FRENCH HEADSCARF LAW: POLICY AND LAW PRESENTATION

Quick Refresher

FRENCH LAW NO. 2004-228 BANNING THE WEARING OF CONSPICUOUS RELIGIOUS ATTIRE

Brief Summary:

In public elementary schools, junior high schools, and high schools, students are prohibited from wearing signs or attire through which they conspicuously exhibit a religious affiliation.

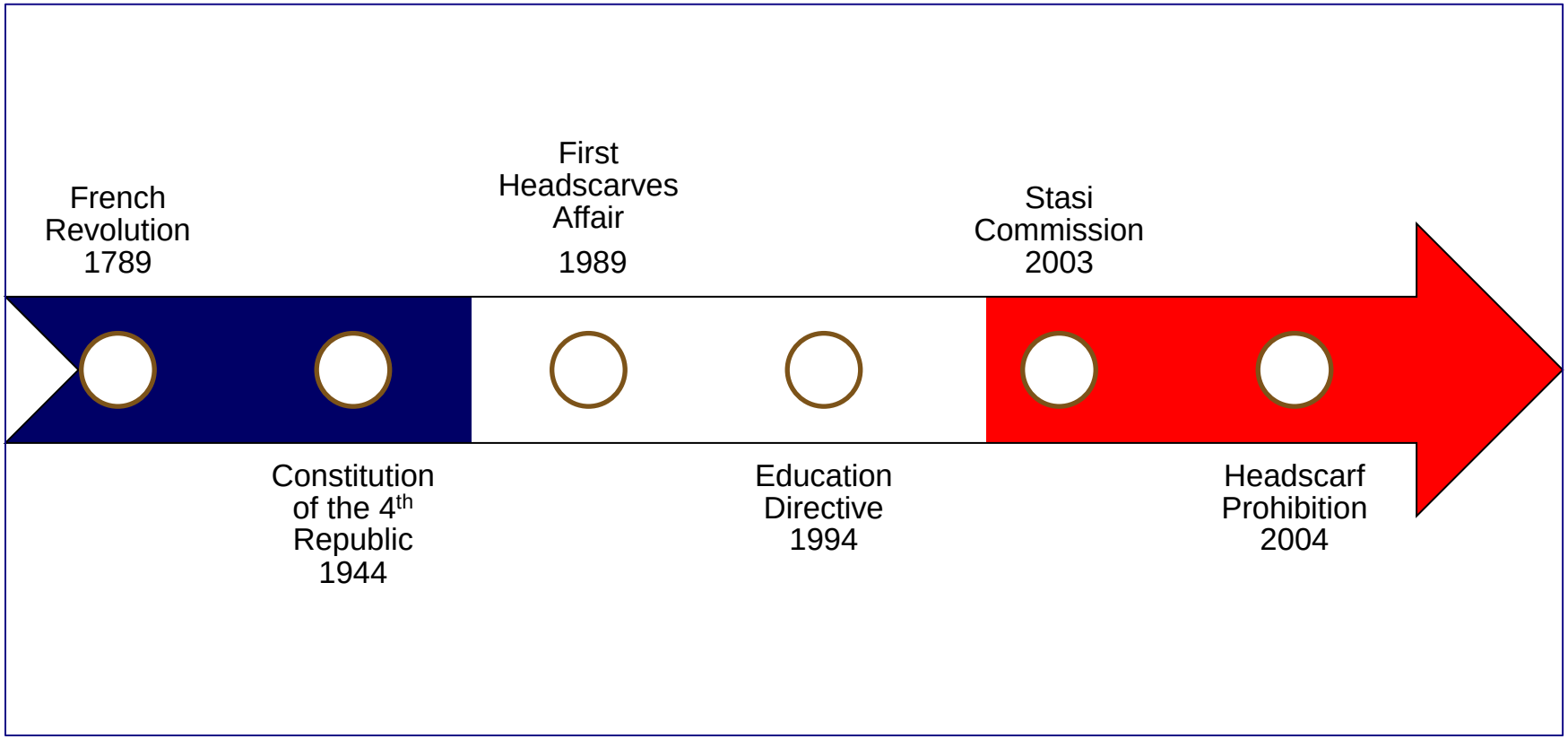
LEGAL EVOLUTION OF THE HEADSCARF CONTROVERSY

- **First Headscarves Affair 1989**
  - **Creil, 40 miles east of Paris**
    - Three junior high school girls refused to remove their hijabs in class
    - The students were expelled
    - They were violating the principle of laicite
    - Principals refusing to admit girls wearing headscarves
  - **Francois Mittérand Administration**
    - Conseil d'Etat issued its opinion
    - Guaranteed freedom of conscience of the students.
    - Freedom of expression should not:
      - Disturb the orderly conduct of a school or any other public institution.
      - Affect the duty of each student to participate fully in school work
      - Constitute an act of pressure or proselytization

LEGAL EVOLUTION OF THE HEADSCARF CONTROVERSY

- **Education Directive 1994**
  - Ministry of Education
    - Recommendations for actions
    - Emphasized the importance of resolving each conflict on a case-by-case basis
    - Endorsed disapproval of the wearing of any dress or symbol that might be ostentatious
      - Included yarmulke, large crosses and hijab
- **Stasi Commission 2003**
- **Headscarf Prohibition 2004**

LEGAL EVOLUTION OF THE HEADSCARF CONTROVERSY GRAPH



RELEVANT LAWS

- **International Covenant on Civil and Political Rights (ICCPR) Article 18**
- **The French Law No. 2004-228**
- **Doctrine of *Laïcité***

WHAT IS THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS?

- **Definition**
- **Parties**
  - France is a signatory – does that mean it is bound?
- **In the classroom:**
  - Do you think a similar law would be passed in U.S.? Why?
    - separation of church and state?
    - freedom of religion and expression?
    - Examples?
  - Would the U.S. be bound by the Covenant in a similar situation?
    - Would it trump U.S. statutes?
    - The Constitution?
    - If no, why would France?
  - What American values are represented in the Covenant?

ARTICLE 18(1) – PROTECTIONS

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. . . .

Protections:

- WHO does Art. 18 protect? (Remember not all countries are signatories.)
- WHAT does Art. 18 protect?
  - What if your student wanted to practice a new religion she made up? Would that be protected?
- WHERE does this protection apply?
  - Public: How do you define this?
  - Private: What does this mean? The privacy of my own home? What about YOUR home?
- Are any sections problematic?

ARTICLE 18(3) – LIMITATIONS

3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. . . .

Limitations:

Proscribed By Law
AND

Necessary To Protect
EITHER

Public Safety, Order, Health, Or Morals
OR
The fundamental rights and freedoms of others

- List general examples for each aspect:
  - Law – (2004-228)
  - Public Safety –
  - Order –
  - Health –
  - Morals –
  - Fundamental rights and freedoms of others –

- Now, list past or current examples that would trigger each of these components.
  - Public Safety –
  - Order –
  - Health –
  - Morals –
  - Fundamental rights and freedoms of others –
- Did they also have a proscribed law?
- Would they fall into the exception to ICCPR?

FRENCH LAW NO. 2004-228

- **Statute**
  - **WHO: <u>Public</u> School Students**
- **WHAT: Signs that ostensibly express a religious belonging**
  - **Consequence for violating?**

LAÏCITÉ

- ***Laïcité***
  - concept denoting the absence of religious involvement in government affairs as well as absence of government involvement in religious affairs
  - 1905 Legal separation of religion and the state

LEGALITY ARGUMENTS OUTLINE

① **State Sovereignty**
- ✧Secularist Arguments
- ✧Laïcité
- ✧Stasi Report
- ✧Public Schools/Educators

① **International Law**
- ✧ICCPR, protections and limitations

② **Discriminatory**

③ **Gender Bias**
- ✧Feminist arguments
- ✧Outside the Scope?

ARGUMENT 1 – STATE SOVEREIGNTY: SECULARISM

✧Secularism:

- ✧Religious freedom has limits; head scarves are outside of protections
- ✧The scarf is considered as a symbol of belonging to the Muslim community
- ✧Secularism in schools is incompatible with wearing ostentatious religious articles,
- ✧Permitting the veil in schools risks opening the door to other practices that exist in the Muslim world
- ✧No different than prohibiting other religious practices, such as peyote use or polygamy

ARGUMENT 1 – STATE SOVEREIGNTY: SECULARISM

Non-discriminatory Law On Its Face

- *President Sarkozy has said the veils imprison women and run counter to the country's sense of equality; detractors say the ban suppresses cultural and religious expression*
  - Declared in 2009 that face veils were "not welcome in France"
  - Appeal to far-right voters
- Marine Le Pen, leader of the Front National
  - Compared Muslims praying in the streets outside overcrowded mosques to the Nazi occupation of France.
  - Criticized halal-only fast food restaurants
  - Popularity grew
- The French government:
  - The French body politic is determined to strictly enforce the respect of every faith, every community, everywhere, and this effort begins in public schools. (BROOKINGS INSTITUTION)

ARGUMENT 1 – STATE SOVEREIGNTY: SECULARISM

✧Freedom *FROM* Religion, Not Freedom *OF* Religion

- **✧French state seeing its task as defending republicanism and secularism and consequently always seek to avoid providing official recognition of any religion.**
- **✧The French state's opposition to multiculturalism is considered by some commentators to be hindering the integration of France's Muslims.**

✧Educators

- ✧ Public spaces should be neutral spaces, not places to spread a particular view of the world.
- ✧ Duty of care to children who enter the public school system

ARGUMENT 1 – STATE SOVEREIGNTY: ***LAÏCITÉ***

- ***Laïcité***
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ARGUMENT 1 – STATE SOVEREIGNTY: STASI REPORT

Jacques Chirac Administration

- Two girls expelled from a lycée in Aubervilliers

To understand the principle of laïcité and its practical implications for and increasingly diverse France

- 20 sociologists, philosophers, politicians and educators

Testimonies on:

- Physical and verbal attacks on young women donning the hijab
- Conflicts between Muslims and Jews
- Family pressure
- Female suppression
- Isolation

Recommendations from the Stasi Commission

Recognized tensions between Muslims and the Republic

Recommended to detect and condemn anything that compromised the neutral character of the French State in matters of religion

Recommended to revise the list of public holidays

Asserted that the display of conspicuous religious symbols was unacceptable

Recommended to establish regulations only to public and not private spaces

- Catholic schools?

ARGUMENT 1 – STATE SOVEREIGNTY: WHERE DOES THE LAW APPLY?

- **Public Schools**
  - How does this translate to the U.S. policies in schools?
    - What dress codes does your school have in place?
    - Is it the same caliber as the idea of religious freedom?
  - Are educators or students bigger proponents?
    - Do they have the same motivations to maintain secularism?
      - Why would teachers want?
      - Why would students want?

ARGUMENT 1 – STATE SOVEREIGNTY: ARGUMENT TO ALLOW

Nobel Peace Prize winner Tawakkul Karman, 'The mother of Yemen's revolution,' when asked about her Hijab by journalists and how it is not proportionate with her level of intellect and education, replied: - "Man in early times was almost naked, and as his intellect evolved he started wearing clothes. What I am today and what I'm wearing represents the highest level of thought and civilization that man has achieved, and is not regressive. It's the removal of clothes again that is regressive back to ancient times."

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ARGUMENT 2 – INTERNATIONAL LAW, ICCPR: PROTECTIONS

- **Which protections of Art. 18 could be triggered here?**
  - Manifest his religion or belief in…observance [or] practice

ARGUMENT 2 – INTERNATIONAL LAW, ICCPR: PROTECTIONS

- **RELIGION:**
  - Islam Headscarf – a sign of modesty
    - Religious freedom
    - A head scarf ban violates the right to freedom of religion and expression
    - Wearing head scarves is unlike religious extremes such as stonings
    - Wearing head scarves/hijabs does no harm and violates nobody's rights
    - Wearing the Hijab is protected by religious freedom under UN Charter.
    - Public bans on head scarves encourage private bans
  - Islamic perspective
    - Tradition
    - Doctrine
- **Other religions affected?**

ARGUMENT 2 – INTERNATIONAL LAW, ICCPR: LIMITATIONS

What limitations of Art. 18 could be triggered here?

Remember, they are -

Proscribed by law
Public safety?
Order?
Health?
Morals?
Rights and freedoms of others?

ARGUMENT 2 – INTERNATIONAL LAW: DOES ICCPR APPLY THEN?

What group does this affect according to plain meaning? What group does it apply to in practice? Is this a loophole in the law?

IS THE BAN A VIOLATION OF INTERNATIONAL LAW?

No

- **France has a very low Muslim population.**
- **A ban on veils only applies in public spaces.**
- **If Muslims don't like policy on the veil, they can move elsewhere.**

Yes

- **Wearing the traditional veil is part of Muslim religious practice.**

ARGUMENT 2 – INTERNATIONAL LAW: DOES ICCPR APPLY THEN?

HARM: IS THE WEARING OF THE MUSLIM VEIL HARMFUL?

YES

- Muslims lose-out in various ways by wearing the hijab
- The Muslim veil is a mark of separation

NO

- Muslim veils cannot harm anyone physically and should not harm anyone emotionally.
- The traditional Muslim veil is just a head dress.
- Intolerance of Muslim veils can be cited as racism.

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ARGUMENT 3 - DISCRIMINATION

- **Assimilation into French culture?**
- **Is that ok? Where do limitations come from?**
- **Does it matter that its in school?**
  - What if languages other than English were prohibited, would that be the same?
- **Does this promote Islamphobia?**

Minority group:

It is already experiencing widespread discrimination.

French government:

Laïcité . a principle of religious neutrality that is intended to create the conditions for religious freedom.

The law is a principle for Muslim integration and social order.

Kenneth Roth, executive director of Human Rights Watch,

"The proposed law is an unwarranted infringement on the right to religious practice" , "For many Muslims, wearing a headscarf is not only about religious expression, it is about religious obligation."

IS IT WRONG TO THINK THAT THE FRENCH ARE BEING BIASED TOWARDS MUSLIMS?

YES

Religions shouldn't be given preferential treatment by the government.

NO

France is depriving Muslims of their religious practice.

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ARGUMENT 4 – GENDER BIAS: FEMINIST ARGUMENT

- **Required Dress Codes for Women**
  - Law of Brothers
    - Social pressure to conform exerted by Muslim men on Muslim women
  - New movement?
    - General consensus among Islamic scholars that Islam prohibits compulsion

ARGUMENT 4 – GENDER BIAS: FEMINIST ARGUMENT

- **Imposing restrictions is counterintuitive to empowerment**
  - **French gender system**
    - **sexuality and attraction are natural parts of life and their enactment in public thus poses no threat to politics or the public sphere.**
    - **how can women be both different from men and equal to them.**
  - **Muslim gender system:**
    - **Represented by the headscarf, sex and gender are organized by a system based on covering, restraint, and the restriction of sexual availability to marriage.**

ARGUMENT 4 – GENDER BIAS: FEMINIST ARGUMENT

- **Feminist Arguments**
  - **Wearing the scarf symbolizes a woman's submission to men**
  - **The hijab is not a free choice, but a result of social pressures**
  - **Religious prescription on female covering as chauvinistic, patriarchal, oppressive and an enforcement on women and against their rights.**

ARGUMENT 4 – GENDER BIAS: OUTSIDE THE SCOPE?

- **Is gender discrimination covered under ICCPR?**
  - How does that weaken the argument that the French law helps protect women?
  - How does that weaken the argument that its unlawful?

8 DIFFERENT VIEWPOINTS: EUROPE AND THE HEADSCARF

- "The world's conflicts should not be brought into the classroom"

Alain Destexhe, Belgian politician

- "What does it mean to be British or French anyway?"

Fareena Alam, UK magazine editor

- "You can't solve these problems with a law"

Amir Taheri, Paris-based Iranian writer

- "We must protect young Muslim women"

Rachida Ziouche, Algerian exile in France

- "This can only fuel extremism and fundamentalism"

Fanny Dethloff, Lutheran clergywoman

- "The headscarf threatens the Enlightenment's achievements"

Alice Schwarzer, German feminist

- "The scarf is a symbol of the inferior status of women"

Binnaz Toprak, Turkish academic

- "Muslims need to be fully involved in their society"

Tariq Ramadan, Islamic affairs analyst

QUESTIONS?