



Non-renewal of contract, in a public establishment, of a social assistant refusing to remove her veil was not contrary to the European Convention on Human Rights

In today's **Chamber** judgment¹ in the case of [Ebrahimian v. France](#) (application no. 64846/11) the European Court of Human Rights held, unanimously, that there had been

no violation of Article 9 (right to freedom of religion) of the European Convention on Human Rights.

The case concerned the decision not to renew the contract of employment of a hospital social worker because of her refusal to stop wearing the Muslim veil.

The Court noted that wearing the veil had been considered by the authorities as an ostentatious manifestation of religion that was incompatible with the requirement of neutrality incumbent on public officials in discharging their functions. The applicant had been ordered to observe the principle of secularism within the meaning of Article 1 of the French Constitution and the requirement of neutrality deriving from that principle. According to the national courts, it had been necessary to uphold the secular character of the State and thus protect the hospital patients from any risk of influence or partiality in the name of their right to their own freedom of conscience. The necessity of protecting the rights and liberties of others – that is, respect for everyone's freedom of religion – had formed the basis of the decision in question.

The Court found that the national authorities had not exceeded their margin of appreciation in finding that there was no possibility of reconciling Ms Ebrahimian's religious convictions with the obligation to refrain from manifesting them, and in deciding to give precedence to the requirement of neutrality and impartiality of the State.

Principal facts

The applicant, Christiane Ebrahimian, is a French national who was born in 1951 and lives in Paris (France).

Ms Ebrahimian was recruited on a fixed-term contract within the public hospital service as a social worker in the psychiatric department of Nanterre Hospital and Social Care Centre ("HSCC"), a public health establishment administered by the City of Paris. Her contract, which ran from 1 October to 31 December 1999, was extended for one year from 1 January to 31 December 2000.

On 11 December 2000 the Director of Human Resources informed the applicant that her contract would not be renewed, on account of her refusal to remove her headgear and following complaints from patients.

The Director of Human Resources sent Ms Ebrahimian a written reminder of the *Conseil d'État's* opinion of 3 May 2000, to the effect that while the freedom of conscience of public officials was guaranteed, the principle of the secular character of the State prevented them from enjoying the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

right to manifest their religious beliefs while discharging their functions; accordingly, wearing a visible symbol of religious affiliation constituted a breach of a public official's duties.

Ms Ebrahimian applied to the Paris Administrative Court to set the decision of 11 December 2000 aside. On 15 and 28 February 2001 she was informed by letter of the decision by the Director of Human Resources of the HSCC to include her on the list of candidates for a competition to recruit social assistants. Ms Ebrahimian did not sit the competition. On 17 October 2002 the Administrative Court found that the decision not to renew her contract had been in accordance with the principles of secularism and neutrality of public services.

In a judgment of 2 February 2004 the Paris Administrative Court of Appeal found that the decision complained of related to a disciplinary matter and set it aside on grounds of a procedural flaw as Ms Ebrahimian had not been able to consult her file before the decision was made. In accordance with that judgment, the Director of Human Resources invited Ms Ebrahimian to consult her file and, in a reasoned decision of 13 May 2005, confirmed to her that her contract would not be renewed. Ms Ebrahimian applied to the Versailles Administrative Court to set that decision aside, but her application was rejected. The Administrative Court of Appeal upheld that judgment. An appeal on points of law by Ms Ebrahimian was declared inadmissible by the *Conseil d'Etat*.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Ms Ebrahimian complained that the decision not to renew her contract as a social worker was in breach of her right to freedom to manifest her religion.

The application was lodged with the European Court of Human Rights on 12 October 2011.

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

Josep Casadevall (Andorra), *President*,
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic),
Síofra O'Leary (Ireland),

and also Milan Blaško, *Deputy Section Registrar*.

Decision of the Court

Article 9

The Court noted that the reason for the decision not to renew Ms Ebrahimian's contract was her refusal to remove her veil, an expression of her affiliation to the Muslim faith. That measure had to be regarded as an interference with her right to freedom to manifest her religion as guaranteed by Article 9 of the Convention.

The Court observed that the interference was prescribed by law. Whilst Article 1 of the Constitution and the case-law of the *Conseil d'État* and of the Constitutional Council constituted a sufficiently strong legal basis on which to restrict Ms Ebrahimian's religious freedom, they did not enable her to foresee that the refusal to remove her veil amounted to misconduct exposing her to a disciplinary penalty as the content of the requirement of neutrality did not include a specific provision governing the profession exercised by Ms Ebrahimian. That said, the Court considered that from the time of publication of the *Conseil d'État's* opinion of 3 May 2000, rendered more than six months prior to

the decision in question, the requirement that public officials observe religious neutrality in discharging their functions had been foreseeable and accessible.

The Court accepted that the interference in question had pursued the legitimate aim of protecting the rights and freedoms of others.

With regard to the question whether the interference was necessary in a democratic society for the protection of the rights and freedoms of others, the Court found that the requirement of neutrality of public officials could be regarded as justified in principle: the State, as employer of the applicant in a public hospital, could consider it necessary that she refrain from expressing her religious beliefs in discharging her functions in order to guarantee equality of treatment of patients. Turning next to an examination of the proportionality of that prohibition in relation to the aim pursued, the Court reiterated that while public officials enjoyed total freedom of conscience, they were prohibited from manifesting their religious beliefs in discharging their functions. Such a restriction derived from the principle of the secular nature of the State, and that of the neutrality of public services, principles in respect of which the Court had already approved a strict implementation where a founding principle of the State was involved.

The Court considered that the fact that the national courts had afforded greater weight to the principle of secularism-neutrality and the State's interest than to Ms Ebrahimian's interest in not having the expression of her religious beliefs restricted did not cause a problem with regard to the Convention.

It was not the Court's task to rule, as such, on the French model. There was nothing in any text or decision of the *Conseil d'État* to say that the requirement of neutrality could be modulated according to the officials and the functions they carried out. It was a strict requirement which had its roots in the relationship established between the secular nature of the State and the freedom of conscience, as stated in Article 1 of the Constitution. That being said, the Court found that it was the administrative courts' task to ensure that the authorities did not disproportionately interfere with the freedom of conscience of public officials where State neutrality was invoked. In that context the disciplinary consequences of the applicant's refusal to remove her veil had been assessed by the authorities having regard to the ostentatious nature of the religious sign and "other circumstances". The administrative court had relied on the French conception of public service and the ostentatious nature of the religious sign worn, and had judged the penalty proportionate. Accordingly, the impact of wearing the veil in discharging her functions had been taken into account in assessing the seriousness of the applicant's misconduct and deciding not to renew her contract. The Court found that the national authorities were better placed to assess the proportionality of the disciplinary penalty, which had to be determined with regard to all the circumstances in which a breach of the requirement of neutrality had been found in order to be compatible with Article 9 of the Convention.

With regard to Ms Ebrahimian, for whom it was important to visibly manifest her religion, she had exposed herself to the serious consequence of disciplinary proceedings. However, following the opinion of 3 May 2000 she had been aware that she had to observe a neutral dress code in discharging her functions. Owing to her refusal to comply with that obligation, and irrespective of her professional qualities, disciplinary proceedings had been instituted against her. She had then had the benefit of the safeguards relating to disciplinary proceedings and remedies before the administrative courts. She had also chosen not to sit the competition to recruit social assistants organised by the HSCC. In those circumstances the Court held that the national authorities had not exceeded their margin of appreciation in finding that there was no possibility of reconciling Ms Ebrahimian's religious convictions with the obligation to refrain from manifesting them, and in deciding to give precedence to the requirement of neutrality and impartiality of the State.

The Court concluded that the interference with the exercise of her freedom to manifest her religion had been necessary in a democratic society and that there had been no violation of Article 9 of the Convention.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.