
Singh vs. France

Facts

The author, an Indian citizen with permanent French resident status, submitted an application to renew his permit and provided two photographs showing him wearing a turban, as he had done when filing his previous application. The Prefect of Paris informed him that the photographs failed to meet the requirements of articles 7 and 8 of Decree No. 46-1574 of 30 June 1946 governing the conditions applying to foreign nationals' admission to and residence in France, which require individuals to appear full face and bareheaded. The author sent a letter to the Prefect requesting an exemption, but his request was rejected. He then wrote to the Minister of the Interior requesting authorization to appear in a turban, but he received no reply. The author contested the authorities' refusal to renew his residence card before the Administrative Court of Paris without success. The Administrative Appeal Court of Paris also rejected his appeal. In August 2007, he lodged an appeal in cassation with the Council of State. His appeal was rejected on 23 April 2009.

Consideration of admissibility

Art. 5 §2(b) Optional Protocol (OP). Regarding the State's claim that, at the time the case was submitted to the Committee, the Council of State had not yet issued a decision on the author's appeal, the Committee recalled its jurisprudence that the moment it takes into account to determining whether or not all the domestic remedies have been exhausted is the time when the communication is taken under consideration (e.g. No. 1228/2003, *Lemercier et al. v. France*, decision on inadmissibility, 2006, § 6.4). In the case at hand, by the time the Committee took into consideration the communication, the Council of State had already dismissed the author's appeal. The Committee also dismissed the State's contention that the author had not invoked the Covenant before the Council of State but another human rights treaty. According to the Committee, an author is not required to cite specific articles of the Covenant at domestic level but need only to invoke the substantive rights (e.g. No. 273/1989, *B.d.b et al. v. The Netherlands*, decision on admissibility, 1989, § 6.3), as the author did for most of the claims. However, since the author did not claim a violation of the right to freedom of movement at domestic level, the Committee considered that domestic remedies had not been exhausted with respect to this claim and considered it inadmissible.

Consideration of merits

Art. 18: The Committee referred to its [General comment No. 22](#) and considered that the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings ([General comment No. 22](#), §4). The wearing of a turban in public is regarded as a religious duty and is also tied in with a person's identity under the Sikh religion. Therefore, the author's use of a turban was a religiously motivated act and the law requirement that people appear bareheaded in the identity photographs used

Key words

- Freedom of religion
- Equality before the law
- Domestic implementation

Relevant Provisions

- Article 18
- Article 26
- Article 2§2
- Article 5§2(b) OP

Violated Provisions

- Article 18

on residence permits interfered with the exercise of freedom of religion of the author. When determining whether that interference was necessary and proportionate to protect public safety and order, according to Art.18 §3, the Committee observed that the State did not sufficiently explain (i) why the wearing of a Sikh turban leaving the rest of the face clearly visible would make it more difficult to identify the author than bareheaded, since he wears his turban at all times, nor (ii) how identity photographs in which people appear bareheaded help to avert the risk of fraud or falsification of residence permits. Therefore, the State did not demonstrate that the interference was necessary. Moreover, the obligation would potentially interfere with the author's freedom of religion on a continuing basis, because he would always appear without his turban in the identity photograph and could therefore be compelled to remove it during identity checks. Therefore, the regulation infringed his right under Art. 18.

The Committee found it unnecessary to address the author's claims under Art. 26.

Conclusions

The Committee found that the requirement that an individual appear bareheaded in the identity photograph used for a residence permit constituted an arbitrary interference with the author's freedom of religion (Art. 18). Therefore, it requested the State party to provide the author with an effective remedy, including a reconsideration of his application for a renewal of his residence permit and a review of the relevant legislative framework and its application in practice, in order to avoid exposing others to similar risks of a violation in the future. It should moreover, within 180 days, give the Committee information about the measures taken to give effect to its views, as well as publishing the Committee's Views.

Dissent/Concurrence

Partially dissenting opinion of Prof. Salvioli. The Committee member considered that the State party was also responsible for a violation of Art. 2 §2, since the legislation was in itself incompatible with the Covenant and, as a result, in order to guarantee that such events would not recur, the Committee ought to have indicated that the State party should have amended Decree No. 46-1574 to remove the requirement that applicants must be photographed "bareheaded". As argued in his dissenting opinion in the case No. 1406/2005, [Anura Weerawansa v. Sri Lanka](#), international responsibility also arises through the adoption of legislative acts contrary to the Covenant, and Art. 2§2 can also be applicable in the context of individual complaints.