrality of public services.

> "... However, while the *Conseil d'État*'s Opinion of 3 May 2000 specifically concerns the case of an employee in the public education service, it also clearly states that the constitutional and legislative texts show that the principles of freedom of

conscience, State secularism and the neutrality of public services apply to the public services in their entirety; although civil-service employees, like all citizens, enjoy the freedom of conscience and of religion laid down in the constitutional, legislative and convention texts, which prohibit any discrimination based on their religious beliefs or their atheism, particularly with regard to access to positions, career progress and also the disciplinary system, the principles of the secular nature of the State and the bodies to which its powers are delegated and of neutrality in public services preclude those employees, in the exercise of their duties, from being entitled to manifest their religious belief, especially through external sartorial expression; this principle is intended to protect the users of the service from any risk of influence being exerted or of interference with their own freedom of conscience.

In view of the above-mentioned principles concerning the manifestation of religious opinions within the public service, the administrative body did not act illegally in refusing to renew the [applicant's] contract on the implied ground of her wearing attire manifesting, in an ostensible manner, allegiance to a religion."

17. The applicant lodged an appeal against that judgment.

18. By a judgment of 26 November 2009, the Versailles Administrative Court of Appeal upheld the judgment, reiterating the reasons given by the lower courts.

19. The applicant appealed on points of law to the *Conseil d'État*. In her submissions, she emphasised that the Administrative Court of Appeal had deprived its judgment of any legal basis in that it had failed to specify the nature of the item of attire worn by her which had justified the sanction. She referred to the disproportionate nature of that sanction, and alleged that it had been incompatible with Article 9 of the Convention.

20. By a judgment of 9 May 2011, the *Conseil d'État* declared the appeal inadmissible.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Principles of secularism and neutrality in public services

21. In the case of *Dogru v. France* (no. 27058/05, 4 December 2008), which concerned the wearing of religious signs at school, the Court had occasion to elucidate the concept of secularism in France. It reiterated in that connection that the exercise of religious freedom in public society is directly linked to the principle of secularism. Arising out of a long French tradition, this principle has its origins in the Declaration of the Rights of Man and of the Citizen of 1789, Article 10 of which provides that "[n]o one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law". It also appears in the key Education Acts of 1882 and 1886, which introduced State primary education on a compulsory and secular basis. The real keystone of French secularism, however, is the Act of 9 December 1905, known as the Law on the separation between Church and State, which

marked the end of a long conflict between the republicans, born of the French Revolution, and the Catholic Church. Section 1 provides: "The Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order." The principle of separation is affirmed in section 2 of the Act: "The Republic may not recognise, pay stipends to or subsidise any religious denomination ..." This "secular pact" entails a number of consequences both for public services and for users. It implies an acknowledgement of religious pluralism and State neutrality towards religions.

The principle of secularism, the requirement of State neutrality and its corollary, equality, are enshrined in Article 1 of the Constitution of 4 October 1958, which reads as follows:

> "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis."

22. From the 1980s, the practice of wearing religious signs at school and in hospitals developed in France, giving rise to reactions based on the principle of secularism (see paragraph 29 below). On 3 July 2003 the President of the Republic set up "a commission to study the application of the principle of secularism in the Republic", which was instructed "to reflect in an in-depth and serene manner ... on the practical requirements which should result for everyone from compliance with the principle of secularism". The commission's report, submitted to the President of the Republic on 11 December 2003, described the threat to secularism in schools and public services. The law of 15 March 2004, regulating the wearing of signs or dress by which pupils overtly manifest a religious affiliation, was adopted as a consequence of this report (see *Dogru*, cited above, §§ 30-31).

23. It was also following this report that, on a referral by the Prime Minister, the Supreme Council for Integration (*Haut conseil à l'intégration*) submitted in January 2007 an opinion containing a "draft charter for secularism in public services". This draft was included in the Prime Minister's circular no. 5209/SG of 13 April 2007 on the Charter for secularism in public services, which reiterates the rights and duties of public-sector employees and also of persons using public services.

> "Public-sector employees
>
> All public officials have a duty of strict neutrality. They must treat all persons equally and respect their freedom of conscience.
>
> The fact of a public official manifesting his or her religious convictions in the exercise of his or her duties shall amount to a breach of his or her obligations.
>
> It shall be for the managers of public services to ensure that the principle of secularism is applied in these services.

Freedom of conscience shall be guaranteed to public officials. They shall be granted authorisations for absence to participate in religious festivals where this is compatible with the requirements of the normal running of the service.

Users of public services

All users shall be equal before the public service.

The users of public services shall be entitled to express their religious convictions in so far as this is compatible with respect for the neutrality of the public service, its smooth running and the requirements of public order, security, health and hygiene.

The users of public services shall refrain from any form of proselytism.

The users of public services may not request the removal of a public official or of other users, or demand that the functioning of the public service or of a public facility be modified. However, the service shall attempt to take into consideration users' convictions, in compliance with the rules to which it is subject and its smooth functioning.

Where necessary to verify identity, users must comply with the attendant obligations.

Users who are accommodated on a full-time basis by a public service, particularly within medico-social establishments, hospitals or prisons, shall be entitled to respect for their beliefs and may participate in practising their religion, subject to the restrictions necessary to ensure the smooth running of the service."

24. The Constitutional Council recently indicated that the principle of secularism is one of the rights and freedoms guaranteed by the Constitution and that it must be defined as follows.

"... pursuant to the first three sentences of the first paragraph of Article 1 of the Constitution, 'France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.' The principle of secularism is one of the rights and freedoms guaranteed by the Constitution; it follows that the State is neutral; it also follows that the Republic does not recognise any religious denomination; the principle of secularism requires, in particular, respect for all beliefs and the equality of all citizens before the law irrespective of religion, and requires that the Republic guarantee free participation in religious worship; it implies that the Republic does not pay stipends to any religious denomination;" (Decision no. 2012-297 QPC, 21 February 2013, Association for the Promotion and Expansion of Secular Thought [remuneration of pastors in the consistorial churches in the *départements* of Bas-Rhin, Haut-Rhin and Moselle]).

25. The civil service includes all public officials, that is, all of the members of staff employed by a public entity, assigned in principle to an administrative public service and subject to a public-law regime. The civil service and the general rules applicable to it are organised into three branches: the State civil service, the local and regional civil service, and the hospital-based civil service. Public employees' freedom of opinion, including religious opinion, is guaranteed by section 6 of the Law of 13 July 1983 laying down the rights and duties of civil servants. Allegiance to a religion may not be recorded in a public employee's file, and it cannot be

used as a discriminatory criterion against a candidate or a contractual employee seeking to obtain a permanent post; certain adjustments to working time are authorised in the name of religious freedom, provided that they are compatible with the smooth running of the service.

At the same time, these employees' freedom of conscience must be reconciled with the requirement of religious neutrality which is a distinctive feature of the public service. Public employees have a professional duty of neutrality. In carrying out his or her duties, a public employee must ensure equal treatment of citizens, whatever their convictions or beliefs. The principle of State neutrality implies that "the authorities and the public services must [not only] provide all the guarantees of neutrality; they must also give every appearance of that neutrality, so that the user can be in no doubt of it. It follows that every employee of a public service is subject to a particularly strict obligation of neutrality" (National Advisory Commission on Human Rights, Opinion on Secularism, Official Gazette no. 0235 of 9 October 2013). The duty of neutrality incumbent on public employees has been set out in detail in the case-law (see paragraph 26 below). However, a bill on the professional ethics and rights and obligations of civil servants, currently under discussion, was adopted by the National Assembly at its first reading on 7 October 2015. This text seeks to introduce into the Law of 13 July 1983 an obligation on civil servants to exercise their functions in compliance with the principle of secularism, by refraining from manifesting their religious opinion while carrying out their duties.

The Constitutional Council has also held on several occasions that neutrality is a "fundamental principle of the public service" and that the principle of equality is its corollary (Constitutional Court decisions nos. 86-217 DC of 18 September 1986, and 96-380 DC of 23 July 1996).

26. According to the *Conseil d'État*'s case-law, the principle of the neutrality of public services justifies placing limitations on the manifesting of religious beliefs by employees in exercising their functions. The *Conseil d'État* took a stand on this issue in the area of education many years ago: the fact of an employee in the State education service manifesting his or her religious beliefs while carrying out his or her duties is a breach of the "duty of strict neutrality that is required of every employee working in a public service" (*Conseil d'État* (CE), 8 December 1948, *Ms Pasteau*, no. 91.406; CE, 3 May 1950, *Ms Jamet*, no. 98.284). In its Opinion of 3 May 2000 (CE, Opinion, *Ms Marteaux*, no. 217017), concerning the decision by a Director of Education to dismiss a secondary-school study supervisor who wore a headscarf, it affirmed that the principles of secularism and neutrality applied to all public services and gave a detailed explanation of the prohibition on employees' manifesting their religious beliefs while carrying out their duties.

> “1. It follows from the constitutional and legislative texts that the principle of freedom of conscience and that of the secular nature of the State and the neutrality of public services apply to all those services;
>
> 2. Although employees of the State education service, like all public-sector employees, enjoy the freedom of conscience which prohibits any discrimination in access to posts and in career development based on their religion, the principle of secularism means that, in the context of the public service, they do not have the right to manifest their religious beliefs;
>
> It is not appropriate to distinguish between employees in this public service on the basis of whether or not they carry out teaching duties;
>
> 3. It follows from the above considerations that the fact of employees of the State education service manifesting their religious beliefs while carrying out their duties, in particular by wearing a sign intended to indicate their allegiance to a religion, amounts to a breach of their obligations;
>
> The consequences of this breach, especially with regard to disciplinary measures, must be assessed by the authorities with due regard to the nature and degree of ostentatiousness of the sign in question, and of the other circumstances in which the breach is found, and are subject to judicial review;”

This case-law has been extended to all public services. In a thematic file entitled “The administrative courts and the expression of religious convictions” published on its Internet site in November 2014, the *Conseil d’État* indicates with regard to the ban prohibiting employees from manifesting their religious convictions while on duty, in addition to what is stated in its Opinion of 3 May 2000, as follows.

> “The administrative courts are generally required to examine these questions in the context of disciplinary proceedings. The lawfulness of the sanction will then depend on how the religious convictions were expressed, the hierarchical level of the employee and the duties carried out by him or her, and also the warnings which he or she may have received. The sanction must also be proportionate. The *Conseil d’État* has thus upheld the sanction imposed on a public-sector employee who displayed his professional email address on the site of a religious association (CE, 15 October 2003, *M.O.*, no. 244428), and against another who had distributed religious documents to users during his working hours (CE, 19 February 2009, *M.B.*, no. 311633).”

27. The requirement of neutrality is applicable to public services even if they are managed by private-law entities (CE, Sect., 31 January 1964, *CAF de l’arrondissement de Lyon*). This aspect was also reiterated recently by the Court of Cassation in a case concerning the Seine-Saint-Denis Health Insurance Office (*Caisse primaire d’assurance maladie*), in respect of an employee working as a “health benefits administrator” who had been dismissed on the ground that she was wearing an Islamic headscarf in the form of a turban, in breach of the provisions of the internal rules. The Social Division of the Court of Cassation held that “the principles of neutrality and of the secular nature of the public service are applicable to the public services as a whole, including where they are provided by private-law entities” and that “the employees of health insurance offices ... are ... subject

to specific constraints arising from the fact that they are engaged in a public-service mission, constraints which forbid them, *inter alia*, from manifesting their religious beliefs by external signs, especially through their attire;" (Cass. soc., 19 March 2013, no. 12-11.690):

> "... having noted that the employee carries out her duties in a public service, and given the nature of the activity carried out by the Insurance Office, which consists, in particular, of providing sickness benefits to persons insured under the social security scheme in the Seine-Saint-Denis *département*, and that she works, specifically, as a 'sickness benefits administrator' in a centre which receives an average of 650 users per day, it being irrelevant whether or not the employee was in direct contact with the public, the Court of Appeal was able to conclude that the restriction imposed by the Insurance Office's internal rules was necessary in order to implement the principle of secularism, in order to guarantee the neutrality of the public service to the centre's users;"

28. Recently, in the course of judicial proceedings that were widely reported in the media, the Social Division of the Court of Cassation, in a judgment of 19 March 2013, initially declared illegal the dismissal of an employee in a private nursery whose internal rules called for "compliance with the principles of secularism and neutrality" on account of her refusal to remove her Islamic headscarf. Faced with the resistance of the Paris Court of Appeal, to which the case had been remitted, the plenary Court of Cassation ultimately upheld those proceedings in a judgment of 25 June 2014. On the occasion of the judgment of 19 March 2013 and of the judgment of the same date described in paragraph 27 above, the "Defender of Rights" (the French Ombudsman) asked the *Conseil d'État* to prepare a report (Report adopted by the General Assembly of the *Conseil d'État* on 19 December 2013). The Ombudsman wished to have the *Conseil d'État*'s opinion on various matters relating to the application of the principle of religious neutrality in the public services, in order to respond to complaints raising the question of the line between a public-service mission, participation in a public service, a mission in the general interest for which certain private structures had responsibility, and the application of the principle of neutrality and secularism. In its report, the *Conseil d'État* reiterated, *inter alia*, as follows.

> "1. Freedom of religious convictions is general. However, restrictions may be placed on their expression in certain circumstances. The principle of the secular nature of the State, which concerns the relations between the public authorities and private persons, and the principle of the neutrality of public services, a corollary of the principle of equality which governs the operation of the public services, give rise to a particular requirement of religious neutrality in these services. This requirement applies in principle to all the public services, but does not apply, as such, outside these services ...
>
> 2. Labour law respects employees' freedom of conscience and prohibits discrimination in any form. It may, however, authorise restrictions on the freedom to manifest religious opinions or beliefs provided that these restrictions are justified by the nature of the task to be carried out and are proportionate to the aim pursued ...

> 4. The requirement of religious neutrality prohibits employees of public bodies and employees of private-law entities to which the State has entrusted the management of a public service from manifesting their religious convictions while carrying out their duties. This prohibition must, however, be reconciled with the principle, arising from Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that any infringements of freedom of religious expression must be proportionate. ...”

B. Principles of neutrality in the public hospital service

29. The 2013-14 annual report by the Secularism Observatory, in the section entitled “Overview of secularism in health establishments” stated that, following the report by the Commission on the application of the principle of secularism in the Republic (see paragraph 22 above), legislation on secularism in hospitals had been envisaged. That Commission’s report indicated as follows.

> “... Nor are hospitals exempt from such matters. They have already been confronted with certain religious prohibitions, such as the Jehovah’s Witnesses’ refusal to accept transfusions. More recently, an increasing number of husbands or fathers have refused on religious grounds to have their wives or daughters cared for or delivered in childbirth by male doctors. In consequence, some women have been deprived of epidurals. Nurses have been refused on the grounds of their supposed religious affiliation. More generally, certain religious concerns on the part of patients may disrupt the functioning of a hospital: corridors are transformed into private prayer areas; parallel canteens have been organised alongside the hospital canteens to serve traditional food, in breach of the health regulations.
>
> ...
>
> Certain religious claims are now being made by public employees. Public-service employees have demanded the right to wear a kippa or a veil indicating their denominational allegiance in the workplace. Trainee doctors have recently expressed the same wish.
>
> Such conduct, which is contrary to the principle of neutrality underlying the public service, is a matter of serious concern. ...”

The Secularism Observatory explained that the Ministry of Health had “in fact regulated the issue by means of a circular” (see paragraph 30 below) and that, at this stage, the existing legal arsenal was sufficient. It specified that the information obtained from health-care establishments indicated that the situation had become more peaceful and was under control. With regard to hospital staff, the most frequent problems were veil-wearing, prayers at certain times of the day and requests for adjustments to working schedules in order not to have to work on religious holidays. It noted that the information available “show[ed] that, with appropriate dialogue, these situations are resolved by a settlement that complies with the principle of public employees’ neutrality”.

30. The circular of 6 May 1995 on the rights of hospitalised patients, which includes a Charter of Hospitalised Patients, stated that the rights of

patients "are to be exercised in compliance with the freedom of others" (circular DGS/DH/95, no. 22). In addition to the guidance with regard to the users of the public hospital service described above (see paragraph 23 sbove), circular no. DHOS/G/2005/57 of 2 February 2005 on secularism in health institutions provides as follows.

> "...
>
> I. Religious freedom, principles of neutrality and non-discrimination
>
> As reiterated in the Stasi Report submitted to the President of the Republic on 11 December 2003 (p. 22), the secularism which is enshrined in Article 1 of the 1958 Constitution requires the Republic to ensure 'equality of all citizens before the law, without distinction of origin, race or religion'. For hospitals, this implies that:
>
> – all patients are dealt with in the same way, whatever their religious beliefs;
> – patients must not have grounds to doubt the neutrality of hospital staff.
>
> A. Equal treatment for patients
>
> ...
>
> ... The above-cited Charter of Hospitalised Patients, while reiterating patients' freedom of action and of expression in the religious field, points out: 'These rights are to be exercised with due respect for the freedom of others. Any proselytism is prohibited, whether by persons being treated in the establishment, volunteers, visitors or members of staff.'
>
> In this respect, particular care must be taken to ensure that the expression of religious beliefs does not impair:
>
> – the quality of care and hygiene regulations (the sick person must accept the clothing imposed in view of the treatment to be administered);
> – the tranquillity of other hospitalised persons and of their relatives;
> – the proper functioning of the service.
>
> ...
>
> B. Neutrality of the public hospital service and of civil servants and public employees
>
> The duty of neutrality was laid down in the case-law more than half a century ago (*Conseil d'État*, 8 December 1948, *Ms Pasteau*, and 3 May 1950, *Ms Jamet*). In a dispute concerning a school, the *Conseil d'État* issued an Opinion dated 3 May 2000 ... [See paragraph 26 above.]
>
> ...
>
> In a judgment dated 17 October 2002 (*Ms E.*) [see paragraph 11 above], ..., the [Administrative] Court reiterated that the principle of neutrality applied to all public employees, and not only those working in the area of education:
>
> ...
>
> In a judgment dated 27 November 2003 (*Ms Nadjet Ben Abdallah*), the Lyons Administrative Court of Appeal held that: 'The wearing by Ms Ben Abdallah ... of a scarf which she explicitly asserted as being religious in nature, and the repeated refusal to comply with the order to remove it, although she had been alerted to the unambiguous status of the applicable law ... amounted to a serious fault such as to provide legal grounds for the suspension measure imposed on her. ...'

These principles apply to all civil servants and public employees, with the exception of the ministers of the various religions mentioned in Article R. 1112-46 of the Code of Public Health. It is reiterated that public employees are employees who participate in the execution of a public service: contractual employees, interns ... You will ensure that in application of Article L. 6143-7 of the Code of Public Health the directors of public health establishments observe those principles strictly, by systematically imposing a sanction in the event of any failure to comply with these obligations or by informing the regional directors of Health and Social Affairs of any fault committed by an employee for whom the appointing body is the Prefect or the Minister.

II. Free choice of practitioner and discrimination against a public-service employee

...

Lastly, this freedom of choice on the part of the patient does not enable the person being treated to object to a member of the care team performing a diagnosis or providing care on the basis of that individual's known or supposed religion.

..."

C. Relevant case-law

31. The relevant decisions regarding the wearing of the veil by public-service employees are cited in the above-mentioned circular (see paragraph 30 above). The Administrative Court judgment delivered on 17 October 2002 in the present case is very frequently cited, given that it confirms that the principle of neutrality is valid for all public services, and not only those operating in the area of public education. The judgment delivered on 27 November 2003 by the Lyons Administrative Court of Appeal in the case of Ms Ben Abdallah (see paragraph 30 above), which concerned a female employment inspector who refused to remove her veil, is also a leading judgment. However, no appeal was made to the *Conseil d'État* in that case. The judgment indicates that the decision on whether to suspend an employee pending a sanction was to be made in view of "all of the circumstances of the case and, among other factors, the nature and degree of the conspicuousness of the sign, the nature of the tasks entrusted to the employee, and whether he or she exercised powers conferred by public law, or representative functions". In that judgment, the Government Commissioner emphasised that

"... an individualised assessment of the duty of neutrality in the civil service, such as that recommended by the Strasbourg Court (*Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V), would be fully compatible with the approach adopted by the case-law of the ordinary courts for private-sector employees. With regard to the specific case of wearing the Islamic veil, the ordinary courts already take account of the nature of the duties performed and of the company image that is transmitted by the fact of an employee wearing this symbol. Under this approach, assessment criteria would then be identified which, without reneging on the principle of neutrality, would lead to an arguably more pragmatic application of them, taking account of the nature of the duties performed (education, management functions) and the circumstances in which they are carried out (contact with the public, whether or not a uniform or

regulation clothing is worn, the degree of vulnerability or sensitivity of users such as pupils or patients).”

However, he suggested that the authorities refrained from going down that path, indicating that, ultimately, it did not appear possible to compromise on civil servants’ duty of neutrality.

“First of all, it is a question of principle. Irrespective of their wishes, and also because they have to a certain extent chosen [this employment], civil servants belong primarily to the public sphere, the rationale for which is service in the general interest and the equal treatment of all users. As the Government Commissioner Rémy Schwartz has pointed out, the neutrality of the service is ‘designed above all for the users; it is with the aim of respecting their convictions that the State is neutral, in order to allow for their full expression’; it is this social role which justifies the fact that the individual who continues to exist within the public employee effaces himself or herself behind the depository of public authority, behind the persona of a civil servant who is entrusted with a public-service mission. While the concept of public service may indeed narrow in the future, it does not ultimately seem possible to compromise on the immutable principles which constitute its exceptionality, particularly the fact of its employees being subject, on account of their status, to a code of conduct and an ethical line.

Equally, we will not dwell further on the fears already expressed concerning the gradual erosion, under the impetus of identity politics, of the essential coherence of the social fabric, characterised by adhesion to the universal values guaranteed by the State.

Moreover, Rémy Schwartz’s conclusions also emphasise the impracticality of an individualised solution that would depend on the nature of the tasks and the degree of maturity of the public in question, given the variety and even the variability over time of the conceivable situations; in addition, it is not clear why an employee’s freedom of conscience, by dint of excessive demands in respect of religious convictions, would justify an infringement of the freedom of conscience which is also enjoyed by his or her colleagues: the interests of the service may thus also justify that, even in the absence of direct contact with the users, an employee’s freedom to express his or her convictions may be restricted. ...

This reaffirmation of the principle of the absolute neutrality of the public service leads to the necessity of issuing a warning in respect of any deviation from the rules that in itself amounts to a disciplinary fault: on the basis of that finding, there would be nothing to prevent the disciplinary body, in the same wording as the *Ms Marteaux* Opinion, from assessing particular cases on an individual basis and from taking account of specific circumstances so that, having put an end to the culpable conduct, it can evaluate the consequences, necessarily including in its assessment the degree of compliance or, on the contrary, intransigence, on the part of the civil servant once he or she has been invited to adhere to the neutrality of the service. ...”

III. COMPARATIVE LAW

32. In *Eweida and Others v. the United Kingdom* (nos. 48420/10 and 3 others, § 47, ECHR 2013), the Court indicated that an analysis of the law and practice relating to the wearing of religious symbols at work across twenty-six Council of Europe Contracting States demonstrated that

> “... the majority of States the wearing of religious clothing and/or religious symbols in the workplace is unregulated. In three States, namely Ukraine, Turkey and some cantons of Switzerland, the wearing of religious clothing and/or religious symbols for civil servants and other public-sector employees is prohibited, but in principle it is allowed to employees of private companies. In five States – Belgium, Denmark, France, Germany and the Netherlands – the domestic courts have expressly admitted, at least in principle, an employer’s right to impose certain limitations upon the wearing of religious symbols by employees; however, there are neither laws nor regulations in any of these countries expressly allowing an employer to do so. In France and Germany, there is a strict ban on the wearing of religious symbols by civil servants and State employees, while in the three other countries the attitude is more flexible. A blanket ban on wearing religious clothing and/or symbols at work by private employees is not allowed anywhere. On the contrary, in France it is expressly prohibited by law. Under French legislation, in order to be declared lawful any such restriction must pursue a legitimate aim, relating to sanitary norms, the protection of health and morals, the credibility of the company’s image in the eyes of the customer, and must also pass a proportionality test.”

33. Recently, in a judgment of 27 January 2015, the German Constitutional Court held that a general prohibition on the wearing of the veil by female teachers in State schools was incompatible with the Constitution, unless it constitutes a sufficiently tangible risk to the State’s neutrality or a peaceful environment in schools (1 BvR 471/10, 1 BvR 1181/10).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

34. The applicant alleged that the refusal to renew her contract as a social worker had been contrary to her freedom to manifest her religion as laid down in Article 9 of the Convention, which provides:

> “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.”

A. Admissibility

35. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

36. The applicant submitted that on 11 December 2000 no legal provision explicitly prohibited public employees, whether civil servants or contract workers, from wearing a religious symbol in the exercise of their functions. The *Conseil d'État*'s Opinion of 3 May 2000 (see paragraph 26 above), relied upon by the Government, concerned only the public education services, and the circular of 2 February 2005 on secularism in health institutions (see paragraph 30 above) had not yet been published. She considered, on the contrary, that on the date in question no particular restrictions had been placed on the freedom to manifest one's religion, including for public employees. In her view, the applicable law had been set out in the *Conseil d'État*'s Opinion of 27 November 1989 on the compatibility with the principle of secularism of wearing signs at school indicating affiliation to a religious community; in that Opinion, the *Conseil d'État* accepted that the principle of neutrality was in no way called into question by the simple fact of wearing a religious symbol, provided that its wearer could not be accused of any proselytising conduct (the Opinion is quoted in full in *Dogru v. France*, no. 27058/05, § 26, 4 December 2008). She concluded from this that the interference had not been prescribed by "law" for the purposes of the Convention.

37. Furthermore, the applicant considered that the impugned interference did not pursue a legitimate aim, given that no incident or problem had arisen in the course of her employment within the CASH. She concluded from the Court's case-law that the State could limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashed with the aim of protecting the rights and freedoms of others, public order and public safety (she referred to *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 111, ECHR 2005-XI, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 92, ECHR 2003-II).

38. For the remainder, the applicant indicated that she wore a simple head covering, which was anodyne in appearance and was intended to hide her hair, and that this did not, in itself, infringe the neutrality of the public service. She submitted that the fact of wearing this head covering had posed no threat to security and public order, nor any disruption within her department, since the wearing of such a head covering did not in itself amount to an act of proselytism, which presupposed conduct followed for

the purpose of encouraging adherence to a belief system. According to the applicant, only the wearing of a full covering such as the burqa or the niqab ought to be perceived as a symbol of social separatism and of a refusal to integrate and be subject to a specific restriction.

39. The applicant specified that she had been able to wear her head covering until a change of personnel within the hospital's management team, and that no comment had ever been made to her prior to that change, either by the hospital staff or by the patients themselves. She submitted several statements dating from December 2000, drawn up by doctors in the psychiatric unit concerned, praising her professional abilities. She considered that the Government had provided no evidence of the alleged disruption to the department's work and submitted that the refusal to renew her contract had been based solely on her adherence to the Muslim religion and that it had been disproportionate in a democratic society.

40. The applicant emphasised that France was isolated in this regard. She argued that in the majority of European countries the wearing of a religious sign such as the headscarf, by pupils or State employees, was not subject to particular restrictions. With regard to the former, she submitted that the French law of 15 March 2004 (see *Dogru*, cited above, § 30), which was inapplicable in the present case and regulated the wearing of symbols or dress displaying religious affiliation in both primary and secondary State schools, had given rise to general incomprehension. State employees were authorised to wear a headscarf in many countries: Denmark, Sweden, Spain, Italy, Greece and the United Kingdom. The applicant expanded on the situation in the United Kingdom, in which the wearing of the Islamic headscarf in schools and in the public services was permitted, as was the wearing of religious head coverings by police officers, soldiers, motorcyclists and construction workers. Lastly, the applicant considered it useful to point out that Christian religious symbols were tolerated in public areas (crucifixes in classrooms, courts and administrative buildings) in Italy, Ireland and Austria, as were non-Christian symbols.

(b) The Government

41. The Government considered that the impugned interference was "in accordance with the law", since at the relevant time the domestic law clearly set out the principle of strict neutrality required from all public officials, and the penalties to which they were liable in the event of failure to comply with this principle. The "law" in question, within the meaning of the Court's case-law, included, firstly, the 1905 Act, which had enshrined the State's neutrality *vis-à-vis* religions, and Article 1 of the Constitution, which affirmed the principle that all citizens are equal before the law (see paragraph 21 above). It also included the Law of 13 July 1983 laying down the rights and duties of civil servants, section 29 of which provided that any misconduct committed by a civil servant in the course of or in connection

with the performance of his or her duties could lead to a disciplinary sanction. In addition, both the case-law of the administrative courts over more than fifty years (see paragraph 26 above) and that of the Constitutional Council (see paragraph 25 above) reiterated the obligation of neutrality incumbent on all public servants in carrying out their functions. The *Conseil d'État*, in its Opinion of 3 May 2000, also emphasised the pre-existing general nature of the principle of neutrality, before applying it in the case before it.

42. The Government added that the applicant had voluntarily signed up to the hospital civil service and its obligations, which included the obligation on every employee to maintain neutrality in one's duties, when she accepted the various contracts binding her to the CASH. She could not have been unaware of these rules, in view of the reminders about her obligations given by the Director of Human Resources on 30 November 2000 and, previously, by a manager from the hospital's social and education unit in an interview held after complaints had been received from patients who had refused to meet her on account of her choice of clothing.

43. According to the Government, the prohibition on public employees' manifesting their religious beliefs was underpinned by the need to preserve the constitutional principle of secularism on which the French Republic was founded. As the Court had already accepted, the neutrality imposed by a State on its employees thus pursued the legitimate aim of protecting the rights and freedoms of others (they referred to *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V).

44. The Government submitted that the refusal to renew the applicant's contract had been necessary in a democratic society. The principle of the neutrality of public services required that employees could not wear any religious symbol, of any form, even if they did not engage in proselytism. In this connection they referred to the Court's case-law with regard to civil servants and their duty of discretion and choice of attire (specifically, *Vogt v. Germany*, 26 September 1995, § 53, Series A no. 323, and *Kurtulmuş v. Turkey* (dec.), no. 65500/01, ECHR 2006-II). They emphasised the particular importance of the principle of neutrality in the circumstances of this case, where it was difficult to assess the impact that a particularly visible external sign could have on the freedom of conscience of fragile and impressionable patients. The Government added that certain patients had specifically refused to meet the applicant, and that this situation had created a general climate of tension and difficulties within the unit, requiring the applicant's colleagues and some social workers to handle sensitive situations. It was in the light of this general climate that the CASH had taken the contested decision, after reminding the applicant on several occasions of the duty of neutrality, and not on account of the latter's professional skills, which had always been acknowledged. The Government considered that the contested decision had complied with the requirement to

weigh up the interests at stake; it had been the consequence of the applicant's refusal to comply with the rules applicable to every public employee, of which she had been perfectly aware, and not, as she alleged, on account of her religious beliefs. Lastly, although the applicant's wearing of the religious symbol had been accepted by the hospital until 2000, this factor did not, in the Government's view, render the contested interference unnecessary. They reiterated that "the fact that an existing rule is applied less rigorously because of a specific context does not mean that there is no justification for the rule or that it is no longer binding in law" (citing *Kurtulmuş*, cited above).

45. Lastly, the Government submitted that the measure appeared proportionate to the aim pursued. They emphasised that, under French law, a public servant employed under contract was not automatically entitled to renewal of his or her contract. It was for the public authority to assess freely whether or not it was appropriate to renew it, and only an argument based on the employee's way of working or on the interests of the department could justify a refusal to renew. In the present case, and as the domestic courts had noted, it was indeed in the interests of the department that the decision not to renew the contract had been taken, and that decision had not been manifestly disproportionate. The Government concluded that the interference had been justified as a matter of principle and proportionate to the aim pursued.

2. *The Court's assessment*

46. Firstly, the Court observes that the CASH always used the word "head covering" ("*coiffe*") to describe the applicant's attire. The applicant submitted to the Court a photograph of herself, surrounded by her colleagues, in which she is seen wearing a head covering which conceals her hair, her neck and her ears, and her face is fully visible. This head covering, which resembles a scarf or an Islamic veil, has been described as a veil by the majority of the domestic courts which have examined the dispute, and it is this latter term that the Court will use in examining the applicant's complaint.

(a) Whether there was an interference

47. The Court notes that the non-renewal of the applicant's contract was explained by her refusal to remove her veil which, while not described as such by the authorities, was the undisputed expression of her adherence to the Muslim faith. The Court has no reason to doubt that the wearing of this veil amounted to a "manifestation" of a sincere religious belief, protected by Article 9 of the Convention (see, *mutatis mutandis*, *Leyla Şahin*, cited above, § 78; *Bayatyan v. Armenia* [GC], no. 23459/03, § 111, ECHR 2011; and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, §§ 82, 89 and 97, ECHR 2013). As the applicant's employer, it is the State

which must assume responsibility for the decision not to renew her contract and to bring disciplinary proceedings against her. This measure must therefore be regarded as an interference with her right to freedom to manifest her religion or belief as guaranteed by Article 9 of the Convention (see *Eweida and Others*, cited above, §§ 83-84 and 97).

(b) Whether the interference was justified

(i) Prescribed by law

48. The expression "prescribed by law" requires, firstly, that the impugned measure should have some basis in domestic law. Secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him or her, and compatible with the rule of law. The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention. According to the Court's settled case-law, the concept of "law" must be understood in its "substantive" sense, not its "formal" one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes, and the relevant case-law authority (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014, and *Dogru*, cited above, § 52).

49. In the present case, the applicant emphasised that there had been nothing prohibiting the wearing of religious symbols in French legislation on 11 December 2000. She considered that the *Conseil d'État*'s Opinion of 3 May 2000 concerned only teaching staff, and that the Opinion of 27 November 1989 relating to the wearing of religious signs in schools represented the applicable "law" (see paragraph 36 above). The Court notes that this latter Opinion concerned only the acknowledged right of pupils to manifest their religious beliefs and that it did not cover the situation of public employees.

50. The Court observes that Article 1 of the French Constitution provides, in particular, that France is a secular Republic which ensures the equality of all citizens before the law. It notes that, in the law of the respondent State, this constitutional provision establishes the basis of the State's duty of neutrality and impartiality with regard to all religious beliefs or the ways in which those beliefs are expressed, and that it has been interpreted and read in conjunction with its application by the national courts. In this connection, the Court notes that it transpires from the administrative courts' case-law that the neutrality of public services is an element of State secularism and that, since 1950, the *Conseil d'État* has asserted the "duty of strict neutrality which is required from all [public]

employees", particularly in the area of education (see paragraphs 26-27 above). Moreover, it notes that the Constitutional Council has emphasised that the principle of neutrality, the corollary of which is the principle of equality, is a fundamental principle of the public service (see paragraph 25 above). The Court concludes from this that the case-law of the *Conseil d'État* and the Constitutional Council amount to a sufficiently serious legal basis to enable the national authorities to restrict the applicant's religious freedom.

51. Nonetheless, the Court acknowledges that the content of the obligation of neutrality as affirmed in this manner, although it was such as to alert the applicant, did not contain any specific reference or application to the profession which she exercised. It therefore accepts that, when she took up her post, the applicant could not have foreseen that the expression of her religious beliefs would be subject to restrictions. However, it considers that, from the date of publication of the *Conseil d'État*'s Opinion of 3 May 2000, issued more than six months before the decision not to renew her contract, the terms of which were brought to her attention by the hospital administration (see paragraph 8 above), these restrictions were set out with sufficient clarity for her to foresee that the refusal to remove her veil amounted to a fault leaving her liable to a disciplinary sanction. That Opinion, although responding to a specific question concerning the public education service, indicated that the principle of State secularism and the neutrality of public services applied to the public service as a whole. It stressed that employees must enjoy freedom of conscience, but that this freedom must be consistent, in its manner of expression, with the principle of neutrality of the relevant service, which precludes the wearing of a sign intended to indicate their adherence to a religion. In addition, it specifies that in the event of failure to comply with this obligation of neutrality the disciplinary consequences are to be assessed on a case-by-case basis, in the light of the particular circumstances (see paragraph 26 above). The Court thus notes that the Opinion of 3 May 2000 clearly lays down the basis for the requirement of religious neutrality by public employees when carrying out their duties, having regard to the principles of secularism and neutrality, and meets the requirement as to the foreseeability and accessibility of "the law" within the meaning of the Court's case-law. The measure in issue was therefore prescribed by law within the meaning of Article 9 § 2.

(ii) Legitimate aim

52. Unlike the parties in *Leyla Şahin* (cited above, § 99), the applicant and the Government do not agree on the aim of the contested restriction. The Government referred to the legitimate aim of protecting the rights and freedoms of others implied by the constitutional principle of secularism, while the applicant denied that any incident had occurred while she was

carrying out her duties which could have given grounds for the interference in her right to freedom to manifest her religious beliefs.

53. Having regard to the circumstances of the case and the reasons given for not renewing the applicant's contract, namely the requirement of religious neutrality in a context where users of the public service were in a vulnerable situation, the Court considers that the interference complained of pursued the legitimate aim of protecting the rights and freedoms of others (see, *mutatis mutandis*, *Leyla Şahin*, cited above, §§ 99 and 116; *Kurtulmuş*, cited above; and *Ahmet Arslan and Others v. Turkey*, no. 41135/98, § 43, 23 February 2010). In the present case the purpose was to ensure respect for all of the religious beliefs and spiritual orientations held by the patients who were using the public service and were recipients of the requirement of neutrality imposed on the applicant, by guaranteeing them strict equality. The aim was also to ensure that these users enjoyed equal treatment, without distinction on the basis of religion. In this connection, the Court reiterates that it has found that an employer's policies to promote equality of opportunity or to avoid any discriminatory conduct *vis-à-vis* other persons pursued the legitimate aim of the protection of the rights of others (see, *mutatis mutandis*, the cases of Ms Ladele and Mr McFarlane, in *Eweida and Others*, cited above, §§ 105-06 and 109). It also reiterates that upholding the principle of secularism is an objective that is compatible with the values underlying the Convention (see *Leyla Şahin*, cited above, § 114). In those circumstances, the Court is of the view that the ban on the applicant manifesting her religious beliefs while carrying out her duties pursued the aim of protecting the "rights and freedoms of others" and that this restriction did not necessarily need to be additionally justified by considerations of "public safety" or "protection of public order", which are set out in Article 9 § 2 of the Convention.

(iii) Necessary in a democratic society

(α) General principles

54. With regard to the general principles, the Court refers to the judgment in *Leyla Şahin* (cited above, §§ 104-11), in which it reiterated that while freedom of conscience and religion is one of the foundations of a "democratic society" (ibid., § 104; see also in respect of the general principles, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A), Article 9 does not, however, protect every act motivated or inspired by a religion or belief. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the freedom to manifest one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. This follows both from paragraph 2 of Article 9 and from the State's positive obligations under Article 1 of the Convention to

secure to everyone within its jurisdiction the rights and freedoms defined therein (see *Leyla Şahin*, cited above, § 106).

55. In that judgment, the Court also reiterated that it had 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. Thus, 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, and the Court considered that this duty requires the State to ensure mutual tolerance between opposing groups. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (ibid., § 107).

56. Moreover, 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. The Court emphasised that this would notably be the case when it came to regulating the wearing of religious symbols in educational institutions, especially in view of the diversity of the approaches taken by national authorities on the issue. Referring, *inter alia*, to the above-cited *Dahlab* case, the Court found that it was not possible to discern throughout Europe a uniform conception of the significance of religion in society, and that the meaning or impact of the public expression of a religious belief would differ according to time and context. It noted that rules in this sphere would 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. It concluded that 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 would depend on the specific domestic context (see *Leyla Şahin*, cited above, § 109).

57. In the above-cited *Kurtulmuş* case, which concerned a ban on an associate professor at Istanbul University wearing the Islamic scarf, the Court emphasised that the principles set out in paragraph 51 above also apply to members of the civil service: "[a]lthough it is legitimate for a State to impose on public servants, on account of their status, a duty to refrain from any ostentation in the expression of their religious beliefs in public, public servants are individuals and, as such, qualify for the protection of Article 9 of the Convention". It stated on that occasion, referring to the above-cited cases of *Leyla Şahin* and *Dahlab*, that "in a democratic society the State [is] entitled to place restrictions on the wearing of the Islamic headscarf if it [is] incompatible with the pursued aim of protecting the rights and freedoms of others and public order". Applying those principles, the

Court noted that "the rules on dress apply equally to all public servants, irrespective of their functions or religious beliefs. As public servants act as representatives of the State when they perform their duties, the rules require their appearance to be neutral in order to preserve the principle of secularism and its corollary, the principle of a neutral public service. The rules on dress require public servants to refrain from wearing a head covering on work premises" (see *Kurtulmuş*, cited above). It accepted, having regard in particular to the importance of the principle of secularism, a fundamental principle of the Turkish State, that the ban on wearing the veil was "justified by imperatives pertaining to the principle of neutrality in the public service", and reiterated in this regard, referring to the above-cited judgment in *Vogt*, that it had "in the past accepted that a democratic State may be entitled to require public servants to be loyal to the constitutional principles on which it is founded".

58. Again in the context of public education, the Court has stressed the importance of respect for the State's neutrality in the context of teaching activity in public primary education, with very young children who are more easily influenced (see *Dahlab*, cited above).

59. In several recent cases concerning freedom of religion at work, the Court has stated that "[g]iven the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate" (see *Eweida and Others*, cited above, § 83).

(β) Application in the present case

60. The Court notes at the outset that, in addition to reminding the applicant of the principle of the neutrality of public services, the authorities had indicated to her the reasons for which this principle justified special application with regard to a social worker in the psychiatric unit of a hospital. The authorities had identified the problems to which her attitude had given rise within the unit in question and had attempted to persuade her to refrain from displaying her religious beliefs (see paragraph 8 above).

61. The Court observes that the national courts validated the refusal to renew the applicant's contract, explicitly stating that the principle of the neutrality of public employees applied to all the public services, and not solely to education, and that it was intended to protect users from any risk of being influenced or infringement of their own freedom of conscience. In its judgment of 17 October 2002, the Administrative Court had attached importance to the fragility of these users, and held that the requirement of neutrality imposed on the applicant was all the more pressing in that she

was in contact with patients who were fragile or dependent (see paragraph 11 above).

62. The Court further observes that the applicant has not been accused of acts of pressure, provocation or proselytism with regard to hospital patients or colleagues. However, the fact of wearing her veil was perceived as an ostentatious manifestation of her religion, incompatible in this case with the neutral environment required in a public service. It was thus decided not to renew her contract and to bring disciplinary proceedings against her on account of her persistence in wearing the veil while on duty.

63. The principle of secularism within the meaning of Article 1 of the French Constitution, and the resultant principle of neutrality in public services, were the arguments used against the applicant, on account of the need to ensure equal treatment for the users of the public establishment which employed her and which required, whatever her religious beliefs or her sex, that she comply with the strict duty of neutrality in carrying out her duties. According to the domestic courts, this entailed ensuring the State's neutrality in order to guarantee its secular nature and thus protect the users of the service, namely the hospital's patients, from any risk of influence or partiality, in the name of their right to freedom of conscience (see paragraphs 11, 16 and 25 above; see also the wording subsequently used in the circular on secularism in health institutions, paragraph 30 above). Thus, it is clear from the case file that it was indeed the requirement of protection of the rights and freedoms of others, that is, respect for the freedom of religion of everyone, and not the applicant's religious beliefs, which lay behind the contested decision.

64. The Court has already accepted that States may rely on the principles of State secularism and neutrality to justify restrictions on the wearing of religious symbols by civil servants, particularly teachers working in the public sector (see paragraph 57 above). It is the latter's status as public employees which distinguishes them from ordinary citizens – "who are by no means representatives of the State engaged in public service" and are not "bound, on account of any official status, by a duty of discretion in the public expression of their religious beliefs" (see *Ahmet Arslan and Others*, cited above, § 48) – and which imposes on them religious neutrality *vis-à-vis* their students. Likewise, the Court can accept in the circumstances of the present case that the State, which employs the applicant in a public hospital where she is in contact with patients, is entitled to require that she refrain from manifesting her religious beliefs when carrying out her duties, in order to guarantee equality of treatment for the individuals concerned. From this perspective, the neutrality of the public hospital service may be regarded as linked to the attitude of its staff, and requires that patients cannot harbour any doubts as to the impartiality of those treating them.

65. It thus remains for the Court to verify that the impugned interference is proportionate to that aim. With regard to the margin of appreciation left to

the State in the present case, the Court notes that a majority of the Council of Europe member States do not regulate the wearing of religious clothing or symbols in the workplace, including for civil servants (see paragraph 32 above) and that only five States (out of twenty-six), one of them France, have been identified as prohibiting completely the wearing of religious signs by civil servants. However, as pointed out above (see paragraph 56), consideration must be given to the national context of State-Church relations, which evolve over time in line with changes in society. Thus, the Court notes that France has reconciled the principle of the neutrality of the public authorities with religious freedom, thus determining the balance that the State must strike between the competing private and public interests or competing Convention rights (see paragraphs 21-28 above), and that this left the respondent State a large margin of appreciation (see *Leyla Şahin*, cited above, § 109, and *Obst v. Germany*, no. 425/03, § 42, 23 September 2010). Equally, the Court has already indicated that in the hospital environment the domestic authorities must be allowed a wide margin of appreciation, as hospital managers are better placed to take decisions in their establishments than a court, particularly an international court (see *Eweida and Others*, cited above, § 99).

66. The main question which arises in the present case is therefore whether the State overstepped its margin of appreciation in deciding not to renew the applicant's contract. On this point, the Court notes that public employees in France enjoy the right to respect for their freedom of conscience, which entails, in particular, a ban on any faith-based discrimination in access to posts or in career development. This freedom is guaranteed, in particular, by section 6 of the Law of 13 July 1983 laying down the rights and duties of civil servants, and is to be reconciled with the requirements of the proper functioning of the service (see paragraph 25 above). However, they are prohibited from manifesting their religious beliefs while carrying out their duties (see paragraphs 25-26 above). Thus, the Opinion of 3 May 2000, cited above, clearly states that public employees' freedom of conscience must be reconciled, albeit solely in terms of how it is given expression, with the obligation of neutrality. The Court reiterates that the reason for this restriction lies in the principle of State secularism, which, according to the *Conseil d'État*, "concerns the relations between the public authorities and private persons" (see paragraph 28 above), and the principle of the neutrality of public services, a corollary of the principle of equality which governs the functioning of these services and is intended to ensure respect for all beliefs.

67. The Court emphasises, however, that it has already approved strict implementation of the principles of secularism (now included among the rights and freedoms safeguarded by the Constitution, see paragraph 24 above) and neutrality, where this involved a fundamental principle of the State, as in France (see, *mutatis mutandis*, *Kurtulmuş*, and *Dalhab*, both

cited above). The principles of secularism and neutrality give expression to one of the rules governing the State's relations with religious bodies, a rule which implies impartiality towards all religious beliefs on the basis of respect for pluralism and diversity. The Court considers that the fact that the domestic courts attached greater weight to this principle and to the State's interests than to the applicant's interest in not limiting the expression of her religious beliefs does not give rise to an issue under the Convention (see paragraphs 54-55 above).

68. It observes in this connection that the obligation of neutrality applies to all public services, as reiterated on numerous occasions by the *Conseil d'État* and, recently, by the Court of Cassation (see paragraphs 26-27 above), and that the fact of employees wearing a sign of religious affiliation in the course of their duties amounts, as a matter of principle, to a breach of their obligations (see paragraphs 25-26 above). There is no indication in any text or decision by the *Conseil d'État* that the impugned obligation of neutrality could be adjusted depending on the employee and his or her duties (see paragraphs 26 and 31 above). The Court is mindful that this is a strict obligation which has its roots in the traditional relationship between State secularism and freedom of conscience as this is set out in Article 1 of the Constitution (see paragraph 21 above). Under the French model, which it is not the Court's role to assess as such, the State's neutrality is incumbent on the employees representing it. The Court notes, however, that it is the duty of the administrative courts to verify that the authorities do not disproportionately interfere with public employees' freedom of conscience when State neutrality is relied upon (see paragraphs 26 and 28 above).

69. In this context, the Court notes that the disciplinary consequences of the applicant's refusal to remove her veil during her working hours were assessed by the authorities "with due regard to the nature and degree of ostentatiousness of the sign in question, and of the other circumstances" (see paragraph 26 above). In this respect, the authorities usefully pointed out that the imposed requirement of neutrality was non-negotiable in view of her contact with patients (see paragraph 13 above). Moreover, in a passage which it would have been worth expanding on, they referred to difficulties in the relevant unit (see paragraph 8 above). For their part, the courts dealing with the case accepted, in essence, the French concept of the public service and the ostentatious nature of the veil, concluding that there had not been an excessive interference with the applicant's religious freedom. Thus, while the applicant's wearing of a religious symbol amounted to a culpable breach of her duty of neutrality, the impact of this attire on the exercise of her duties was taken into consideration in evaluating the seriousness of that fault and in deciding not to renew her contract. The Court notes that section 29 of the Law of 13 July 1983 does not define the fault (see paragraph 41 above) and that the authorities have discretion in this area. It observes that they obtained witness statements before finding that they had

sufficient information to bring disciplinary proceedings against the applicant (see paragraph 8 above). Furthermore, the Administrative Court did not criticise the sanction of non-renewal of her contract, finding that – having regard to public employees' duty of neutrality – it was proportionate to the fault. The Court considers that the national authorities are best placed to assess the proportionality of the sanction, which must be determined in the light of all of the circumstances in which a fault was found, in order to comply with Article 9 of the Convention.

70. The Court notes that the applicant, whose religious beliefs meant that it was important for her to manifest her religion by visibly wearing a veil, was rendering herself liable to the serious consequence of disciplinary proceedings. However, there can be no doubt that, after the publication of the *Conseil d'État*'s Opinion of 3 May 2000, she was aware that she was required to comply with the obligation of neutrality in her attire while at work (see paragraphs 26 and 51 above). The authorities reminded her of this obligation and asked her to reconsider wearing her veil. It was on account of her refusal to comply with this obligation that the applicant was notified that disciplinary proceedings had been opened, notwithstanding her professional abilities. She had subsequently had access to the safeguards of the disciplinary proceedings and to the remedies available before the administrative courts. Moreover, she had chosen not to take part in the recruitment test for social workers organised by the CASH, although she had been included in the list of candidates drawn up by that establishment in full cognisance of the situation (see paragraph 10 above). In those circumstances, the Court considers that the domestic authorities did not exceed their margin of appreciation in finding that it was impossible to reconcile the applicant's religious beliefs and the obligation not to manifest them, and subsequently in deciding to give priority to the requirement of State neutrality and impartiality.

71. It appears from the report by the Secularism Observatory, in the section entitled "Overview of secularism in health establishments" (see paragraph 29 above), that disputes arising from the religious beliefs of persons working within hospital services are assessed on a case-by-case basis, and that the authorities attempt to reconcile the interests at stake in a bid to find friendly settlements. This desire for conciliation is confirmed by the small number of similar disputes brought before the courts, as indicated in the 2005 circular or recent studies on secularism (see paragraphs 26 and 30 above). Lastly, the Court observes that a hospital is a place where users, who for their part have equal freedom to express their religious beliefs, are also requested to assist in implementing the principle of secularism, by refraining from any form of proselytism and respecting the manner in which the service is organised and, in particular, the health and safety regulations (see paragraphs 23 and 29-30 above); in other words, the regulations of the respondent State place greater emphasis on the rights of others, equal

treatment for patients and the proper functioning of the service than on the manifestation of religious beliefs, and the Court takes note of this.

72. Having regard to the foregoing, the Court considers that the impugned interference can be regarded as proportionate to the aims pursued. It follows that the interference with the applicant's freedom to manifest her religion was necessary in a democratic society and that there has been no violation of Article 9 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 9 of the Convention;

Done in French, and notified in writing on 26 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Josep Casadevall
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly concurring and partly dissenting opinion of Judge O'Leary;

(b) dissenting opinion of Judge De Gaetano.

J.C.M.
M.B.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE O'LEARY

In the present case, I voted in favour of finding no violation of Article 9 of the Convention for two reasons. On the one hand, the jurisprudence of the Court on Article 9 − particularly strands of that case-law dealing with the principles of neutrality and secularism in certain sectors, mainly education, and in certain member States, mainly France and Turkey − could be relied on in support of the majority's finding of a justified and proportionate interference with the applicant's right to manifest her religious beliefs at her place of work (see section I below). On the other hand, it is clearly established that the member States enjoy an ample if not a very wide margin of appreciation where questions concerning the relationship between the State and religions are at stake (see section II below).

That being so, the majority's assessment of certain aspects of the case calls, in my view, for further comment and reflection.

I. The *Ebrahimian* judgment in the context of the Court's existing case-law on Article 9

As indicated above, the case-law of the Court cited in paragraphs 52 to 59 of the present judgment *could* be relied on to support the impugned French prohibition on the wearing of religious symbols by employees of public bodies.

Nevertheless, all of the cases cited, bar one, involved restrictions on the individual's right to manifest their freedom of religion in an *educational* context. As regards teachers, the Court in each case examined whether the correct balance had been struck between, on the one hand, their right to manifest their religious beliefs and, on the other, respect for the neutrality of public education and the protection of the legitimate interests of pupils and students, ensuring peaceful coexistence between students of various faiths and thus protecting public order and the beliefs of others. In those cases, the Court's reasoning, when finding no violation or rejecting the complaints as manifestly ill-founded, was intimately linked to the role of education and teachers in society, the relative vulnerability of pupils and the impact or influence which religious symbols might have on the latter.[1] In the case-law regarding pupils, the same concerns with the neutrality of State education and the need to protect susceptible and easily influenced pupils and students

1. See, variously, *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V; *Kurtulmuş v. Turkey* (dec.), no. 65500/01, ECHR 2006-II; and *Karaduman v. Turkey* (dec.), no. 41296/04, 3 April 2007.

from pressure and proselytisation emerge.[2] In only one of these cases (*Kurtulmuş*) did the Court express itself in broader terms, not apparently limited to the specificities of the educational sector, when it found that the applicant teacher had chosen to become a civil servant and the dress code with which she did not wish to comply applied equally to all public servants, irrespective of their functions or religious beliefs.[3]

The only other Article 9 case on the wearing of religious symbols in employment is *Eweida and Others v. the United Kingdom*[4], which is both relevant to the present case (see below) and entirely distinguishable. The latter is because, as regards Ms Eweida, the first applicant, the Court found a violation of Article 9, upholding the applicant's private-sector employer's wish to protect its own brand as legitimate but regarding the interference with the applicant's right as disproportionate. As regards Ms Chaplin, the second applicant, who was a nurse in a public hospital, the prohibition on her wearing a cross was for public-health reasons and related to clinical safety. In those circumstances, the Court was unable to conclude that the measures in question were disproportionate.

An overview of existing case-law thus reveals clear instances, in cases involving Turkey and France, where the Court has allowed principles of secularism and neutrality to justify bans on the wearing of religious symbols. However, a careful reading of those cases reveals also that those abstract principles were, in each case, translated into a more concrete form[5] than is the case in the present judgment, before they were allowed to defeat the individual applicant's fundamental right to manifest his or her religious beliefs. In addition, in all of these cases, and notwithstanding the broad reference to civil servants in *Kurtulmuş*, the Court's decisions and judgments were carefully tailored to the educational context involved.

As such, the majority judgment in the present case is an extension to the public service generally of jurisprudence previously restricted to one sector and underpinned by a justification specifically related to that sector and to the role of education in society. In addition, while the outcome of the present case is somewhat limited – the applicant, employed on a fixed-term contract, found that her contract was not renewed because of her refusal to

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2. See, variously, *Köse and Others v. Turkey* (dec.), no. 26625/02, ECHR 2006-II; *Dogru v. France*, no. 27058/05, 4 December 2008; *Kervanci v. France*, no. 31645/04, 4 December 2008; *Gamaleddyn v. France* (dec.), no. 18527/08, 30 June 2009; *Aktas v. France* (dec.), no. 43563/08, 30 June 2009; *Ranjit Singh v. France* (dec.), no. 27561/08, 30 June 2009; *Jasvir Singh v. France* (dec.), no. 25463/08, 30 June 2009; and *Leyla Şahin v. Turkey* [GC], no. 44774/98, ECHR 2005-XI.

3. See, for confirmation of *Kurtulmuş*, albeit in a different context, *Ahmet Arslan v. Turkey*, no. 41135/98, § 48, 23 February 2010.

4. *Eweida and Others v. the United Kingdom*, nos. 48420/10and 3 others, ECHR 2013.

5. See the reference, for example, in *Leyla Şahin* (cited above, § 116) to "the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women".

remove her headscarf – the consequences of the judgment are not. Depending on how the final part of the judgment on proportionality is to be interpreted (see section V), the wearing of visible religious symbols by employees of French public bodies is prohibited and leads to dismissal or non-renewal of their contract.[6] A blanket ban is thus justified with reference to the principles of secularism and neutrality and is found to be proportionate. There is, however, little discussion in the judgment of this considerable extension of case-law forged exclusively in the educational sector.

II. The member States' wide margin of appreciation and Article 9

Another and perhaps stronger reason for voting for a finding of no violation, given recent Grand Chamber judgments on Article 9 and beyond[7], is the very wide margin of appreciation afforded member States in this context. As the majority judgment reiterates, 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 national decision-making bodies must be given special importance. This, as we have seen above, 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 national authorities on the issue.[8]

This separate opinion should not, in the light of this established case-law, in view of the subsidiary role of the Court and having regard to the fundamental importance in French society of the principles relied on by the Government, be read as a denial of that State's margin of appreciation in this field. It is not for the Court, as the majority points out in paragraph 68 of the judgment, to assess the French secular model as such.

Nevertheless, a wide margin of appreciation goes hand in hand with European supervision in cases where the Convention applies, as it clearly does in this case, and that supervision cannot be sidestepped simply by invoking the margin of appreciation, however wide.

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6. Neither is the judgment limited to civil servants, the applicant having been merely an employee of a public body, neither enjoying the benefits which civil-service employment confers nor, arguably, some of the duties which it imposes. This point alone distinguishes the present case from *S.A.S. v. France* ([GC], no. 43835/11, § 145, ECHR 2014), where the legitimate aim and margin of appreciation recognised by the Court were also very wide but where the scope of application of the impugned legislation was very narrow.
7. See, particularly, *S.A.S. v. France*, cited above, and *Lautsi and Others v. Italy* [GC], no. 30814/06, ECHR 2011.
8. See paragraph 56 of the present judgment and the jurisprudence cited therein. See, however, paragraph 3 of the dissenting opinion in the *Leyla Şahin* case on the question of whether there can really be said to be a "diversity of practice between the States" and, therefore, the lack of a European consensus. See also the comparative analysis of Council of Europe member States in paragraph 47 of the judgment in *Eweida and Others*.

III. Whether the measure was "prescribed by law" at the relevant time

In concluding that the limitation of the applicant's rights was prescribed by law, the majority judgment relies on the French Constitution as well as the jurisprudence of the *Conseil d'État* and the Constitutional Council, citing in particular the Opinion of 3 May 2000 of the former, which related to the wearing of religious symbols in educational establishments.

Yet if one examines carefully the legislative and jurisprudential framework presented in paragraphs 21 to 31 of the present judgment, paying particular attention to the chronology, it is questionable whether, in 1999, when the applicant was first employed, or in 2000, when her contract was not renewed, the prohibition in issue here was accessible and foreseeable within the meaning of this Court's case-law. The 1983 Law laying down the rights and duties of civil servants (mentioned in paragraph 25 of the present judgment) appears vague and unspecific, as does the 1995 circular on the rights of patients. Only one relevant *Conseil d'État* decision predating the non-renewal date of the applicant's contract is relied on here and even then it predates it merely by a matter of months.[9] The decision in that case concerned the wearing of religious symbols in educational establishments and simply included a one line *obiter* to the effect that there was no reason to distinguish between employees in the public service according to whether they were employed in education. However, in a previous Opinion of 1989, relied on by the applicant, the *Conseil d'État* had held that "wearing signs in schools by which [pupils] manifest their affiliation to a particular religion is not in itself incompatible with the principle of secularism"[10]. According to this *Conseil d'État* Opinion, problems only arose due to the conditions in which the signs were worn and, in particular, if the signs were ostentatious or in some way demanding or constituted acts of pressure and provocation.

All the other decisions, circulars, etc., referred to in these paragraphs of the present judgment post-date, in some cases by over a decade, the non-renewal of the applicant's contract. In paragraph 25 it is confirmed that a draft law amending the 1983 Law with a view to including an express obligation that when civil servants exercise their functions they respect the principle of secularism and refrain from manifesting their religious views was only adopted by the National Assembly in October 2015. Paragraph 30 reveals that a circular on secularism in health-care establishments was only adopted in 2005.[11]

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9. If, in any event, the 2000 Opinion of the *Conseil d'État* is the key event in the instant case (see § 70), one could wonder why equity did not require a reasonable lapse of time for interested persons to become acquainted with it. See, in the context of exhaustion, *Valada Matos das Neves v. Portugal*, no. 73798/13, § 105, 29 October 2015.

10. See the Opinion of the *Conseil d'État* (no. 346.893) of 27 November 1989, which concerned school pupils, and which is reproduced at § 26 of *Dogru v. France*.

11. Contrast with the very different legal framework described in the judgment in *Leyla*

In these circumstances, it is difficult to conclude that when the applicant first signed a contract with the CASH, she could have foreseen that the wearing of an Islamic headscarf (which, furthermore, she wore in her interview and for several months after she first started work without comment) would lead to disciplinary proceedings and, effectively, to dismissal. Of course, as the Court has recognised, the meaning or impact of the public expression of a religious belief will differ according to time and context and the rules in this sphere will consequently vary from one country to another.[12] However, the wider the margin of appreciation left to States, the more accessible and foreseeable the legal framework on which they rely should be. It is questionable whether this standard was met in 1999-2000 and the majority judgment could be read as assessing the requirement of lawfulness not with reference to the law as it stood then but with reference to the law as it stands now, following fifteen years of a wide and undoubtedly sensitive debate in French society.

IV. Whether the measure pursued a legitimate aim

This case represents another instance of a member State relying on abstract principles or ideals – those of neutrality and secularism – to justify interference with an applicant's individual right to manifest her religious beliefs. While the latter is clearly not absolute, pursuant to Article 9 § 2 limitations of that right or freedom must be "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". The majority judgment seeks to couch the member State's reliance on the principles of secularism and neutrality into the last legitimate aim exhaustively listed in Article 9 § 2, namely the protection of the rights and freedoms of others. Again, it could be argued that the judgment simply applies the approach already developed by the Court under Article 9 in the sphere of education. However, as highlighted above, the principles of neutrality and secularism in those cases sought to protect the rights and freedoms of the pupils and students involved and were intimately linked to the values which educational establishments are intended to teach (see, *inter alia*, *Dahlab*, or *Leyla Şahin*, § 116, both cited above). The decision in *Kurtulmuş* again appears to be the sole exception to this rule.

In *Eweida and Others*, as regards the first applicant, the Court found that the employer's legitimate aim to protect a certain corporate image was accorded too much weight in circumstances where "there was no evidence of any real encroachment on the interests of others" (see *Eweida and*

Şahin, cited above, §§ 37, 39, 41 and 120, or the much clearer French legal framework in issue in *Dogru*, cited above, §§ 17-32.

12. See, *inter alia*, *Leyla Şahin*, cited above, § 109.

Others, cited above, §§ 94-95). As regards the second applicant, the very concrete and legitimate aim of protecting health and safety on a hospital ward outweighed the individual right of that applicant to wear her cross (ibid., §§ 99-100). In the instant case, given the nature and context of the applicant's work in a psychiatric hospital, the Government could have relied on such a concrete, legitimate aim, expressly provided by Article 9 § 2. It sought instead to rely on abstract principles in support of a blanket ban applicable to all employees of public bodies.

It is uncontested that secularism and neutrality in this context are essential principles whose importance has already been recognised by the Court, and repeatedly by the Grand Chamber. In France, the neutrality of the public service is recognised as a constitutional value. Nevertheless, such recognition does not release the Court from the obligation under Article 9 § 2 to establish whether the ban on wearing religious symbols to which the applicant was subject was necessary to secure compliance with those principles and, therefore, to meet a pressing social need. When it comes to the Chamber's assessment of proportionality (see below), it can be seen that the abstract nature of the principles relied on to defeat the right under Article 9 tended also to render abstract this assessment. The risk is therefore that any measure taken in the name of the principle of secularism-neutrality and which does not exceed a State's margin of appreciation – itself very wide because what are in issue are choices of society[13] – will be Convention compatible.[14]

V. Whether the measure was necessary in a democratic society

Was there, in the instant case, a reasonable relationship of proportionality between the means employed and the legitimate aims pursued by the interference?

In paragraphs 60 to 71, the majority judgment appears to mix two very different approaches when assessing the proportionality of the interference with the applicant's right. On the one hand, one finds a fairly concrete assessment of proportionality based on the particular functions exercised by the applicant (her work as a social worker), the context in which those functions were carried out (the fact that she was a social worker in a psychiatric unit) and the vulnerability and needs of the patients with whom she was in contact (see paragraphs 60-61, 64-65 and 69-70 of the judgment). On the other, there is a much more abstract assessment of proportionality rooted in the very abstract nature of the principles of neutrality and

13. See *S.A.S. v. France*, cited above, §§ 153-54.

14. See P. Bosset, "Mainstreaming religious diversity in a secular and egalitarian State: the road(s) not taken in Leyla Şahin v. Turkey", E. Brems (ed.), *Diversity and European Human Rights: Rewriting Judgments of the ECHR*, Cambridge University Press, 2013, pp. 192-217, at p. 198.

secularism on which the national authorities and the Government principally relied (see paragraphs 63-69).

To the extent that the majority judgment finds no violation of the applicant's Article 9 right to manifest her religious beliefs on the basis of the former "functional" assessment of the proportionality of the impugned measure, I have little difficulty subscribing to it. It is also an approach which applies in the private sector in France[15] and which the French authorities seemed at one point to have discussed as regards the public sector but subsequently rejected[16].

In contrast, the more abstract proportionality assessment at the heart of the present judgment seems to be the inevitable result of reliance on abstract principles to justify the interference with the Article 9 right in the first place. According to the majority, the fact that the national courts accorded more weight to the principle of secularism-neutrality and to the interest of the State than to the interest of the applicant does not pose a problem from the perspective of the Convention. The national courts essentially based their approach on the French conception of the public service and the "ostentatious" nature of the headscarf worn by the applicant to conclude that there was no disproportionate interference with the latter's Article 9 right (see paragraphs 67-69 of the present judgment).

In reaching this conclusion, the majority accept that there was no evidence that the applicant, through her attitude, conduct or acts, contravened the principle of secularism-neutrality by exerting pressure, seeking to provoke a reaction, proselytising, spreading propaganda or undermining the rights of others.[17] It is noteworthy that the majority

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15. See *Eweida and Others*, cited above, § 47.

16. See the submissions of the Government Commissioner reproduced in paragraph 31 of the present judgment. It is worth recalling, as an aside, that France is a member of the European Union and therefore subject to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Official Journal L 303, p. 16). This Directive prohibits direct and indirect discrimination on grounds of religion and beliefs. The Court of Justice of the European Union has not yet dealt with a preliminary reference or infringement action concerning the wearing of religious symbols at work. It remains to be seen whether it would follow a "functional" approach (as the terms of Article 4 § 1 might suggest) or whether, on the basis of the broader terms of Article 2 § 5 of the Directive, which to a large extent resembles Article 9 § 2 of the Convention, an approach akin to that of the present judgment would pass muster. See, however, for examples of "functional" ECJ reasoning pursuant to that Directive, the judgments of 12 January 2010 in *Wolf*, C-229/08, EU:C:2010:3, and 13 September 2011in *Prigge and Others*, C-447/09, EU:C:2011:573. As the Directive applies to employment in both the French public and private sectors, the Court's case-law thereunder highlights the possible vulnerability of the ban on wearing religious symbols when assessed with reference to the principle of non-discrimination in the employment context.

17. Contrast the approach in this case with paragraphs 94 and 95 of *Eweida and Others*, or with the Decision of the United Nations Human Rights Committee in *Bikramjit Singh v. France*, § 8.7, Communication No. 1852/2008, according to which the State Party had not furnished compelling evidence that, by wearing his *keski*, the applicant would have posed a

judgment also criticises the absence of detail regarding the alleged difficulties in the service referred to by the national administration as a result of the applicant's wearing a headscarf (see paragraph 69 of the judgment).

Nor do we find any real engagement, strongly emphasised in *Eweida and Others* (cited above, § 106) with the serious consequences (disciplinary proceedings and, effectively, dismissal) which the applicant faced if, because of the strength of her religious convictions, she felt unable to remove the religious symbol complained of. In *Eweida and Others* (§ 83) the Court held, regarding the possibility of changing job, that the better approach in Article 9 cases would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate rather than holding that such a possibility negated the existence of interference. Traces of *Eweida and Others* and any consideration of reasonable accommodation are somewhat lost in the judgment in the instant case.[18]

It is also noteworthy that the mere wearing of the headscarf is regarded as an *ostentatious* manifestation of the applicant's religious beliefs, an appraisal which sits uneasily with the Court's tolerance, in the more sensitive educational context in *Lautsi and Others*, of what it regarded as mere passive symbols[19].

VI. Conclusion

While the Court must be conscious of its subsidiary role, it cannot divest itself of its supervisory role by adjusting the terms of Article 9 § 2, broadening − with reference to ever more abstract ideals and principles – the scope of the limitations for which that provision exhaustively provides and disengaging with the requirements of proportionality.

A finding of no violation could, in my view, have been arrived at by means of an assessment more in conformity with the requirements of the Convention while ensuring a greater degree of coherence between different facets of the Court's Article 9 case-law. A wide margin of appreciation must be supported by a legal framework which is both foreseeable and accessible. Equally, that same margin of appreciation must not absolve the member

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threat to the rights and freedoms of other pupils or to order at the school.

18. While the 2013-14 report of the French "Secularism Observatory" refers to friendly settlements and conciliation (see paragraph 71 of the present judgment), the facts on the ground in the instant case suggest a slightly different reality. See further, as regards reasonable accommodation, the dissenting opinion in *Francesco Sessa v. Italy*, no. 28790/08, ECHR 2012, and K. Alidadi, "Reasonable Accommodations for Religion and Belief: Adding Value to Article 9 ECHR and the European Union's Anti-Discrimination Approach to Employment?", *European Law Review*, Issue 6, 2012, pp. 693-715.

19. See *Lautsi and Others*, cited above, § 72.

States, at first instance, and, one step removed, the Court, of their obligation to ensure a concrete assessment of proportionality, particularly when what is in issue is a blanket ban which interferes with the rights of an individual, while also potentially affecting the employment opportunities of an entire collectivity.

Where member States rely on flexible notions, principles and ideals to justify interferences with the freedom to manifest one's religion, the Grand Chamber has previously stated that it must engage in a careful examination of any impugned limitation (see *S.A.S v. France*, cited above, § 122). It is questionable whether this has occurred in the instant case, as the proportionality assessment is, at one and the same time, both targeted and functional and vague and broad.

DISSENTING OPINION OF JUDGE DE GAETANO

I have had the benefit of reading the separate opinion of Judge O'Leary. I share entirely the concerns that she expresses so eruditely regarding the reasoning in the judgment.

However, those very same concerns lead me ineluctably to the conclusion that in this case there has been a violation of Article 9. The thrust of the judgment is to the effect that the *abstract* principle of *laïcité* or secularism of the State *requires* a blanket prohibition on the wearing by a public official at work of any symbol denoting his or her religious belief. That abstract principle becomes in and of itself a "pressing social need" to justify the interference with a fundamental human right. The attempt to hedge the case and to limit its purport to the specific facts applicable to the applicant is, as pointed out by Judge O'Leary, very weak and at times contradictory. The judgment proceeds from and rests on the false (and, I would add, very dangerous) premise, reflected in paragraph 64, that the users of public services cannot be guaranteed an impartial service if the public official serving them manifests in the slightest way his or her religious affiliation – even though quite often, from the very name of the official displayed on the desk or elsewhere, one can be reasonably certain of the religious affiliation of that official.

Moreover, it would also seem that what is prohibited under French law with regard to public officials is the *subjective* manifestation of one's religious belief and not the *objective* wearing of a particular piece of clothing or other symbol. A woman may wear a headscarf not to manifest a religious belief, or any belief for that matter, but for a variety of other reasons. The same can be said of a man wearing a full beard, or a person wearing a cross with a necklace. Requiring a public official to "disclose" whether that item of clothing is a manifestation or otherwise of his or her religious belief does not sit well with the purported benefits enjoyed by public officials as mentioned in paragraph 66 of the judgment.

While States have a wide margin of appreciation as to the conditions of service of public officials, that margin is not without limits. A principle of constitutional law or a constitutional "tradition" may easily end up by being deified, thereby undermining every value underpinning the Convention. This judgment comes dangerously close to doing exactly that.