

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
France	2024	France / Conseil d'Etat / N°687944 / EC1119.CECJHS-2024-687944-20240921	http://www.conseil-etat.fr/fr/droitpublic/CE/decisions/2024-09-27/687944	Religion	Conseil d'Etat	The case relates to an application for the annulment of a decision by the Minister of National Education and Youth, expressed in a memorandum on respect for the values of the Republic published on 31 August 2023 in the official bulletin of the French education system (bulletin officiel de l'éducation nationale), to ban the wearing of the "abaya and qamis" on school premises.	The Council of State (Conseil d'Etat) upheld the memo. The decision thereby validates the ban on "abayas and qamis" in all schools. The ban runs the risk of validating a pattern of discriminatory behaviour on the part of school staff, given the difficulty of identifying such types of clothing. It also runs the risk of further marginalising Muslim students and preventing them from attending school.	The Council of State's (Conseil d'Etat) decision was based on several factors. It considered that the wearing of abaya-type clothing by pupils in public schools could be regarded, at the date of issue of the disputed memorandum, as ostensibly manifesting a religious affiliation, within the meaning of Article L. 141-5-1 of the French Education Code, which prohibits the wearing in schools of signs or clothing by which pupils ostensibly manifest their religious affiliation. The memo was limited to prohibiting the wearing of abaya-type clothing within the meaning of the French Education Code. While it did not prohibit the wearing of any religious symbols by pupils in public schools, "it only prohibited the wearing of signs or clothing by which pupils ostensibly manifested their religious affiliation". Furthermore, "the contested memo stipulated that a dialogue procedure must be initiated with pupils wearing such clothing in public schools, in disregard of this ban, which would be followed by a disciplinary procedure only if the former failed". This prohibition did not prevent pupils who refuse to stop wearing such clothing and are excluded from their school from continuing their education in the same way as in a private school.	The question was whether the ban on the "abaya and qamis" constituted a serious and manifestly unlawful infringement of the right to privacy, freedom of worship, the right to education and respect for the best interests of the child, or the principle of non-discrimination, such as to justify an interim injunction.	"8. A supposer que la liberté des élèves de choisir les vêtements qu'ils entendent porter en milieu scolaire relève du champ d'application de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, c'est au point précédent, et que l'interdiction, énoncée par la note de service attaquée, du port de tenues de type abaya par les élèves dans les établissements d'enseignement publics soit constitutive d'une restriction suffisamment significative de cette liberté pour être regardée comme une ingérence dans l'exercice du droit de ces élèves au respect de leur vie privée, cette interdiction résulte de l'article L. 141-5-1 du code de l'éducation, cité au point 2, et poursuit un des buts légitimes énumérés au second paragraphe de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, en l'espèce, la protection des droits et libertés d'autrui - qui requiert, notamment, la garantie pour les élèves de bénéficier d'un enseignement public exempt de toute forme d'exclusion et de pression, dans le respect du pluralisme et de la liberté d'autrui -, outre celle du principe constitutionnel de laïcité. Par ailleurs, ces dispositions législatives, dont la note de service attaquée fait application au cas des tenues de type abaya, n'interdisent pas le port de tout signe religieux par les élèves dans les établissements d'enseignement publics mais seulement celui de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse. La note de service attaquée prévoit en outre qu'une procédure de dialogue doit être engagée avec les élèves portant, en méconnaissance de cette interdiction, de telles tenues dans les établissements d'enseignement publics, qui n'est suivie par une procédure disciplinaire qu'en cas d'échec de la première. Enfin, une telle interdiction ne fait pas obstacle à ce que les élèves qui refuseraient de renoncer à porter de telles tenues et feraient l'objet d'une mesure d'exclusion de leur établissement d'enseignement public poursuivent leur scolarité en bénéficiant des autres modalités d'accès à l'instruction obligatoire prévues à l'article L. 131-2 du code de l'éducation. Dans ces conditions, cette restriction n'apparaît pas disproportionnée au but poursuivi. Il suit de là que le moyen tiré de la méconnaissance, par la note de service attaquée, de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales doit, en tout état de cause, être écarté." "8. Assuming that the freedom of pupils to choose the clothing they want to wear in the school environment falls within the scope of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, stipulated in the previous paragraph, and that the prohibition, set out in the contested memorandum, on the wearing of abaya-type clothing by pupils in public schools constitutes a sufficiently significant restriction of this freedom to be regarded as interference in the exercise of the pupils' right to respect for their private lives, this prohibition results from Article L. 141-5-1 of the Education Code, stipulated in point 2, and pursues one of the legitimate aims listed in the second paragraph of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in this case the protection of the rights and freedoms of others - which requires, in particular, the assurance for pupils to benefit from public education free from all forms of exclusion and pressure, while respecting pluralism and the freedom of others - in addition to that of the constitutional principle of secularism. Moreover, these legislative provisions, which the contested memo applies to abaya-type clothing, do not prohibit the wearing of any religious symbols by pupils in public schools, but only the wearing of signs or clothing by which pupils ostensibly manifest their religious affiliation. The contested memo stipulated that a dialogue procedure must be initiated with pupils wearing such clothing in public schools, in disregard of this ban, which would be followed by a disciplinary procedure only if the former failed. Lastly, this prohibition did not prevent pupils who refuse to stop wearing such clothing and are excluded from their public school from continuing their education by taking advantage of the other means of access to compulsory education as provided for in Article L. 131-2 of the French Education Code. Under these conditions, this restriction did not appear disproportionate to the aim pursued. It follows that the argument that the contested memo infringed Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms must, in any event, be rejected."

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