UNVEILING THE HEADSCARF DEBATE

French Law no. 2004-228 of 15 March 2004, concerning, through the application of the principle of laïcité, the wearing of symbols or clothing demonstrating religious affiliation in state primary and secondary schools.

ABSTRACT. In March 2004 the French parliament controversially adopted legislation regulating the wearing of symbols indicating religious affiliation in public educational establishments. This note discusses several features of the new law indicating its origins, its rationale and its position within French constitutional discourse on religious freedom and secularity. It is based on a panel discussion held in April 2004 within the Gender Studies Programme at the Robert Schuman Centre for Advanced Studies, European University Institute, Florence. Placing the French legislative initiative in the context of recent developments in national and European case law (suggesting clear limitations to freedom of religion), the note explores the complexity of issues of gender, identity and difference in the present debate, especially when considered in the light of reactions to the law in Islamic countries.

KEY WORDS: constitutional law, cultural diversity, European Convention on Human Rights, feminism, French law, gender, headscarf, identity, Islam, religious freedom, veil

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1 This note was primarily compiled from the texts of the panel presenters, and the comments of other participants in a discussion held at the European University Institute, Florence, in April 2004. The first section on the regulation of religious freedom draws most strongly on the contribution of Channa Samkalden (E.U.I.), the second section on the European Convention of Human Rights relies on Mark Bell’s (University of Leicester) presentation, the third section on gender, identity and difference is largely based on the presentation of Elena Pulcini (Università di Firenze & Istituto Gramsci), and the fourth section on the reception of the debate in Islamic countries draws on Geraldine Chatelard’s presentation (R.S.C.A.S., E.U.I.). We are grateful to the participants for generously sharing their texts. However, we take responsibility for the overall interpretation of the ideas expressed here and for any mistakes.

INTRODUCTION

On 17 March 2004, Law 2004-228 was published in the Official Journal of France to regulate, in educational establishments, the wearing of symbols that express religious adherence. The law prohibits symbols that "ostensibly" manifest a particular religious belief.\(^3\) This was one recommendation of the report of the Stasi Commission (published in December 2003) after the question of wearing headscarves in French public schools became a site of controversy for the third time in 15 years. The law itself is extremely concise, containing just four short articles, yet it has provoked a vibrant debate within France and in the international media. Whilst the law deals with religious symbols in general, the public debate was mostly concerned with the Islamic headscarf (foulard) or veil (voile). In present day Europe where we note an apparently increasing xenophobia towards Muslims, the headscarf has a stronger symbolic load than a kippah or a Sikh turban for instance, and it is as a result of this symbolic overload that the debate has touched questions of identity, community, cultural diversity, religious freedom and tolerance, Islam in Europe, and, not least, gender relations.

LEGAL REGULATION OF RELIGIOUS FREEDOM AT THE NATIONAL LEVEL

Case law in France (beginning in 1989) has brought into focus a latent conflict between the individual expression of religious belief (through symbols) – which rests on the principles of freedom of expression and freedom of religion – and the collective value placed on the principle of laïcité, that is, the clear separation of religion and the state (Dubourg-Lavroff 1999). What this means in practice is, amongst other things, that state-provided education is secular, and it

\(^3\) Article 1 of Law 2004-228 inserts a new Article L. 141-5-1 into the Code on Education to this effect. “Article 1: Il est inséré, dans le code de l’éducation, après l’article L. 141-5, un article L. 141-5-1 ainsi rédigé: Article L. 141-5-1. – Dans les écoles, les collèges et lycées publics, le port de signes ou tenues par lesquels les élèves manifestant ostensiblement un appartenance religieuse est interdit. . . .” Further to the legislation, a circular was adopted on 18 May 2004 by the Ministry of Education regarding the more detailed terms of application of the Act: Journal Officiel no. 118, 22 May 2004, p. 118.