BENEATH THE VEIL: MUSLIM GIRLS AND ISLAMIC HEADSCARVES IN SECULAR FRANCE

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This article outlines some of the key events of the headscarf controversy in France in 1989 and during the 1990s. It reviews the 1989 legal opinion delivered by France's highest administrative court, the Conseil d'État, which set out principles to be followed in resolving the disputes, as well as ministerial circulars issued to interpret and explain the legal opinion. It also surveys the cases precipitated by the expulsions of Muslim schoolgirls who refused to remove their headscarves. The case law shows that France's administrative courts consistently ruled that wearing the headscarf was not inconsistent with secularism. More often than not, the cases were decided in the schoolgirls' favour, although for the girls themselves this was sometimes a case of 'winning a battle but losing the war'. The article goes on to critically analyse the enactment in 2004 of a law banning the wearing of any religious signs in public schools. It argues that the 2004 law changed the judicial balance which the courts had worked to achieve throughout the 1990s. The 2004 law arguably contravenes rights which secularism and the Republic are supposed to protect. As a consequence, it has significant implications for secularism itself.

I INTRODUCTION

The 'affair of the headscarf' in France arose from a series of events which took place over several decades. The first of these events occurred in September 1989, when three Muslim schoolgirls were expelled from their lower secondary public school in a town in northern France for refusing to remove their Islamic headscarves while at school. Their expulsions were followed by similar incidents involving other Muslim schoolgirls around France and amid growing public protests, all of which were reported widely in French and international media.

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The affair was controversial for a number of reasons. One of these was that it revolved around the headscarf, an item of clothing which has historically been a potent symbol with powerful, complex and sometimes contradictory political, religious, cultural and social connotations.

Another key issue was the fundamental role of secularism in France. The principle of secularism is a central tenet of French public policy, and public education in particular. Secularism also represents a set of social and cultural values which have profound historical resonances for many French people. Many French people believed that wearing the headscarf posed an unacceptable challenge to the fundamental Republican principle of secularism in public schools and were unsure of how to interpret and apply secularism and secular values in the circumstances of the affair.

Finally, the affair of the headscarf struck social and political nerves: the principal parties in the affair were Muslim schoolgirls, many the children of immigrant families who were already likely to suffer from high unemployment, live in poor housing and experience religious or racial discrimination. The headscarf became associated with social policies of immigration, integration and assimilation, despite the somewhat contradictory fact that many of the Muslim girls concerned had been born or had grown up in France.

Certainly, the headscarf, when worn by Muslim girls, appeared to many French people to signify a refusal to become French.[1] According to one man: '[These young girls] are in France, they must follow the customs of the country', while another warned: 'In France, [Muslims] must adapt to our habits, or else return to their own country'.[2] Of course, one of the difficulties was that, as far as most of the schoolgirls were concerned, they were in their own country. Moreover, the controversy was somewhat ironic since Muslim girls, who generally perform better at school than their male counterparts and are more likely to find work afterwards, have been described as 'the most capable of integrating'.[3]

The events also placed Muslim schoolgirls in the public spotlight at an age where they were highly likely to want to blend in with mainstream society and, at the same time, to object to being told what they must or must not do. One senior teacher at a lower secondary school in Creil attributed the wearing of the headscarf to the inflammatory nature of teenagers, who are 'quick to play with the forbidden'.[4] A similar view was expressed by Harlem Désir, president of SOS-

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1 Cynthia DeBula Baines, '*L'Affaire des Foulards* – Discrimination or the Price of a Secular Public Education System?' (1996) 29 *Vanderbilt Journal of Transnational Law* 303, 311.

2 'Et vous, qu'en pensez-vous?' *France-Soir* (France), 21 October 1989.

3 'Quand l'islam fait école', *Le Quotidien de Paris* (France), 21 October 1989.

4 'Abderrahmane, ou la tolérance sur le tas', *Libération* (France), 21 October 1989.

Racisme: 'If tomorrow you asked a Jewish student to remove his *kippa*, you can be sure that the following day there would be three times more *kippas*'.[5]

This article will outline some of the key events of the affair of the headscarf in 1989 and during the 1990s. In addition, it will review the 1989 legal opinion delivered by France's highest administrative court, the Conseil d'État, which set out relevant legal principles to be followed in resolving the disputes; ministerial circulars which were issued to interpret the legal opinion and explain how it was to be applied; and the cases which resulted from many of the expulsions and applied the principles set out in the opinion. The case law shows that France's administrative courts consistently ruled that wearing the headscarf was not inconsistent with secularism. More often than not, the cases were decided in the schoolgirls' favour, although for the girls themselves this was sometimes a case of 'winning a battle but losing the war'.

The article will also discuss some of the difficulties experienced by the Muslim schoolgirls during the affair of the headscarf. Some of these were practical, arising from the lengthy delays between court hearings and subsequent appeals before final decisions on the expulsions were delivered. Other difficulties were more complex and subtle, arising from the conflict between many schoolgirls' public and everyday school lives and their private home situations. At times, the girls found themselves caught between the conflicting forces of their schools, families, friends, communities, and even their own wishes. Some Muslims also felt that they were being unfairly targeted by a ban that seemed only to apply to them rather than to any other students. As the father of the Creil schoolgirls asked, 'Here in France people dress the way they want. Why not my daughters?'[6] Finally, this article will consider some of the private reasons why many Muslim schoolgirls chose to wear or not to wear the headscarf. In so doing, it will examine some of the public discourse which prevailed during the affair, since this discourse revealed much of what was taking place in public life at that time.

II THE 'AFFAIR OF THE HEADSCARF'

A *Events in 1989*

The first incidents in the affair took place on 18 September 1989, at the start of the new school year. Three Muslim schoolgirls, 14-year-old Fatima, her 15-year-old sister Leila and their 14-year-old friend Samira, wore Islamic headscarves to their lower secondary school in Creil, north of Paris. When asked to remove the headscarves, they refused to do so. The school principal and teachers interpreted their refusal as an attack on secularism in public education and the girls were suspended.

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5 Nicole Gauthier, 'Harlem Désir-Areski Dhamani: deux voies pour la laïcité', *Libération* (France), 21 October 1989.

6 'Le voile est une tradition dans notre famille', *Le Parisien* (France), 21 October 1989.

There was some background to these events. The schoolgirls had worn the headscarf during the previous school year, although on several occasions their school principal, Ernest Chenières, had asked them to remove their headscarves. Chenières had attempted to find an acceptable compromise between the school and the students, although in practice the compromise appeared to consist more of persuading the girls to comply with the school's conditions by removing their headscarves than of the school altering its approach.[7] Following the students' suspension, the father of the two sisters Fatima and Leila immediately withdrew them from school.

This situation attracted widespread media attention and over the following weeks there was heated debate in national newspapers such as *Le Monde*, *La Croix* and *Le Figaro* over the principle of secularism and the girls' rights to education and freedom of religion.

On 9 October, following departmental intervention, meetings with the parents and mediation on the part of local cultural associations, the three girls returned to school. The negotiations appeared to have identified a satisfactory compromise: the girls could wear their headscarves within school grounds, including to sports classes and in school corridors, but in classrooms they would lower the scarves to their shoulders.

Creil school principal Ernest Chenières warned of the consequences if the scale of the problem were to increase: 'Imagine that it is no longer a case of three young girls who are causing a problem, but thousands and fifty thousands; it would be a nightmare'.[8] Little more than a month later, it looked as if these numbers might indeed materialise. The affair was taking on a national dimension and, according to media reports, there appeared to be increasing numbers of students wearing the headscarf. Daily and weekly newspapers ran front page stories describing similar incidents which were taking place in other cities across France, in which other Muslim schoolgirls were also wearing their headscarves to school and protesting against the resulting exclusions.[9] André Lamy, deputy principal of a lower secondary school in Montpellier, also expressed concern: 'the problem this year has come from the number [of students]. At the start of the school year, we had fifty young girls [wearing the headscarf]'.[10]

The public attention resulted in school teachers and principals across the country taking increasingly strict measures against the wearing of the headscarf. On 16 October, for example, one student was suspended from her professional secondary school in Avignon for wearing the headscarf, despite her protests that she had been wearing it to the school for two months already without attracting any opposition

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7 Jean-François Guyot, 'Creil: le "défi permanent"', *Le Figaro* (France), 21 October 1989.

8 Ibid.

9 Françoise Gaspard and Farhad Khosrokhavar, *Le foulard et la République* (1995) 14-15.

10 Monique Glasberg, Vincent Albinet and François Wenz-Dumas, 'Le choc de l'Islam sur l'école de la République', *Libération* (France), 21 October 1989.

and that, moreover, she had worn it at her lower secondary school for the previous two years. Two days later, eight of her fellow students (six Maghrebin and two Spanish girls) came to school wearing headscarves to show support for their suspended classmate.[11]

Ten days after they had agreed to the school authorities' compromise, the three Creil schoolgirls breached the agreement by once again refusing to lower their headscarves in class.[12] It was noted that their actions followed meetings which had taken place between the girls' fathers and Daniel Youssouf Leclerc, a representative and former president of the Fédération Nationale des Musulmans de France, a Muslim association which was setting itself up in opposition to the more moderate Paris Mosque.[13] The girls were once again suspended from their classes and taken to the school library. Their suspension resulted in a five-hour meeting between the teachers, the parents, the education authorities and representatives of cultural associations in a vain attempt to reach a new agreement.[14]

According to one analysis, this was the point at which 'the dimension of this problem changed' and 'the affair exploded, particularly in relation to the media':

> Following the second exclusion of the three girls, the press and the television literally pounced on the affair, paving the way for numerous media personalities, more or less inspired by the issue, to take part in a debate which was becoming national. [N]ational magazines and daily newspapers took over and contributed to moving the stakes of this local conflict to a nationwide level.[15]

Around 22 October 1989, a protest march was organised in Paris by several Muslim groups, the Association Islamique de France and the Voix de l'Islam, to show support for the Creil schoolgirls. This 'manifestly fundamentalist' demonstration was attended by hundreds of Muslims and was spearheaded by a procession of women wearing the all-covering *chador* (rather than the disputed headscarf).[16] One week later, moderate Muslim women's organisation Expression Maghrébine au Féminin also organised a march. In contrast to the previous demonstration, this protest was initially banned by the local Republican authorities. It was finally allowed to take place and consisted of Muslim women protesting against religious

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11 Élisabeth Chikha, 'Chronologie' (1990) 1129 *Hommes et Migrations* 1, 2.

12 Gaspard and Khosrokhavar, above n 9, 15.

13 Ibid 16.

14 Chikha, above n 11, 2.

15 Fabien Collet, *La Laïcité, une doctrine de l'Éducation nationale* (Diplôme d'Études Approfondies (Administration publique) thesis, Université des Sciences Sociales de Grenoble, 1995) 17.

16 According to Gaspard and Khosrokhavar, the protest was attended by a few hundred people: Gaspard and Khosrokhavar, above n 9, 21. However, Chikha refers to the attendance of 'around six hundred fundamentalist Muslims': Chikha, above n 11, 3.

extremism and reaffirming their attachment to the values of secularism and to respect for individual freedoms.[17]

Clearly, there was considerable confusion over whose responsibility it was to negotiate and resolve the various cases. The father of a schoolgirl in Lille called for clarification of the legal principles underpinning the affair: 'If the State decides that the headscarf is prohibited at school, I will agree. It is the State. But the teachers cannot decide that it is forbidden'.[18] His appeal was supported by Abdsamad Aïfoute, president of the Montpellier section of the Association of Islamic Students in France:

> The government must decide its position very soon. This problem concerns all school-age children. It's ridiculous to prevent them from attending school when nothing in the [school rules] forbids them to wear the Islamic headscarf.[19]

On 23 October 1989, the teaching and administrative staff in the Creil lower secondary school wrote to Lionel Jospin, the Minister for National Education, asking him to 'express a clear opinion on a question which has gone national in order to restore calm to the school'.[20] On 4 November 1989, at least partly in response to the calls for clarification, Jospin sought the opinion of the Conseil d'État, France's highest administrative court, whose function is to advise the government on legislative and administrative matters,[21] on the constitutional legitimacy of wearing 'religious signs' in school.

B *Legal Opinion of the Conseil d'État*

Following the Education Minister's request, the Conseil d'État deliberated for three weeks before delivering its legal opinion on 27 November 1989, entitled 'The wearing of signs showing affiliation to a religious community (Islamic headscarf)'.[22] In the opinion, the Conseil d'État identified relevant legislative and constitutional provisions, as well as prevailing international law, and extrapolated from these a set of guiding principles relating to secular education, freedom of religion and the rights and obligations of public school students.

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17 Chikha, above n 11, 5.

18 Glasberg, Albinet and Wenz-Dumas, above n 10.

19 Ibid.

20 Ibid, 3.

21 The Conseil d'État has both a compulsory and an optional consultative function. In accordance with its optional consultative function, the government may seek the opinion of the Conseil d'État on a legal problem: Conseil d'État, *Conseiller le gouvernement* <http://www.conseil-etat.fr/cde/fr/conseiller> at 29 June 2009.

22 Conseil d'État Assemblée Générale (Section de l'intérieur), *Port de signe d'appartenance à une communauté religieuse (foulard islamique)*, Avis No 346893, 27 November 1989 <http://www.conseil- etat.fr/cde/media/document//avis/346893.pdf> at 27 June 2009.

In summary, the Conseil d'État stated that wearing the headscarf was 'not by itself incompatible with the principle of secularism, insofar as it constitutes the exercise of freedom of expression and freedom of manifestation of religious beliefs'. The students' freedoms could be limited if the 'signs of religious affiliation', by their 'ostentatious or protesting' nature or the conditions in which they were worn, constituted an act of pressure, provocation, proselytism or propaganda, jeopardised the dignity or freedom of the student wearing the signs or of other students or staff, posed a health or safety risk, disrupted teaching activities or disturbed order and the normal running of the school. The legal opinion gave no indication of how schools should determine which religious signs might be considered 'by their nature […] ostentatious' or the circumstances in which they might constitute 'an act of pressure, provocation, proselytism or propaganda'. However, the attitudes and behaviour of students wearing the religious signs to school were to be important issues in deciding these questions.

The Conseil d'État also pronounced in favour of caution by deciding that each matter was to be negotiated by schools on a case-by-case basis. In this way, the Conseil d'État clearly indicated its preference for each matter to be resolved at a local level, rather than in accordance with a strict set of national guidelines.

The legal opinion was greeted with mixed responses. It was criticised for appearing to support teachers and students alike, affirming the respective positions taken by Education Minister Jospin, students, school principals and teachers, or at least not contradicting the public position of either side.[23] Not all of the responses were negative. English legal academic Dr Sebastian Poulter observed approvingly that the Conseil d'État achieved '[a] balanced and sensible compromise […] in a tense and complex situation through the application of legal principles relating to human rights'.[24]

Meanwhile, the three Creil schoolgirls were still isolated in their school library.[25] On 2 December 1989, sisters Leila and Fatima returned to school without their headscarves. It soon became public knowledge that King Hassan of Morocco had summoned the two girls and their father (who was of Moroccan origin) to the consulate in Paris to request that the girls stop wearing the headscarf.[26] Although the third girl, Samira, whose family was Tunisian, still refused to abandon the headscarf, she eventually returned to school without her headscarf on 26 January 1990.[27]

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23 Bronwyn Winter, 'Learning the Hard Way: the debate on women, cultural difference and secular schooling in France' in John Perkins and Jürgen Tampke (eds), *Europe: Retrospects and Prospects* (1995) 203, 204.

24 Sebastian Poulter, 'Muslim Headscarves in School: Contrasting Legal Approaches in England and France' (1997) 17 *Oxford Journal of Legal Studies* 43, 59.

25 Chikha, above n 11, 9.

26 Ibid 11.

27 Luis Cardoso, 'Au Coeur de "l'Affaire": Un Professeur de Creil témoigne' (Paper presented at the 'The Veil' conference, University of North Carolina, USA, 2000)

On 12 December, Jospin issued a ministerial circular[28] to explain the Conseil d'État's legal opinion. The 'Jospin circular' emphasised the importance of dialogue, while noting that strictness and even sanctions were available if the obligations of secularism and student participation were infringed. Following its publication, some of the media and public interest in the affair began to subside. In the majority of cases, schools appeared to be dealing with matters on an individual basis and 'a process of dialogue and a spirit of tolerance resulted in agreements which were acceptable to all parties.'[29] It was these sorts of local resolutions which the Conseil d'État had indicated should be the desired outcome of the process of dialogue to be undertaken in each case.

C *Events during the 1990s*

Although the affair of the headscarf had for the most part subsided from media and public attention by the early 1990s, its consequences were still evident. Some of the expelled schoolgirls and their families had commenced legal action to appeal the schools' exclusion decisions, and these cases were starting to be heard in administrative tribunals around the country.

Following parliamentary elections in March 1993, a conservative coalition government took office in the wake of the former Socialist-led government. As one article noted, this electoral victory marked the point at which 'the official attitude toward Muslims […] changed.' Illegal immigrants increasingly became targeted in police 'round-ups' and Algerians and other North Africans suspected of being or sympathising with fundamentalist militants were detained, sometimes without charge.[30]

In some schools, the affair had never really ceased. In one secondary school in Goussainville, a largely working-class and immigrant-populated outer northern suburb of Paris, the school principal had attempted over the 1993-94 school year to negotiate a compromise with Muslim students wearing the headscarf, and had succeeded in persuading one schoolgirl, Samia, to wear a headscarf made of material which was considered acceptable. However, the school had been the site of violent protests during the year and in June 1994, just before the summer holidays, the school's governing body amended its internal regulations to prohibit any form of headdress.[31]

<http://www.unc.edu/depts/europe/conferences/Veil2000/articles/coeur1.htm> at 26 June 2009.

28 Ministerial circulars are issued to government departments in order to explain and clarify the application of legislation or jurisprudence in the relevant portfolio area.

29 Poulter, above n 24, 60.

30 'Ban on Islamic scarves renews debate', *The Tennessean* (Nashville, USA), 15 September 1994, 3A.

31 Winter, above n 23, 205.

In September 1994, François Bayrou, the new conservative Education Minister, ignited the controversy by announcing in a magazine interview that he intended to banish the wearing of headscarves in public schools.[32]

Also in September 1994, at the start of the school year, four Muslim schoolgirls (including Samia) arrived at their high school in Goussainville wearing 'full Islamic regalia': black headscarves and long tunics. According to reports, the school principal held several lengthy discussions with the girls in the presence of witnesses, during which the schoolgirls were encircled by a group of around 20 male 'bodyguards' who elbowed them if they showed signs of wavering. Following these discussions, the principal enforced the school's internal regulations and the girls were expelled.

Their expulsions precipitated further demonstrations, with groups of students organising successive strikes and pickets to show variously their support for or disagreement with the students.[33] By late September, groups of between 200 and 300 students gathered on footpaths at the school's entrances, preventing other students, particularly Muslim students, from entering the school.[34]

D *The Bayrou Circular*

Public attention returned once again to the affair of the headscarf. On 29 September 1994, Education Minister Bayrou issued a ministerial circular bearing the unambiguous title of 'Wearing of ostentatious signs in schools'.[35] In this circular, he recommended that schools take a firm stand to prohibit the wearing of 'signs so ostentatious that their signification is precisely to separate certain students' from the rest of the school community. The circular continued:

> These signs are, in themselves, elements of proselytism, particularly when they accompany challenges to certain classes or certain subjects, when they involve the safety of students or when they lead to disruptions to the collective life of the school.

Bayrou's circular further urged school principals to redraft the internal regulations of their schools to include a 'prohibition on these ostentatious signs' and indeed provided draft wording which could serve as a model for the amendment or redrafting of their internal regulations. According to this draft wording:

> The wearing by students of discreet signs manifesting their personal commitment to beliefs, notably religious beliefs, is permitted in schools. But

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32 'Ban on Islamic scarves renews debate', above n 30.

33 Winter, above n 23, 205-6.

34 Anne Fohr, 'École: la déchirure', *Le Nouvel Observateur* (France), 6-12 October 1994, 47-8.

35 'Wearing of ostentatious signs in schools', 35 *Bulletin officiel de l'Éducation nationale* 2528, 29 September 1994, 2528-9.

> ostentatious signs, which constitute in themselves elements of proselytism or discrimination, are forbidden.

Although the circular did not mention any particular religious signs, it was widely understood to refer to the Islamic headscarf. The circular represented a striking condemnation and indeed 'rebranding' of the headscarf, labelling it ostentatious and divisive, an element of proselytism in itself, and suggesting that it was dangerous and disruptive.

In effect, Bayrou's circular also afforded support for those schools still wishing to ban the headscarf. A number of schools immediately incorporated the circular's suggested wording into their internal regulations (as became clear from subsequent legal rulings) and then applied them. In late 1994, for example, two Strasbourg secondary schools implemented the provisions of the circular, requesting that all Muslim girls wearing headscarves to school remove them or risk expulsion. Dozens of students refused and the schools suspended at least 38 schoolgirls, many of whom had regularly worn their headscarves to school for many months or indeed years. After the regional director of education confirmed their expulsions, 18 of the students commenced legal action in the administrative tribunal at Strasbourg to appeal the expulsion decisions.[36]

E *The 'Headscarf' Legal Cases*

Meanwhile, the legal proceedings brought by students who had been expelled for wearing the headscarf were starting to be heard in administrative courts around the country. Half a dozen 'headscarf cases' were decided between 1992 and 1995. By the end of the 1995 school year, the controversy 'appeared to have died down and the tide had turned in favour of the Muslim girls'.[37] However, the number of legal proceedings surged in 1996 and 1997, with administrative courts hearing 38 and 21 cases respectively.[38]

During the busiest years of 1996 and 1997, in the overwhelming majority of cases (around 83%) the schoolgirls' expulsions were overturned, while in the remaining cases (approximately 15%) the expulsions were upheld. However, this may give a misleading idea of actual student expulsion numbers, since most of the cases in which the students' expulsions were overturned tended to involve a single student, while those in which the expulsions were upheld often involved a group of several students. Taking this factor into account, around 60% of students had their expulsions overturned and were entitled to return to school, while approximately 40% of the students were unsuccessful and remained expelled.

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[36] Michel Sousse, 'Le tribunal de Strasbourg annule l'exclusion de 18 lycéennes qui portaient le foulard', *Libération* (France), 21 April 1995.

[37] DeBula Baines, above n 1, 307.

[38] The cases are available through *Legifrance*, a French government website which provides access to legislation, regulations and case law: Legifrance, <http://www.legifrance.gouv.fr> at 14 June 2009.

A relatively consistent set of principles emerged from the body of case law, based on the Conseil d'État's legal opinion but more specific to the particular circumstances of the cases: a student was not to be expelled from school simply for wearing the headscarf, since wearing a headscarf was not incompatible with the principle of secularism. Thus, in one 1996 case, a school principal had expelled a student on the sole basis that 'the wearing of this headscarf is by its nature incompatible with the principle of secularism'. The Conseil d'État ruled that this reason was incorrect in law and overturned the student's expulsion.[39] However, an expulsion could be justified if a student had engaged in political acts, attempted to pressure or proselytise to other students, actively participated in public protests, disturbed order in the school or breached her obligations to attend and participate in all classes.

Those students whose expulsions were confirmed had generally been involved in political protests at their schools which had disrupted teaching activities, or had worn their headscarves selectively to some classes but not others, or had refused to remove the headscarves when requested to do so in sports, physical education, science or technical classes, or had absented themselves from classes.

Overall, the cases reflected a trend on the part of the administrative courts towards keeping the students in school. Indeed, the cases arguably functioned as a sort of practical vindication of the Conseil d'État's 1989 opinion. Although some of the decisions, and indeed some of the reasons on which they were based, might be open to criticism, it is clear that in most of the situations where students had done nothing but wear the headscarf, their expulsions were ruled unjustifiable and overturned. In those cases where the students' expulsions were upheld by the courts, for the most part the students had at least participated actively in the events which led to their expulsion.

The number of 'headscarf cases' dwindled to a handful in the years between 1999 and 2003. No cases were heard in 2004–05, although 2006–08 saw a brief surge of 17 cases appearing before the courts. Clearly, at least for the time being, the work of French administrative courts in the affair of the headscarf was coming to an end.

III DIFFICULTIES EXPERIENCED BY THE SCHOOLGIRLS

A *Disrupted Education and other Disadvantages*

No matter what the outcomes were, the courts' decisions undoubtedly came at a cost to many Muslim schoolgirls and their families. Sometimes the cost was the disruption to their lives and schooling caused by the disputes or the resulting legal proceedings. In other cases, the disputes exacerbated existing socio-economic disadvantages already experienced by many of the schoolgirls and their families.

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[39] Conseil d'État, No 170343, 20 May 1996.

In some cases, by the time a matter had been heard at first instance and appealed through the administrative courts of appeal, a final decision could be delivered up to five years after the student had been expelled. For example, one girl was expelled from her secondary school on 21 November 1994. The decision to expel her was confirmed by successive orders of the Strasbourg regional director of education on 22 December 1994 and 25 January 1995. The schoolgirl appealed her expulsion to the Strasbourg administrative tribunal which, on 3 May 1995, overturned the director of education's decisions and upheld her right to return to school.[40] However, the tribunal decision was appealed by the Department of Education and this appeal was finally decided by the Conseil d'État on 27 November 1996. Although the Conseil d'État rejected the appeal and confirmed the tribunal's earlier decision overturning the schoolgirl's expulsion, its decision came more than two years after she had been expelled.[41]

In another matter, a schoolgirl in her final year of lower secondary school was suspended on 18 November 1994 and then expelled on 15 December 1994. By the time the expulsion decision had been confirmed by the regional director of education, appealed to the administrative tribunal, appealed to the administrative court of appeal, and then finally appealed to the Conseil d'État, which delivered its decision effectively confirming the schoolgirl's expulsion on 20 October 1999, almost five years had passed since she had been expelled.[42]

For these girls, as for others embroiled in the various legal actions, crucial years of their education were disrupted or, at best, undertaken in a study environment which was less than ideal and often in the context of ongoing legal proceedings.

In addition to being time-consuming, the various cases and appeals were undoubtedly costly. It is likely that at least some Muslim schoolgirls and their families would have been unable or unwilling to expend the necessary time and financial means, and perhaps would also have lacked the confidence and skills, to commence legal action to appeal the expulsion decisions or to continue it over a period of years.

Moreover, newspaper accounts indicated that many of the schoolgirls came from working class or poor families, often living in crowded conditions on housing commission estates on the outskirts of major cities. Such families were at a relative disadvantage in attempting to resolve any disputes. One father in Lille, for example, explained that the principal of his daughter's school had told him that he must come to the school to discuss the matter, otherwise his daughter would be expelled: 'As a result, on Monday I wasn't able to go to work. I am a builder. And in a temping agency, missing a day of work means losing your job'.[43]

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40 Administrative tribunal at Strasbourg, No 95216 95804, 3 May 1995.
41 Conseil d'État, No 169522, 27 November 1996.
42 Conseil d'État, No 181486, 20 October 1999.
43 Glasberg, Albinet and Wenz-Dumas, above n 10.

B *Media Discussion of the Headscarf*

There were other more subtle reasons for some of the difficulties experienced by the schoolgirls during the affair of the headscarf. For example, the language which was used to describe and discuss the headscarf itself could have the effect of making the schoolgirls feel excluded or different from the general community.

During the affair, the French media exhibited a degree of 'semantic confusion over the "correct" term to apply to Muslim dress'.[44] In some cases, for example, it was apparent that using terms borrowed from other languages (such as '*chador*' or '*hijab*') was intended to reflect respect for the custom. An article in *Le Quotidien de Paris* attested to this respect – and to some confusion – when, over two pages, the journalist fluctuated between using the terms veils, headscarves, Qur'anic headscarves, *chadors* and '*hijab*' (which was printed between quotation marks), before explaining somewhat fussily that 'the terminology abounds, but it seems that "*hijab*", hastily and misleadingly translated as Qur'anic – or Islamic – headscarf, is the most appropriate term'. Nevertheless, in three further references to the headscarf, the article proceeded to use the terms 'veil' twice and 'headscarf' once, in preference to '*hijab*'.[45] At other times, the available terms appeared to be used interchangeably and without any clear distinction: 'From the simple "headscarf" we rapidly moved to "veil", then very quickly to "*chador*".'[46]

The confusion over differing terminology was at times quite deliberately related to questions of power and symbolic distance, and provided an ideal opportunity for 'ideological "positioning"'. The executive committee of the Socialist Party, for example, was deeply split over the affair, debating for more than half an hour over whether to use the term 'headscarf' or 'veil' before deciding on the more 'orthodox secular' word 'veil'.[47] In 1989, Creil schoolgirl Leila Achaboun also believed that terminology was significant when she claimed that what she was wearing was 'not a veil, it's a headscarf'.[48]

A degree of deliberate selection was also apparent in the popular press. In general, according to studies of media coverage of the affair, the more right-wing or populist newspapers such as *Le Parisien*, *Le Figaro* and *Le Quotidien de Paris* preferred terms such as '*hijab*' and '*chador*'. In one 1989 article in *Le Figaro*, for example, the journalist initially used the word 'headscarf' several times, before finishing the article with a reference to '*l'affaire du tchador'*, a term which was also prominently displayed in the title.[49] In 1990, the editor of *Le Parisien* admitted that his newspaper used '*chador*' because the term evoked 'directly the responsibility of a

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44 Neil MacMaster and Toni Lewis, 'Orientalism: from unveiling to hyperveiling' (1998) 28 *Journal of European Studies* 121, 131.

45 'Quand l'islam fait école', above n 3.

46 Gaspard and Khosrokhavar, above n 9, 19.

47 MacMaster and Lewis, above n 44, 131.

48 Denis Jeambar, 'Faut-il laisser entrer l'islam à l'école?' *Le Point* (France), 16 October 1989.

49 Max Clos, 'Derrière le tchador', *Le Figaro* (France), 30 October 1989.

country, in this case Iran'.[50] A journalist from the conservative publication *Royaliste* explained that 'you only have to call a headscarf or a scarf a "*chador*" for passions to become enflamed'.[51]

The use of Persian and Arabic words such as '*chador*' and '*hijab*' in media discussions of the headscarf carried out a particular function in France, communicating the exotic and 'strange' nature of the headscarf and marking it as a foreign element transplanted into French language and culture. The lexical and semantic differences also emphasised the insurmountable 'cultural distance' between Muslims and the French, signalling 'the impossibility of integration' and consequently 'the dangers presented to Republican values and unity'.[52]

IV PERSPECTIVES ON WEARING THE HEADSCARF

A *The Schoolgirls' Personal Attitudes*

The schoolgirls' own actions and motivations for wearing the headscarf also came to play a public part in the discourse in relation to the affair, not least because a variety of motivations for wearing the headscarf were attributed to them. Their testimony, as reported in the media or obtained from transcripts of interviews, provides some insight into their situations and the factors affecting their choices.

1 *Desire for Respect and Independence*

In recent years, there has been a noticeable trend among young Muslim women in a variety of countries to adopt the headscarf in order to express their desire for a greater degree of respect and an independent identity.[53] This trend has also been observed in France, where attitudes towards the headscarf appear to have changed over the past two decades. For example, Muslim girls wearing the headscarf are no longer primarily regarded by their peers as 'religious fundamentalist loonies', caught up in an archaic tradition.[54] On the contrary, the headscarf increasingly appears to be regarded as a sign of modesty, respectability and other positive qualities, while the symbolic 'character reference' which it communicates is

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50 Antonio Perotti and Pierre Toulat, 'Immigration et médias: le "Foulard" surmédiatisé?' (1990) 12 *Migrations Société* 15.

51 Sylvie Fernoy, 'La laïcité en question', *Royaliste* (France), 30 October 1989.

52 MacMaster and Lewis, above n 44, 130.

53 The issue of wearing the headscarf to mark one's individuality or to re-empower oneself has been considered by a number of scholars, including Egyptian sociologist Fadwa El Guindi, 'Veiling Infitah with Muslim Ethic: Egypt's Contemporary Islamic Movement' (1981) 28 *Social Problems* 465, 483; Bouthaina Shaaban, *Both Right and Left Handed* (1988); Fatima Mernissi, *The Veil and the Male Elite* (1991) and *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (revised ed, 1985); Anne-Emmanuelle Berger, 'The Newly-Veiled Woman: Irigaray, Specularity, and the Islamic Veil' (1998) 28 *Diacritics* 93, and others.

54 'Enquête sous le voile', *Le Nouvel Observateur* (France), 15-21 May 2003, 6.

important to many young Muslim women: 'This is the veil of modesty' or, more explicitly, 'Devout and serious young woman, ready to be married'.[55]

At the same time, wearing the headscarf allows these women to participate in public activities and the wider community and to overcome obstacles, such as unwanted attentions in public life, which are presented by both Muslim and non-Muslim men. In this way, the headscarf can be a means of liberation for many Muslim women, since it removes public attention from their physical appearance and sexuality and guarantees them freedom of movement, while at the same time communicating their respectability to their male compatriots.[56] During the affair, the headscarf was described as a vehicle for liberty for many young Muslim girls in France: 'thanks to it, [the girls] can go out'.[57] Thus, wearing the headscarf can serve an almost contradictory function through its adoption as a means for Muslim girls and women to engage in public activities and negotiate public space in safety, as well as to bypass community or other criticism of their behaviour and choices.[58]

In addition, Muslim girls wearing the headscarf are seen as 'serious' girls who are withstanding 'the excesses of modernity'.[59] In this way, they can win the respect of their parents and communities, which can be especially helpful for young women in France, who are often better educated than their mothers and know exactly what the Qur'an will and will not allow. This gives them an unprecedented degree of authority and allows them to create 'an awareness and a model of resistance for other young women of their community'.[60]

On a more personal level, some Muslim girls in France have found that wearing the headscarf has reinforced their identity and given them a certain sense of pride, as well as providing them with rights and a status which French society has not previously offered them.[61]

2 *Commitment to a New Islam*

For modern young Muslim women, choosing to wear the headscarf can also indicate their ability to appreciate their role as agents for change in a political world, as well as their determination not to be treated as their parents were.[62]

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55 Ibid 8.

56 Note comments by a Lebanese Muslim woman on the advantages of wearing Islamic clothing: Shaaban, above n 53, 84-5.

57 Gaspard and Khosrokhavar, above n 9, 37.

58 Lama Abu-Odeh, 'Post-Colonial Feminism and the Veil: Considering the Differences' (1992) 26 *New England Law Review* 1527, 1534.

59 'Enquête sous le voile', above n 54, 6.

60 Homa Hoodfar, 'The Veil in Their Minds and on Our Heads: Veiling Practices and Muslim Women' in Lisa Lowe and David Lloyd (eds), *The Politics of Culture in the Shadow of Capital* (1997) 248, 271.

61 'Enquête sous le voile', above n 54, 9.

62 Abdelhamid Chirane, 'Conflict and Division within Muslim Families in France' (Michael King trans) in Michael King (ed), *God's Law versus State Law* (1995) 16, 20.

Schoolgirls such as Hafida, for example, rejected with scorn the view that their parents' restrictions were in accordance with Islam:

> [R]ead between the lines: what does the Qur'an really say? Women must hide themselves away so that men, who are incapable of controlling their instincts, are not turned away from their religious and social duties … That's a bit too easy, don't you think?[63]

Wearing a headscarf can also give Muslim women the freedom to speak from a position of authority and respect without fear that they will be accused of being 'Westernised' or of abandoning Muslim values. These women may be more able to criticise aspects of Muslim practice, since they are already demonstrating their commitment to the traditions of their faith and their culture:

> [M]any veiled women are allowed far more liberty in questioning the Islamic foundation of many patriarchal customs perpetuated in the name of Islam. [...] [W]earing the veil often means they are given a voice to articulate their views and be heard in a way that nonveiled Muslims are not.[64]

For these women, wearing the headscarf can be one way of identifying with a movement which is collectively 'asserting cultural authenticity in the face of a dominant cultural model seeking to extinguish Islamically inspired social mores'.[65] It also reflects their desire for a new Islam which is relevant to their lives and will allow them the freedom to study, work and enjoy social, legal and financial independence, while providing them with respect, cultural meaning and spiritual satisfaction. They are claiming for themselves an Islam which liberates women and indicating their desire to escape their 'sub-identity' as second-generation immigrants.[66] They may not want to leave their families or their culture, even to pursue their studies or work, and signalling their acceptance of traditional dress can make it easier for them to flout or ignore other traditional and cultural norms. As Sadek Sellam, an Algerian writer living in France, noted, 'The younger generation of Muslim kids is different from their parents […]. These kids […] want to live in France but as Muslims'.[67]

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63 'Les voiles de l'islam déchirent la France', *Le Journal du Dimanche* (France), 22 October 1989.

64 Hoodfar, above n 60, 271-2.

65 Camillia Fawzi El-Solh and Judy Mabro (eds), *Muslim Women's Choices: Religious Belief and Social Reality* (1994) 11.

66 'Elles veulent être de nouvelles musulmanes', *Le Nouvel Observateur* (France), 15-21 May 2003, 11.

67 Bruce Wallace and Barry Came, '"The Islamic peril": a right-wing crackdown targets France's Muslim immigrants' (1994) 107 *Maclean's* 46, 49.

3 *Hierarchies of Muslim Women*

At the same time, there is also some evidence of a growing marginalisation of Muslim girls who do not choose to wear the headscarf. Accounts of the ways in which the headscarf is worn by some modern young Muslim women in France suggest that modern distinctions in France between 'veiled' and 'unveiled' Muslim women are introducing an informal social and moral hierarchy, whether or not this is intended.[68] For some young women, wearing the headscarf 'can encourage a sense of difference which can be expressed as a statement of opposition, almost of moral superiority'.[69] As a result, these women may feel a degree of sanctimony and even moral superiority over Muslim women who do not wear the headscarf.

The headscarf may also have become a fashion item '*à la mode'*. According to an article in *Le Nouvel Observateur*, some Muslim girls go to such lengths as arranging their headscarves carefully to ensure that some of their hair is visible and also wearing mascara, the latest sports shoes and designer headscarves.[70] This modern way of wearing the headscarf to enhance physical attractiveness and attract attention is also a subversion – or perhaps a modern reappropriation – of its traditional coded meaning and original purpose in orthodox Islamic doctrine and tradition, which was to signal 'modest and dutiful retreat'[71] by covering and concealing a woman's physical attributes, in effect rendering her inconspicuous. During the affair, one article in *Libération* noted this paradox, observing that 'the Qur'anic headscarf […] uses the private sphere to parade itself publicly at the same time'.[72]

Indeed, it is interesting to note that the traditional codes underlying the headscarf are largely subverted in a country such as France, in which a Muslim woman wearing a headscarf can actually become more visible and therefore be more likely to attract attention than a woman with no headscarf. In 1989, during the early events of the affair, president of Muslim women's association Expression Maghrébine au Féminin Halima Boumedienne noted that wearing the headscarf 'focuses attention on [Muslim women]', breaching the traditional obligation on women to behave modestly which is the basis for wearing the headscarf. In contrast, referring to Muslim women who do not wear the headscarf, '[i]t is precisely because we are not veiled that no-one notices us'.[73]

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68 Gaspard and Khosrokhavar, above n 9, 86.
69 Abu-Odeh, above n 58, 1536.
70 'Enquête sous le voile', above n 54, 8.
71 Berger, above n 53, 109.
72 'Il est préférable de ne pas se voiler la face', *Libération* (France), 23 October 1989.
73 'Un voile qui dévoile…', *La Croix* (France), 3 November 1989.

B *Community Attitudes*

1 *Symbolic Oppression*

This symbolic invisibility, together with the practice of sexual segregation and the division of space into male and female areas in many Muslim countries, is the basis for the perception by many Western feminists that the headscarf perpetuates Muslim women's silencing and oppression.[74] As a result, the headscarf tends to be 'politically charged with connotations of the inferior "other," implying and assuming a subordination and inferiority of the Muslim woman'.[75]

These connotations appeared to underpin the views of many French people during the affair, who were adamant that the headscarf should not be countenanced: 'Those young girls, they'd be better off if they could be persuaded to stop wearing their headscarves'.[76] According to one man: 'When you live in a country you should live like everyone else. It's not right that women are veiled in France when here they are very liberated'.[77]

However, sociologist Monique Gadant has warned against 'a naïve French ethnocentrism which may have led people to mistake the *hijab* too quickly for a sign of women's oppression'.[78] El-Solh and Mabro also caution against simplistic and reductionist tendencies to associate veiling, or the wearing of the headscarf, with traditionalism, which assume that it is a practice which will be abandoned when Muslim women or societies become more progressive and modernised. Such assumptions ignore the fact that 'modernisation' does not necessarily have to lead to 'Westernisation' and overlook the reality that the practice of wearing the headscarf reflects different cultural and social contexts.[79] In other words, what may be good for middle-class Western women may not be good for all other women.[80]

These assumptions also do not take into account some of the reasons given by modern Muslim women who choose to wear the headscarf. For many of these

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74 There is ongoing debate on the headscarf taking place in Muslim communities around the world, which is part of a greater discussion on how to improve the status and rights of Muslim women in many different countries. For further elaboration of these debates, see Leila Ahmed, *Women and gender in Islam: historical roots of a modern debate* (1992); Fadwa El Guindi, *Veil: Modesty, Privacy and Resistance* (1999) and above n 53; Shahin Gerami, *Women and Fundamentalism: Islam and Christianity* (1996) 8; Mernissi, above n 53; Shaaban, above n 53; Shahnaz Khan, 'Canadian Muslim Women and Shari'a Law: A Feminist Response to "Oh! Canada!"' (1993) 6 *Canadian Journal of Women and the Law* 52, and others.

75 El Guindi, *Veil: Modesty, Privacy and Resistance*, above n 74, 157.

76 Sylvie Caster, 'Le voile à toutes les sauces', *Le Canard Enchaîné* (France), 9 November 1994, 8.

77 'Et vous, qu'en pensez-vous?' above n 2.

78 Berger, above n 53, 93. This has also been described as the 'assumption that *veil* equals *ignorance* and *oppression*': Hoodfar, above n 60, 249.

79 El-Solh and Mabro, above n 65, 9.

80 Hoodfar, above n 60, 249.

women, such a choice may reflect a position which supports female autonomy and equality, but on terms which are quite different from 'the language of the West'.[81]

2 *Questions of Free Choice*

Another paradox of the headscarf is that it is assumed to be a private matter and that women have freedom of choice in relation to whether or not to wear it. Yet often it is not subject to women's individual decisions at all but is a public matter, imposed by institutions of the state which are often patriarchal, such as the religious leadership, the state regime, the family and the community.[82] In fact, the problem of distinguishing between individual action as a result of individual choice or in the face of community or social pressures was one of the most contentious issues in the affair.

Indeed, it was this question of free choice that was considered particularly important in France. According to Dr Bronwyn Winter, the question of 'individual choice' was instrumental in determining the general public response, particularly in view of the absence of Muslim women's voices from much of the public debate during the affair. In 1994, although the Muslim women 'remained largely invisible and silent – as they had five years previously',[83] those schoolgirls wearing the headscarf were for the most part older students attending secondary school, rather than the younger lower secondary schoolgirls of 1989. As a result, there appeared to be a clearer distinction along the lines of free choice.[84]

Many French people believed that the most effective way to ensure that Muslim girls were exercising or could exercise free choice, which was also the best way to improve their economic and social opportunities, was to ensure that they learned civic and secular values, finished their schooling and were in a position to make informed choices for themselves. According to Claude Allégré, a lecturer at Université Paris-VII and former adviser to Education Minister Jospin, the best way to combat the sexual discrimination practised by 'certain religions' was to admit the Muslim schoolgirls into secular public schools 'where they could learn, compare, understand and finally decide for themselves'.[85] From this perspective, it was essential that the girls continue to attend school, at least until they were old enough to remove their own headscarves. The possibility that even informed and well-educated Muslim girls might choose to continue to wear the headscarf did not appear to be acknowledged.

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81 Leila Ahmed, quoted in El-Solh and Mabro, above n 65, 11.

82 Jacqueline Siapno, 'Gender Relations and Islamic Resurgence in Mindanao, Southern Philippines' in El-Solh and Mabro, above n 65, 196.

83 Winter, above n 23, 206.

84 Ibid 209.

85 Elisabeth Schemla, [no title], *Le Nouvel Observateur* (France), 9-15 November 1989, 33.

V CONCLUSIONS

A *New law on secularism*

The legal regime governing the wearing of the headscarf in France changed significantly in 2004, when the French Parliament enacted legislation to prohibit the wearing of any religious signs in public schools. On 3 February 2004, draft legislation entitled 'Bill concerning the application of the principle of secularism, the wearing of signs or clothing manifesting a religious affiliation in public schools, lower secondary and secondary schools', abbreviated to 'Bill on secularism in schools', was submitted to the National Assembly. It was then referred to the Senate, where it was passed on 3 March 2004 with 276 votes in favour and 20 against. The legislation received bipartisan support and, according to the parliamentary transcripts, was greeted with universal applause from across the benches. However, extensive public protests were held in France and other countries across Europe to mark the concerns of many in the community about the enactment of the new law.[86]

The law came into force in September 2004 and contained four articles. The substantive provision was Article 1 which inserted the following paragraph into the *Code of Education*:

> Art. L. 141-5-1 – In primary, lower secondary and secondary public schools, the wearing of signs or clothing by which students visibly manifest a religious affiliation is forbidden. The internal regulations note that the commencement of disciplinary proceedings shall be preceded by dialogue with the student.[87]

This prohibition applies to all visible religious signs which make the wearer's religious affiliation immediately identifiable, meaning that the wearing of Islamic headscarves, Jewish skullcaps and oversized Christian crosses is now prohibited in public schools, and students wearing these signs are liable to be suspended or expelled.

In effect, the 2004 law on secularism changed the judicial balance which the administrative courts, particularly the Conseil d'État, had worked to achieve throughout the 1990s. The law arguably contravenes rights which secularism and

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86 In January 2004, tens of thousands of Muslims marched in protest against the proposed law on secularism in Paris, Marseille, Lille and other cities across France, while other protests were held in London, Berlin, Stockholm, Brussels, Cairo and Bethlehem: 'Mobilisation contre le projet de loi sur la laïcité', *Le Monde* (France), 17 January 2004; Jean-Paul Dufour, 'Forte mobilisation à Lille', *Le Monde*, 19 January 2004; Jon Henley, 'French MPs reappraise plan to outlaw veils', *The Guardian* (UK), 20 January 2004; and 'France steps closer to Muslim headscarf ban', *The Guardian*, 30 January 2004.

87 Article 1, *Law* No 2004-228 of 15 March 2004 applying the principle of secularism to regulate the wearing of signs or clothing manifesting a religious affiliation in public schools, lower secondary and secondary schools.

the Republic are supposed to protect. As a consequence, it has significant implications for secularism itself.

Under the previous regime, the Conseil d'État in its 1989 legal opinion had sought to uphold – and to balance – both secularism and the right to freedom of religious expression, while setting out principles to guide the application of the law according to the circumstances of each case. Its caution and apparent imprecision, ensuring that restrictions to the wearing of religious signs could be interpreted as broadly as possible, were deliberate. The result was broad acceptance by the courts of the wearing of the headscarf in public schools. At the same time, the courts also required the students to respect public order and their responsibilities to attend and participate in school activities, and penalised them if they breached these obligations. In this way, the courts contributed to the negotiation of a working definition of secularism which encompassed both rights and duties. In addition, by incrementally negotiating a series of acceptable responses to the particular circumstances of the affair, the courts were adapting secularism to the specific challenges posed by the wearing of the headscarf in schools.

However, under the 2004 law, all Muslim students wearing the headscarf in public schools, regardless of whether or not they engage in political or proselytising activities, disturb public order or disrupt teaching activities, are liable to be expelled.

B *The European Court of Human Rights*

The Conseil d'État's approach has now been confirmed by the European Court of Human Rights. On 4 December 2008, the court decided two French 'headscarf cases',[88] both arising from events which took place before the entry into force of the 2004 law on secularism. In both cases, the court found in favour of the French government and school authorities, confirming the expulsions of two Muslim schoolgirl applicants as a result of wearing the headscarf.

The two cases arose from events which occurred at around the same time and in the same school: two Muslim schoolgirls, aged 11 and 12 years old, wore their headscarves to physical education classes, were asked on a number of occasions to remove them, refused to do so and were expelled from the school. The girls' families appealed against the expulsion decisions to administrative courts at first instance and on appeal until they had exhausted all available domestic legal options. Both girls then complained to the European Court of Human Rights that their expulsions violated Article 9 of the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (*European Convention*) protecting their right to freedom of religious expression and Article 2 of Protocol No 1 to the *European Convention* protecting their right to education.

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[88] *Kervanci v France*, No 31645/04, European Court of Human Rights, 4 December 2008 (volume still unallocated) and *Dogru v France*, No 27058/05, European Court of Human Rights, 4 December 2008 (volume still unallocated).

The European Court of Human Rights found that the school's ban on wearing the headscarf during physical education and sports classes and the girls' subsequent expulsions constituted a restriction on the exercise of their right to freedom of religion. However, as permitted under Article 9(2) of the *European Convention*, freedom to manifest one's religion may be subject to limitations that are 'prescribed by law and are necessary in a democratic society in the interests of public safety, [to protect] public order, health or morals, or for the protection of the rights and freedoms of others'.

After considering the Conseil d'État's 1989 legal opinion, ministerial circulars and the relevant case law, the court accepted that the restriction had a sufficient legal basis in domestic law and so could be regarded as having been 'prescribed by law'. Furthermore, the restriction mainly pursued the legitimate aims of protecting the rights and freedoms of others and protecting public order.[89]

In the circumstances, the court considered that it was not unreasonable to conclude that wearing the headscarf was incompatible with sports classes for reasons of health or safety. Moreover, the various disciplinary proceedings against the schoolgirls fully satisfied the duty to undertake a balancing exercise of the various interests at stake. Finally, the penalty of expulsion from school did not appear disproportionate. The court found that the question of whether the schoolgirls had overstepped the limits of their right to express and manifest their religious beliefs on the school premises 'falls squarely within the margin of appreciation of the State'. Accordingly, having regard to the circumstances of the cases and to 'the margin of appreciation that should be left to the States in this domain', the court concluded that the restriction in question was justified as a matter of principle and proportionate to the aim pursued. As a result, it ruled that there had been no violation of Article 9 of the *European Convention*.[90]

At this stage, the European Court of Human Rights has not been required to consider whether the 2004 law on secularism might be contrary to the Article 9 right to freedom of religion.

C *Conclusion*

Clearly, as the various public debates over its meaning and significance attest, the headscarf became both a public and a private concern in France; aptly so, since the headscarf itself functions as a marker between public and private space. Its symbolism varied depending on the ways and the places in which it was worn or in which its wearing was forbidden and, importantly, depending on who was constructing its meaning. For the most part, during the affair, it was the broader non-Muslim community which framed the debates and selected the people who

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89 Ibid [48], [59]-[60].

90 Ibid [73]-[78].

could speak and the language they should use to discuss the affair. Already marginalised in public life, the schoolgirls were similarly marginalised in much of the public discourse, despite being the primary participants in the affair.

The schoolgirls' private reasons for choosing to wear the headscarf also raised certain questions of identity: what did the headscarf mean to the girls who wore it? What did it mean to Muslim or indeed non-Muslim communities in France? What was at stake for all of the parties when the headscarf was worn? This article has attempted to explore some of the answers to these questions.

As the article has also tried to show, the events of the affair of the headscarf and the resulting legal cases led to unfortunate consequences for many of the Muslim schoolgirls. Even where the courts finally ruled in favour of reinstating the expelled schoolgirls, the girls' schooling and elements of their lives had been disrupted while their expulsion decisions were being considered or appealed.

Moreover, the public debates which took place during the affair of the headscarf also reflected some of the ways in which Muslim girls and women were subtly (and sometimes not-so-subtly) excluded within the broader French community. The affair influenced popular discourse in France to such an extent that Muslim women found that they tended to be reduced to their headscarves. Their bodies were talked about as either 'naked' or 'veiled', requiring them to be defined and to define themselves in relation to the headscarf, which 'introduced a difference to which the clothing (and behaviour) of every [Muslim] woman must refer'.[91] According to one article in *Le Nouvel Observateur*, its symbolic power was such that many Muslim girls had it '*in* rather than wearing it *on* their heads'.[92]

Yet the debates over the affair of the headscarf in France had considerable resonance because they entailed – and continue to entail – the assertion by many Muslim girls and women of a culture and an identity. Some Muslim women have expressed reluctance at contributing further to an ongoing debate on the headscarf because 'so much energy has been expended by Muslim men and then Muslim women to remove the veil and by others to affirm or restore it'.[93] However, the discourse continues because it reflects fundamental elements of identity and free choice which are important, particularly to Muslim women themselves, who continue to seek to make their own decisions about the headscarves that they wear and the meanings that they wish them to convey.

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91 Berger, above n 53, 106.

92 'Enquête sous le voile', above n 54, 7.

93 Ahmed, above n 74, 167.