

The *Ghazal* Case

CE, Sect., 5 Dec. 2007, claim no 295671, *Mr and Mrs Ghazal*

Considering, in the first place, that pursuant to the wording of article L. 141-5-1 of the code of education, issuing from article 1 of the statute dated 15 March 2004: In public primary schools, junior and senior high schools, the wearing of signs or clothes whereby students conspicuously express a religious affiliation is prohibited./ Internal regulations will recognize that the institution of disciplinary proceedings must be preceded by a dialogue with the student.;

Considering that it follows from these provisions that, if students from public primary schools, junior and senior high schools can wear discreet religious signs, are however prohibited, on the one hand, signs or clothes, such as for instance an islamic veil or scarf, a kippa or a large cross, whose wearing, in and of itself, conspicuously expresses a religious affiliation, on the other hand, those whose wearing conspicuously expresses a religious affiliation only on account of the student's behaviour;

Considering that after having noted, through a sovereign assessment of the facts, that the square of material in the bandana style covering the hair of Miss A was worn by her permanently and that she herself and her family had persisted with intransigence in their refusal to renounce it, the administrative court of appeal of Nancy could, without proceeding to make an inexact application of the provisions of article L. 141-5-1 of the code of education, deduce from these findings that Miss A had conspicuously expressed her religious affiliation through the wearing of this headgear, which could not be termed discreet, and, accordingly, had misread the prohibition laid down by the statute;

Considering, in the second place, that the disciplinary measure of definitive expulsion from the schooling institution pronounced against Miss A resulted from her refusal to respect the prohibition enacted at article 141-5-1 of the code of education; that this prohibition does not ignore the provisions of article 9 of the European convention for the protection of human rights and fundamental freedoms regarding freedom of thought, of conscience and of religion, given that it does not affect that freedom through an excessive infringement in view of the general interest goal being pursued seeking to ensure respect for the principle of laicity in public school institutions; that therefore, this disciplinary measure does not in and of itself ignore these provisions; that it follows that the administrative court of appeal of Nancy has not committed an error of law in deciding that the challenged disciplinary measure did not misread the provisions of article 9 of the European convention for the protection of human rights and fundamental freedoms;*

Considering, in the third place, that following upon her definitive expulsion from junior high school, Miss A could, to benefit from the right to education, either be enrolled in a public institution by conforming to the provisions of article L. 141-5-1 of the code of education, or be enrolled at the national center for distance learning (CNED), or yet be enrolled in a private institution, or still be educated within her family under the conditions contemplated by article L. 131-2 of the code of

education, as, in effect, the superintendent of schools has indicated to her parents upon notifying them of the disciplinary measure taken against her; that accordingly the administrative court of appeal of Nancy has not committed an error of law in deciding that this disciplinary measure did not ignore the provisions of article 2 of the first protocol to the European convention for the protection of human rights and fundamental freedoms pursuant to which no one can be deprived of the right to education;**

Considering, in the fourth place, that the disciplinary measure taken against Miss A, which aims to ensure respect for the principle of laicity in public schooling institutions without discrimination between students' faiths, does not ignore the general principle of no-discrimination enacted by the provisions of article 14 of the European convention for the protection of human rights and fundamental freedoms; that therefore the administrative court of appeal of Nancy has not committed an error of law in deciding that this disciplinary measure did not misread these provisions;***

Considering that it follows from what precedes that the claimants are not well-founded to request the annulment of the challenged decision; that must be dismissed, by way of consequence, their arguments regarding the application of the provisions of article L. 761-1 of the code of administrative justice.****

Decides:

Article 1: The claim of Mr and Mrs A is dismissed.

Article 2: The present decision will be notified to Mr and Mrs Bessam A and to the minister of National Education.

(Messrs Barbat, *reporter*; Keller, *government commissioner*).

**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".

***"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

****"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

*****This article concerns the payment of court costs.