

**United Nations Human Rights Council
Universal Periodic Review
France**

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.

**United Nations Human Rights Council
Universal Periodic Review of Member-State France**

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in France as a contribution to the Universal Period Review of UNHRC member-state France.

1. Constitutional Framework

Although the 1958 Constitution of France does not specifically mention the right to practice freedom of religion, it does provide for the protection against religious discrimination and pledges the state's respect for all beliefs. France is designated as an, "indivisible, secular, democratic and social Republic."¹ Additionally, *Article 1* states that the nation shall protect, "the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."²

The French were at the forefront of the institutionalization of freedom of religion when the National Assembly of France issued the Declaration of the Rights of Man and of the Citizen in 1789:

Article 10: "No 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 . "

That same document was ground-breaking in its arguments for natural rights and the free expression thereof. Today, France once again faces these questions and debates over natural rights and free expression, specifically in regard to the public expression of religion and belief.

2. Laïcité

In 1905, France passed a law creating a strict separation between church and state at a time when the Catholic Church had much political power. Despite its anti-clerical intention, this law created greater parity for minority religions like Protestantism and Judaism in the early 20th century. However, the demographics of France have changed significantly since then, as it has developed a more pluralistic religious population. The most significant addition to the French population is the Muslim population, numbering approximately 5 million and mostly of North African heritage.

Today, the Law of 1905 is still in place, and the strict separation between church and state (*laïcité*) is interpreted to limit the expression of religion in the public square. The effects of this application have been most difficult for minority religions like Islam and new religious movements (Jehovah's Witnesses, Church of Scientology, etc.).

¹ CONST. OF FRANCE, art. I.

² CONST. OF FRANCE, art. I.

3. Religious Expression in Government and Schools

Under a strict interpretation of separation of church and state in the concept of *laïcité*, government officials are expected to remain neutral on religion in their public roles. In application, this neutrality principle, discriminates against religious people who see the public expression of their faith – in attire, action, etc. – as a central component to their religion.

In 2003, President Jacques Chirac created a commission to analyze the implementation of *laïcité* in modern France. The commission affirmed the “separation of church and state” in France. The commission also made recommendations to accommodate a more pluralistic, modern French society, including institution of study of religion as an optional academic subject, recruitment of Muslims to serve in the army or as prison guards, and creation of a national school of Islamic studies. In the end, the one recommendation the government adopted was a ban on conspicuous religious symbols (including large Christian crosses, Jewish yarmulkes, and Islamic headscarves) in public schools. The law implementing this recommendation was passed in 2004 and has been at the heart of the debate over public expression of religion ever since.³

Since the passage of the religious symbols law in 2004, at least 48 children have been expelled from schools. This figure does not account for the number of children who either stopped going to school after the ban came into affect, switched to a private school, or enrolled in a distance learning system. While Muslim students have been most significantly affected by the law, a large number of Sikh students have also been affected by this legislation.⁴

Numerous consequences of the law have negatively influenced the potential for peaceful religious pluralism and religious freedom in France.

First, the law has, *de facto*, denied a significant number of children the right to education because those who choose to remain true to their religious principles by wearing religious attire such as Sikh turbans, Muslim headscarves, or yarmulkes are unable to attend public school. The UN Committee on Rights of the Child stated that “the new legislation on wearing religious signs in public schools may be counterproductive, by neglecting the

³ The law referred to is Law 2004-228, passed by the National Assembly 15 March 2004. The law states, “In public [primary and secondary schools], the wearing of symbols or clothing through which the pupils ostensibly manifest a religious appearance is prohibited.” C. CIV. 2004-228.

⁴ According to the U.S. Department of State’s 2007 International Religious Freedom Report, approximately 168 Sikh boys were affected by the law. The Becket Fund has advised 3 Sikh students who were expelled from school because they would not remove their turban, a central aspect of their religious expression. The schoolboys were forced to attend a private Catholic school as a result. The Conseil d’Etat ruled against the Sikh students in December 2007. In making its ruling, the Conseil stated that the interest in preserving *laïcité* was greater than the students’ religious freedom rights. The case may be appealed to the ECHR. See <http://www.becketfund.org/index.php/case/96.html> (2008).

principle of the best interests of the child and the right of the child to access to education.”⁵

Second, in pushing those students who wish to wear a headscarf or some other religious symbol out of State schools, France risks the radicalization of their beliefs. Although there was not as strong of a backlash to the law as was expected initially, there is no way to measure accurately radicalization.⁶ The violent racial riots in fall 2005 in the suburbs of France may have been influenced by this law.⁷ Telling Muslims, Jews, Sikhs or anybody else who wears a religious head covering that they cannot do so in public spaces is often to dictate their conscience and the acceptability of who they are in the public square. Rather than neutralising the public square, this exacerbates existing tensions.

Third and most significantly, this law limits the expression of religion in a circumstance that does not justify such a limitation according to public safety, order, health, or morals, or the fundamental right and freedoms of others. In General Comment No. 22 on Article 18 of the International Covenant on Civil and Political Rights, the UN Committee on Human Rights stated:

The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including [...] the display of symbols [...] The observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or headcoverings [...]

In her 2005 report to the Commission on Human Rights, Special Rapporteur on freedom of religion or belief Asma Jahangir describes the 2004 law as “a limitation of the right to manifest a religion or a belief.”⁸

⁵ CERD/C/15/Add.4, para. 25

⁶ The Becket Fund advised high school student Cennet Doganay, whose Strasbourg high school refused to allow Doganay, who traditionally wore a Muslim headscarf, to wear even a baseball cap or bandanna allowed to other students because her use of the cap or bandanna would be for a religious purpose. Doganay eventually shaved her head rather than expose her hair, and was then made to sit alone without instruction in a classroom for months before finally transferring to a school in London. The school expressed that shaving her head for a medical reason would have been acceptable, but not for the purpose of religious expression. The ban was thus selectively enforced only upon people with religious intent. The school’s enforcement of its rules went beyond forms of public expression and forbade not only the behaviour it deemed disruptive, but the very conscience behind her actions. See Angela C. Wu, *Balancing Rihts Behind the Burqa*, WASH. TIMES, January 30, 2008; see also Wu, *Balancing rights behind the Netherland’s burqa ban*, The Jurist (2008), at <http://jurist.law.pitt.edu/hotline/2008/01/balancing-rights-behind-netherlands.php>.

⁷ Further, the scope of the law is limited to public schools (primary and secondary). However, the public understanding is that the law is much broader, with some believing the ban to apply everywhere. This unfortunately misinformation lead to many episodes of headscarved Muslim women being denied service in shops or being insulted in public.

⁸ Civil and Political Rights, Including the Question of Religious Intolerance, Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief, Addendum 2: Mission to France (18 to 29 September 2005), E/CN.4/2006/5/Add.4 (8 March 2006)

4. Restrictions on Minority Religions

In 1995, the French government created a commission to study religious “cults.” This commission created a set of criteria to identify these organizations – mental destabilization, exaggerated financial contributions, offence to physical integrity, recruitment of children, public order offences to name a few. The commission also released a list of 173 groups, identified as “cults” worthy of public caution. The evidence used by the commission included judicial decisions and testimonies of former “cult” members. Included in this list were the Jehovah’s Witnesses and the Church of Scientology. Following the report, a government body was created to monitor the activities of such religious “cults.”⁹ In 2001, the French parliament passed the About-Picard Law, which placed tighter restrictions on associations, especially “cults,” and facilitated the dissolution of such groups.

In 2002, the Council of Europe criticized the About-Picard Law for its overbreadth:

Although a member State is perfectly at liberty to take any measures it deems necessary to protect its public order, the authorized restrictions on the freedoms guaranteed by Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR are subject to specific conditions. [...] The Assembly invites the French Government to reconsider this law....¹⁰

The state’s interest in protectng its citizens from fraud, bribery, violence, and illegal practice of medicine, is important, just as the state must also maintain rule of law and public order. Yet all of these central roles of government are achieved in laws targeting these unlawful actions. Indeed, some sects have proven themselves worthy of investigation by committing illegal actions, but it is the government’s responsibility to properly balance the protection of fundamental freedoms like religious liberty with the protection of public order.

Members of minority religious groups report numerous instances of discrimination as a result of the About-Picard law, including towards children of sect members within the school system.¹¹ Groups identified in the 1995 report continue to face difficulties building houses of worship or expressing their religions in public.¹² Abdelfattah Amor,

⁹ The current version of this governmental body is the Inter-Ministerial Monitoring Mission against Sectarian Abuses (MIVILUDES).

¹⁰ Parliamentary Assembly of the Council of Europe, Resolution 1309.

¹¹ In April 2007, a Paris appeals court reversed a 2006 decision throwing out a 2002 complaint against the Church of Scientology for fraud, extortion, and illegal use of drugs. See U.S. Department of State International Religious Freedom Report 2007, France.

¹² In the Vosges Departement, Jehovah’s Witnesses have had difficulty getting permission to build a house of worship in the town of Deyvilliers. A group has lobbied against the religious group since 2004, and in May 2007, a local court refused to hear a complaint against the lobbying group by the Jehovah’s Witnesses. See U.S. Department of State International Religious Freedom Report 2007, France.

the previous Special Rapporteur on Freedom of Religion or Belief, addressed the issue of cults:

Sects, whether their religion is real or a fiction, are not above the law. The State must ensure that the law [...] is respected. [...] [T]here are many legal courses open and they afford plenty of scope for action against false pretences and misdirection. Beyond that, however, it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction.¹³

The About-Picard Law is still in place and was used in 2004 to convict a sect leader.¹⁴

5. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of France. We humbly suggest that the UNHRC not only consider France's treatment of the majority religions, but also the accommodation of smaller and less well known minority religions.

We are encouraged by President Sarkozy's willingness to engage the religious community and to discuss legal reform concerning religion. We recognize the meeting of his Interior Minister and leaders of the major French religious communities in June 2007 as a positive step toward greater accommodation for peaceful religious expression in France.

The UNHRC should also evaluate the effects of the 2004 law banning conspicuous religious symbols in State schools, and the actual necessity of the About-Picard law in maintaining public order.

¹³ E/CN.4/1997/91, para. 99

¹⁴ See U.S. Department of State International Religious Freedom Report 2007, France.