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Communication No. 1928/2010

Views adopted by the Committee at its 108th session (8–26 July 2013)

<i>Submitted by:</i>	Shingara Mann Singh (represented by counsel, Ms. Christine Bustany of O'Melveny & Myers)
<i>Alleged victim:</i>	The author
<i>State party:</i>	France
<i>Date of communication:</i>	15 December 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 February 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2013
<i>Subject matter:</i>	Obligation to appear bareheaded on passport photographs
<i>Procedural issue:</i>	Failure to exhaust domestic remedies
<i>Substantive issues:</i>	Freedom to manifest one's religion, freedom of movement, indirect discrimination
<i>Articles of the Covenant:</i>	Articles 2, 12, 18 and 26
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (108th session)

concerning

Communication No. 1928/2010*

Submitted by: Shingara Mann Singh (represented by counsel, Ms. Christine Bustany of O'Melveny & Myers)

Alleged victim: The author

State party: France

Date of communication: 15 December 2008 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 July 2013,

Having concluded its consideration of communication No. 1928/2010, submitted to the Human Rights Committee by Shingara Mann Singh under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Shingara Mann Singh, a French citizen originally from the Punjab region in India. He claims to be the victim of a violation by France of articles 2, 12, 18 and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 17 May 1984. The author is represented by counsel.

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not participate in the consideration of the present communication.

The facts as submitted by the author

2.1 The author emigrated to France in 1970 and was naturalized in 1989, when he became a French citizen and immediately obtained a French passport. For his first passport, the prefecture in Val d'Oise, his place of residence, allowed him to wear his turban on the identity photographs. In the following 15 years the author obtained three more passports, issued successively on 8 December 1989, 21 October 1991 and 15 December 1995, and an extension for the 1995 passport, issued on 16 November 2000. Each passport included a photograph showing the author with his turban.

2.2 On 8 December 2005 the author attempted to renew his passport for the fourth time and submitted a photograph showing him wearing his turban. However, Val d'Oise prefecture rejected his application, stating that the photograph was not in conformity with the provisions of Decree No. 2001-185 of 26 February 2001 on the conditions for the issuance and renewal of passports. Article 5 of the decree provides that identity photographs must be "face-on, bareheaded, in 35 x 45 mm format, recent, and with an accurate likeness". The decree in question has been replaced by Decree No. 2005-1726 of 30 December 2005 on electronic passports, but the requirements for photographs remain the same.

2.3 On 16 February 2006 the author challenged the Prefect's refusal before the Cergy-Pontoise Administrative Court, which rejected his application on 29 June 2006. The author then appealed the decision before the Versailles Administrative Court of Appeal, which rejected the application in a ruling handed down on 24 January 2008.

2.4 The ruling of the Versailles Administrative Court of Appeal refers to articles 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "European Convention on Human Rights") and to article 18 of the Covenant and points out that those provisions "themselves stipulate that the freedoms they guarantee may be subject to limitations, in particular in the interest of public safety and the protection of public order; that the provisions of article 5 of the decree of 26 February 2001 [...], aimed at limiting the risk of fraud or falsification of driver's licences, by making it possible for the document in question to identify the document holder as veraciously as possible, are neither inappropriate nor disproportionate in relation to the objective at hand; that the fact that the use of photographs showing people with their heads covered has been tolerated in the past does not constitute an obstacle to the decision to end such tolerance owing to the increase in the number of falsifications detected; that the specific violation of the requirements and rituals of the Sikh religion invoked is not disproportionate to the objective in question, in particular taking into account the limited nature of the obligation to remove a head dress to produce a bareheaded photograph; that the requirement does not involve treatment that is different for Sikh persons than it would be for other applicants, and that consequently the contention that the decree of 26 February 2001 is illegal should be dismissed". The ruling also notes that the decision of the subprefect "involved no discrimination, nor did it disregard [...] the principle of equality as invoked in the provisions of article 19 of the Act of 30 December 2004 [establishing the High Authority to Combat Discrimination and Promote Equality], the provisions of articles 9 and 14 of the European Convention on Human Rights [...] and the provisions of articles 1 and 12 of the Covenant".

2.5 The author claims that he did not bring the case before the Conseil d'Etat because that body had on 15 December 2006 issued a ruling against him in an identical case which concerned the photograph on his driver's licence. The Conseil d'Etat had deemed that the purpose of the provisions at issue, in particular Circular No. 2005-80 of 6 December 2005 concerning identity photographs on driver's licences, was to limit the risk of fraud or falsification of driver's licences by making it possible for the document in question to identify the document holder as veraciously as possible, and that the violation of the

requirements and rituals of the Sikh religion was not disproportionate to the objective in question, in particular taking into account the limited nature of the obligation to remove a head dress to produce a bareheaded photograph. It did not involve treatment that was different for Sikh persons than it would be for other applicants.

2.6 The author subsequently brought the case concerning his driver's licence before the European Court of Human Rights, which in a decision of 13 November 2008 declared the case inadmissible, as it was manifestly unfounded. Specifically, in relation to article 9 of the European Convention on Human Rights, the Court took into consideration the margin of discretion of States in this field and concluded that the impugned interference was justified in principle and proportionate to the objective in question.¹

2.7 In the light of these two rulings, the author considered it futile to bring this case before the Conseil d'Etat and the European Court of Human Rights, as the arguments are the same. He thus considers that domestic remedies have been exhausted. Furthermore, the State party's violation of his freedom of religion in this case deprives him of the opportunity to travel outside his own country, which makes the need to find a solution all the more pressing.

2.8 The author maintains that wearing a turban is an integral part of a Sikh's faith and identity. The first commandment of the Sikh faith is that the hair must never be cut and must be kept clean, groomed and hidden from public view. Removal of the turban may be considered a renunciation of the faith, and the disrespectful mishandling by others of one's turban is extremely insulting. To oblige Sikhs to remove their turbans is as humiliating as obliging people to remove their trousers in public. A number of countries recognize the dual religious and personal significance of the turban and the importance of covering one's hair; they have adopted specific measures to protect the dignity and religious freedom of devout Sikhs.

The complaint

3.1 The author maintains that the application of article 5 of Decree No. 2001-185 in respect of his case violates articles 2, 12, 18 and 26 of the Covenant.

3.2 While the decree appears to be neutral, the requirement to show oneself bareheaded is humiliating for the minority of French citizens who are observant Sikhs. The application of this provision in the author's case is thus indirect discrimination based on his ethnic origin and religious beliefs. Identical treatment of persons in very different situations can constitute a form of discrimination. What is important is for people to have the opportunity to equally enjoy the same rights. This discriminatory effect violates articles 2 and 26 of the Covenant. In this respect, the Committee's general comment No. 18 states that the principle of equality sometimes requires that States take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.² France must treat Sikhs differently from how it treats the majority when this is necessary to avoid a discriminatory effect.

3.3 The author maintains that he has been a victim of a violation of his right to manifest his religion or belief. The French authorities argue that the requirement for "proportionality" has been met, as the infringement of the author's freedom of religion is "temporary". However, a bareheaded photograph of the author is very likely to repeatedly lead to orders to remove the turban so as to make it possible to better compare his

¹ *Mann Singh v. France* (dec.), No. 24479/07.

² General comment No. 18: Non-discrimination, Official Documents of the General Assembly, Forty-fifth session, Supplement No. 40 (A/45/40), vol. 1, annex VI, sect. A, para. 10.

appearance with his likeness on the photograph. Such repeated humiliation is not proportionate to the objective of identifying the person. The Covenant does not authorize States to restrict the right to manifest one's religion when such restrictions would have the sole purpose of being useful, desirable or expedient or when they have an impact only on one religious or ethnic minority. Any restriction must be necessary; with no other solution available that would be proportionate to the objective in question.

3.4 Immigration officials and computer systems are capable of identifying a passport holder even if the person's hair is covered – even more reliably in the case of Sikhs, who never appear in public without their hair covered and face clearly visible. Such is the case in the three identity photographs in the author's previous passports, in which he wore his turban.

3.5 The State party currently authorizes citizens of other countries to enter its territory using passports where they are not bareheaded. It is therefore difficult to fathom why restrictions imposed only on the freedom of religion of French citizens are necessary to make France safer.

3.6 The acts at issue also constitute a violation of the right to freedom of movement guaranteed under article 12 of the Covenant. The author is being forced to choose either to uphold his dignity or to be able to travel outside of France, but he cannot do both. According to general comment No. 27, any restriction on freedom of movement must be consistent with all the other rights recognized in the Covenant.³ The author points out that when States impose security regulations such as those relating to passports, which have an impact on freedom of movement, they must ensure that the restrictions imposed do not violate the other provisions of the Covenant.

State party's observations on admissibility

4.1 On 26 April 2010 the State party submitted its observations on admissibility, stating that the communication is inadmissible because of a failure to exhaust domestic remedies.

4.2 The author did not consider it necessary to bring the case before the Conseil d'Etat, as that body had already dealt with the substance of the question at hand in its ruling of 15 December 2006 in the case of *Association United Sikhs and Mr. Mann Singh*, a case in which he was a complainant. However, the case in question related only to conditions for issuing a driver's licence, not to supporting documents for a passport renewal. Furthermore, in this case the Conseil d'Etat had issued its decision only in respect of alleged violations of articles 9 and 14 of the European Convention on Human Rights, not the provisions of the Covenant.

4.3 The decision to bring this case before the Committee and not the European Court of Human Rights, while the author also alleged violations of articles 9 and 14 of the European Convention on Human Rights before the domestic courts, is motivated by a desire to obtain a decision from the Committee differing from the one already adopted by the Court. Thus, the complainant considers either that the Court's case law is not applicable to the Committee because of the specific nature of the Covenant, or that the outcome of litigation relating to the conditions for issuing driver's licences is not applicable to a challenge relating to conditions for issuing passports. In such circumstances, he cannot at the same time maintain that the Conseil d'Etat, by ruling on the conditions for issuing driver's licences solely on the basis of the European Convention, could have issued a decision in substance on the question now before the Committee.

³ General comment No. 27: Freedom of movement, Official Documents of the General Assembly, Fifty-fifth session, Supplement No. 40 (A/55/40), vol. I, annex VI, sect. A, para. 11.

4.4 In any event, in its ruling of 15 December 2006 the Conseil d'Etat did not address freedom of movement at all, yet this issue is also raised by the author in the present communication.

Author's comments on the State party's observations on admissibility

5.1 On 3 January 2011 the author challenged the State party's observations on admissibility. With regard to the exhaustion of domestic remedies, the author reiterated that the Conseil d'Etat had already issued a ruling on that question, in the case decided on 15 December 2006. It was of no importance that in the domestic procedures for that case the author had invoked articles 9 and 14 of the European Convention on Human Rights, while before the Committee he was invoking the corresponding articles of the Covenant. It was also of no importance that in the former case the author had decided to go before the European Court of Human Rights, while in the latter he had decided to bring the case before the Committee. The Committee was not obliged to follow the case law of the European Court of Human Rights.

5.2 The case from 2006 is not the only one in which the Conseil d'Etat issued an opinion on this matter. In another case, decided on 14 April 2009, the Conseil d'Etat rejected an appeal lodged by another Sikh citizen against Decree No. 46-1574, which requires the use of bareheaded photographs on residence permits.⁴ The Conseil d'Etat had considered the requirement not to be in contradiction with articles 9 and 14 of the European Convention.

5.3 In the light of these two rulings it would have been futile to bring this issue before the Conseil d'Etat. As for the State party's argument that the 2006 case did not raise the issue of freedom of movement, nothing suggests that the decision of the Conseil d'Etat would be different if it had to take a position on that question. On the other hand, the violation of the right to freedom of movement stems from the violation of the right to freedom of religion, and the two are intricately linked. If it is futile to raise the issue of freedom of religion before the Conseil d'Etat, it is also futile to raise the issue of freedom of movement.

5.4 The author notes that this case is not the same as the one he brought before the European Court of Human Rights in 2006, as the domestic law at issue was different in 2006. The argument based on the Court's inadmissibility ruling is inoperative in the present case. Consequently, the current communication cannot be declared inadmissible under article 5, paragraph 2 (a), of the Optional Protocol.

State party's observations on the merits

6.1 On 20 August 2010 the State party submitted its observations on the merits of the communication. It points out that the principles of equality and non-discrimination are protected by the Constitution of 1958. As early as 1979 the freedom to come and go was recognized by the Constitutional Council as a constitutional principle.

Complaint relating to article 18

6.2 The State party recalls that the freedom to manifest one's religion is subject to the restrictions in article 18, paragraph 3, of the Covenant and that, in accordance with the

⁴ The *Ranjit Singh* case, which was later brought before the Committee. See communication No. 1876/2009, *Singh v. France*, Views adopted on 22 July 2011.

Committee's general comment No. 22 concerning article 18,⁵ recourse to such restrictions must be interpreted in a strict sense.

6.3 The European Court of Human Rights has taken positions in cases where the freedom to wear religious clothing or attire has been restricted in order to protect public order or health or to protect the rights and freedoms of others. What is more, in a case very similar to the present one brought by the author before the European Court of Human Rights in 2007, the Court, applying its case law and without even communicating it to the State, deemed that the case was "manifestly unfounded".

6.4 The Court accepted that a bareheaded identity photograph was required on the driver's licence for the authorities in charge of ensuring public safety and the protection of public order, in particular for identity checks carried out to identify drivers and ensure that they were entitled to drive the vehicle in question. Such checks were necessary for public safety in the sense of article 9, paragraph 2, of the European Convention on Human Rights. The Court stressed, in this regard, that the impugned regulation had been tightened up because of the increased risk of fraud or falsification of driver's licences. It specified that the means for implementing such checks was within the discretion of the State, all the more so as the obligation to remove the turban for this purpose, or initially to issue a driver's licence, was a temporary measure. The Court thus concluded that "the impugned interference was justified in principle and proportionate to the objective in question".

6.5 The State party considers that the conditions established in article 18, paragraph 3, of the Covenant have been met. First of all, there is a legal provision for the measure being challenged: the decree of 26 February 2001.

6.6 Secondly, the measure has a legitimate objective. It addresses the need to limit the risk of passport fraud or falsification by making it possible to use the document in question to identify as veraciously as possible the document holder. This concern is all the more understandable for passports, as such documents, which allow their holders to pass borders, are subject to stringent security requirements, in particular in order to ensure public safety. By applying a simple rule setting out this obligation, the regulations allow the administrative authorities to avoid having to engage in troublesome assessments of whether one or another type of head covering, offering more or less facial coverage, allows for reliable identification of the person in question. It thus ensures public safety and order, and also the equality of all citizens before the law.

6.7 Thirdly, the measure at issue is proportionate to the objective. While the obligation to produce bareheaded identity photographs may represent a constraint or even be an embarrassment for some, the constraint is a limited one. People who consider themselves duty-bound to wear turbans are not obliged definitively or even repeatedly to refrain from doing so, but to do so just once, for the short time required to take a photograph. The nuisance for the applicant must be balanced against the general interest of combating passport falsification.

6.8 The author is hoping to obtain satisfaction from the Committee in respect of his passport while he did not obtain the same satisfaction from the European Court of Human Rights in respect of his driver's licence. In the light of the similarity of wording between article 9 of the European Convention on Human Rights and article 18 of the Covenant, the very strong similarity between the cases and the high level of protection of human rights afforded by both the Court and the Committee, the State party considers that the author's request lacks the relevant justification.

⁵ General comment No. 22 (1993), Official Documents of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/40), annex VI.

Complaint relating to articles 2 and 26

6.9 The author has not been subjected to any discrimination, as the decree of 26 February 2001 applies to everyone without distinction. Nor has he been the victim of any kind of indirect discrimination. The regulations in question have no discriminatory purpose and are not applied in a discriminatory manner. Paragraph 8 of general comment No. 18 states that “[t]he enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance”. That paragraph does not mean that States are obliged to introduce differences in treatment according to the opinions of the different parties; it merely accepts in certain cases that separate rules can exist in cases where, objectively, situations of individuals differ. In the present case it is unjustified to grant certain people, on the basis of their religious beliefs, a dispensation from the rules applicable to all citizens for the purpose of maintaining public safety and order.

6.10 Similarly, the author cannot avail himself of paragraph 10 of general comment No. 18 to justify the derogation which he is claiming, as it states that “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant”. This paragraph, which covers deliberate policies aimed at reducing de facto discrimination and refers cautiously to “affirmative action”, in no way calls for the adoption of distinct laws that would apply to some people but not to others on the basis of their opinions or beliefs. Nor does it call for the State, in implementing the ordinary law, to engage in dubious (and, incidentally, discriminatory) arguments based on its understanding of the intensity of the philosophical or religious obligations of different people under its jurisdiction.

Complaint relating to article 12

6.11 This complaint raises no questions not already raised by the previous two complaints. The restrictions on the freedom to come and go which can result from the refusal to issue a travel document to the author result exclusively from his refusal to comply with the general rules for the issuance of passports, which are justified by the overriding need for public safety. In such conditions, it is not possible that a violation of article 12 of the Covenant has occurred.

Author’s comments on the State party’s observations on the merits

7.1 The author replied to the State party’s observations on the merits on 3 January 2011.

Complaint relating to article 18

7.2 The author does not contest the fact that reducing fraud and falsification is a valid objective for the State to pursue. However, the State party does not prove that the measure at issue is required for it to attain that objective.

7.3 The State party provides no answers to the following arguments: (a) the obligation to use bareheaded photographs on passports is arbitrary, as it can apply to a large number of situations in which head covering is not an obstacle to identification; (b) turbans do not cover facial features. In the long term, turbans pose even fewer identification problems than other changes, such as those that take place when people radically grow out or cut their hair or beards, or when they dye their hair, wear wigs or hairpieces, or lose their hair or wear heavy make-up. In the author’s case, as he always wears his turban in public, a photograph with a turban would facilitate identification rather than hamper it. In all his identity documents issued since 1970 he appears wearing a turban, and this never posed a problem; (c) the State party authorizes foreign citizens whose passport photographs do not show them bareheaded to enter its territory; (d) the State party authorizes the use for visa

applications of photographs in which religious symbols that the person normally wears appear; (e) most European countries and others such as Australia, Canada, New Zealand and the United States of America, which have the same concerns as France regarding security and fraud, allow religious symbols to be worn on the head in identity photographs. France is the only country of the European Union that requires passport photographs to be bareheaded.

7.4 The lack of a response in the State party's observations to the above arguments demonstrates that the measure at issue is neither necessary nor legitimate under article 18, paragraph 3.

7.5 According to the author, it is not credible to suggest that the administrative authorities encounter problems in determining whether a head covering hides the face and to suggest that the measure thus ensures the principle of equality before the law. Many States have established rules in this respect. In the United States, for instance, head coverings may be worn in visa or passport photographs for religious reasons, but they must not cast a shadow on the face, and the forehead must not be covered. Furthermore, the State party does not respond to the author's suggestion regarding the use of alternative steps to prevent fraud, such as biometric measures or digital recognition.

7.6 As for the proportionality of the measure, the State party maintains that it is temporary, but a bareheaded photograph of the author would continuously be used as a means of official identification. The constraint would thus not be a mere inconvenience but an affront to the Sikh religion, to his ethnic identity and to his place in French society. A bareheaded photograph would result in multiple situations in which he would be requested to remove his turban to make it possible to check his likeness against the photograph.

7.7 On the above basis, the author concludes that there has been a violation of article 18, as the measure at issue is neither necessary nor proportionate and the State party has not made use of the least restrictive means to achieve the objectives it invokes.

Complaint relating to articles 2 and 26

7.8 The author reiterates that the measure at issue is an affront to the minority of French citizens who are Sikhs and to other non-Christian religious groups. Christians, the majority religious group in France, are not concerned by the measure, as they do not cover their heads for religious purposes. Consequently, it is clear that the application of the measure to the author is an act of indirect discrimination. Even if the measure at issue does not in itself have a discriminatory purpose and is not applied in a clearly discriminatory manner, it nonetheless produces a discriminatory effect.

7.9 The right to equality means that similar situations must be dealt with in the same way, and that, when necessary, different situations must be handled in different ways. The arguments in respect of article 18 concerning the need for and the proportionality of the measure are also valid for the complaints under articles 2 and 26.

Complaint relating to article 12

7.10 The author rejects the arguments of the State party on this subject, as they do not show that the restrictions to freedom of movement imposed on the author are justified. The criteria of necessity and proportionality to which reference is made are also valid in respect of the complaint relating to article 12.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the arguments of the State party, which maintains that the author has not exhausted domestic remedies because he did not bring the case before the Conseil d'Etat after his application was rejected by the Versailles Administrative Court of Appeal. The Committee notes that in 2006 the Conseil d'Etat had ruled against the author in an appeal submitted by him against Circular No. 2005-80 of 6 December 2005 on the use of identity photographs on driver's licences. In another case brought by a Sikh citizen, the Conseil d'Etat had also upheld Decree No. 46-1574, which requires the use of bareheaded photographs on residence permits. In the light of these precedents of the Conseil d'Etat in relation to identity photographs, and the relevant legislation in force in France at the time, the Committee considers that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication in respect of the complaints relating to articles 2, 26 and 18, the main elements of which have already been the subject of decisions by the Versailles Administrative Court of Appeal.

8.4 With regard to the complaint of a violation of article 12 of the Covenant, the Committee observes that the author did not contest the argument of the State party that the question relating to the violation of freedom of movement had not previously been raised before the Conseil d'Etat. Consequently, the Committee considers that domestic remedies have not been exhausted with respect to the alleged violation of article 12 of the Covenant and finds this part of the communication to be inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8.5 The Committee considers that all the other criteria for admissibility have been met and declares the communication admissible with respect to the complaints relating to articles 2, 18 and 26 of the Covenant.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's allegation that the requirement to appear bareheaded on his passport's identity photograph is a violation of his right to freedom of religion under article 18 of the Covenant and is neither necessary nor proportionate when considered in the light of paragraph 3 of that article. The Committee notes that the State party considers that the conditions established in article 18, paragraph 3, have been met in this case. Specifically, it is claimed that the requirement responds to the need to limit the risk of fraud or falsification of passports and facilitates the identification of the passport holder by the administrative authorities, while the constraints involved are only temporary.

9.3 The Committee refers to its general comment No. 22 concerning article 18 of the Covenant and considers that the freedom to manifest a religion encompasses the wearing of

distinctive clothing or head coverings.⁶ The fact that the Sikh religion requires its members to wear a turban when in public is not contested. The wearing of a turban is not only regarded as a religious duty, but is also tied in with a person's identity. The Committee therefore considers that the author's use of a turban is a religiously motivated act and that article 5 of Decree No. 2001-185 and its equivalent in Decree No. 2005-1726, which require bareheaded passport photographs, interfere with the exercise of the right to freedom of religion. The Committee must therefore determine whether the restriction of the author's freedom to manifest his religion or belief (art. 18, para. 1) is authorized by article 18, paragraph 3, of the Covenant.

9.4 There is no dispute as to the fact that the law requires people to appear bareheaded in their identity photographs and that the purpose of this requirement is to protect public safety and public order. The task before the Committee therefore is to decide whether that limitation is necessary and proportionate to the end that is sought.⁷ The Committee recognizes the State party's need to ensure and verify, for the purposes of public safety and public order, that the person appearing in the photograph on a passport is in fact the rightful holder of that document. The Committee observes, however, that the State party has not explained why the wearing of a Sikh turban covering the top of the head and a portion of the forehead, but leaving the rest of the face clearly visible, would make it more difficult to identify the author, who wears his turban at all times, than if he were to appear bareheaded. Nor has the State party explained in specific terms how bareheaded identity photographs of people who always appear in public with their heads covered help to facilitate their identification in everyday life and to avert the risk of fraud or falsification of passports.

9.5 Consequently, the Committee is of the view that the State party has not demonstrated that the limitation placed on the author is necessary within the meaning of article 18, paragraph 3, of the Covenant. It also observes that, even if the obligation to remove the turban for the identity photograph might be described as a one-time requirement, it would potentially interfere with the author's freedom of religion on a continuing basis because he would always appear without his religious head covering in the identity photograph and could thus be compelled to remove his turban during identity checks. The Committee therefore concludes that the regulation requiring persons to appear bareheaded in their passport photographs is a disproportionate limitation that infringes the author's freedom of religion and constitutes a violation of article 18 of the Covenant.

9.6 Having found that a violation of article 18 of the Covenant has occurred, the Committee will not consider the complaint stemming from the claim of a separate violation of the right to non-discrimination under articles 2 and 26 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of article 18 of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a reconsideration of his application for renewal of his passport and the revision of the relevant rules and their application in practice, in the light of its obligations under the Covenant. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has

⁶ Ibid., para. 4.

⁷ Ibid., para. 8.

been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
