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Views

Communication No. 1876/2000

Submitted by:	Ranjit Singh (represented by Christine Bustany of O'Melveny & Myers)
Alleged victim:	The author
State party:	France
Date of communication:	15 December 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 February 2009 (not issued in document form)
Date of adoption of Views:	22 July 2011
Subject matter:	Refusal to renew a residence permit in the absence of an identity photograph showing the applicant bareheaded
Procedural issues:	Failure to exhaust domestic remedies
Substantive issues:	Freedom of religion, non-discrimination, liberty of movement
Articles of the Covenant:	2, 12, 18 and 26
Articles of the Optional Protocol:	5, paragraph 2 (b)

On 22 July 2011, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 1876/2009.

[Annex]

* Made public by decision of the Human Rights Committee.

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 (102nd session)

concerning

Communication No. 1876/2009*

Submitted by:	Ranjit Singh (represented by 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 22 July 2011,

Having concluded its consideration of communication No. 1876/2009, submitted to the Human Rights Committee on behalf of Mr. Ranjit 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

1.1 The author of the communication is Mr. Ranjit Singh, an Indian national of Sikh origin who has had refugee status in France since 1992. He claims to be the victim of a violation by the State party of articles 2, 12, 18 and 26 of the International Covenant on Civil and Political Rights.[1] He is represented by counsel, Ms. Christine Bustany of O'Melveny & Myers.

* The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabián Omar Salvioli, Mr. Krister Thelin 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 adoption of the present decision.

The text of the individual opinion signed by Mr. Fabián Omar Salvioli, Committee member, is appended to the present decision.

[1] The Covenant and the relevant Optional Protocol entered into force for France on 4 February 1981 and 17 May 1984, respectively.

1.2 On 23 July 2010, the Chairperson, acting on behalf of the Committee, decided that the admissibility of the communication should be considered jointly with its merits.

The facts as submitted by the author

2.1 The author is an Indian citizen who has had refugee status and a permanent French residence permit since 1992. In 2002, his permanent residence permit was due for renewal. On 13 February 2002, the author submitted an application to renew his residence permit and provided two photographs showing him wearing a turban, as he had done when filing his previous application. On 22 February 2002, the Prefect of Paris informed him that the photographs which he had provided failed to meet the requirements of articles 7 and 8 of Decree No. 46-1574 of 30 June 1946 governing the conditions applying to foreign nationals' admission to and residence in France, which require individuals to appear full face and bareheaded. On 11 April 2002, the author sent a letter to the Prefect of Paris requesting an exemption from those provisions of the decree. This request was rejected in May 2002. He then wrote to the Minister of the Interior on 12 July 2002 and requested authorization to appear in a turban in his identity photographs. He received no reply.

2.2 On 20 July 2006, the Administrative Court of Paris rejected the application filed by the author, who was contesting the authorities' refusal to renew his residence card. On 24 May 2007, the Administrative Appeal Court of Paris rejected his appeal. In August 2007, he lodged an appeal in cassation with the Council of State. His appeal was rejected on 23 April 2009.

The complaint

3.1 The author explains that wearing a turban is a religious obligation and an integral part of Sikhism,[2] his religion. It is the outward manifestation of Sikhism and is closely intertwined with faith and personal identity. The removal of his turban could be viewed as a rejection of his faith, and its improper use by third parties is deeply insulting. Appearing bareheaded in public is deeply humiliating for Sikhs, and an identity photograph showing him bareheaded would produce feelings of shame and degradation every time it was viewed.[3] It is not just that the author would have to appear bareheaded for the photograph to be taken; the State party is, in essence, asking Mr. Singh to repeatedly humiliate himself whenever proof of his identity is requested. This is why the author has refused to comply with the requirement to remove his turban for his residence card photograph.

3.2 The author submits that Decree No. 46-1574 of 30 June 1946, which requires all identity photographs accompanying residence card applications to show applicants full face and bareheaded, takes no account of the fact that members of the Sikh community are bound by their religious beliefs to cover their heads in public at all times. He claims to be a victim of indirect discrimination by the State party in violation of article 18, paragraph 2.[4] He explains that, without his residence card, he is considered to be living illegally in France. As a result, he has also lost access to the free public health-care system.[5]

[2] Sikh code of conduct, Sikh Rehat Maryada, section 4, chapter X, article XVI, indent (t).

[3] The author cites a number of countries which have adapted their legislation in recognition of the importance attached by Sikhs to wearing a turban. These countries include Canada, Germany, the United Kingdom and the United States of America. He also cites the United Nations, which allows Sikhs to wear a turban rather than a helmet during peacekeeping missions.

[4] See general comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993), para. 5.

[5] The author cites a report by the Paris public hospital system (Assistance Publique des Hôpitaux de Paris) which establishes that non-renewal of a residence card results in the loss of all rights to health insurance.

3.3 Moreover, because the French Government has refused to renew his residence permit, the author no longer has access to unemployment benefits, housing benefits or reduced transit fares for older persons even though, under French law, the author's straitened financial circumstances entitle him to Government assistance, such as housing and unemployment benefits. The author last received such assistance in May 2005. His benefits were then discontinued following his refusal to remove his turban for his identity photographs. He submits that the withdrawal of his social benefits, when such benefits are received by other residents in France in a similar financial situation, amounts to indirect discrimination, which is prohibited under article 18, paragraph 2.[6]

3.4 The author points out that article 18, paragraph 3, of the Covenant permits restrictions on the freedom to manifest one's religion only if such limitations are prescribed by law and are necessary to achieve one of the aims referred to in article 18, paragraph 3.[7] He explains that an identity photograph showing him bareheaded would very probably lead to repeated situations in which he would be ordered to remove his turban for ease of comparison with the photograph. The author would thus suffer a double humiliation: each time that the authorities require him to remove his turban for ease of identification and each time that the photograph showing him bareheaded is examined by the French authorities. This repeated humiliation is not a proportionate measure for purposes of identification. He submits that requiring a person to be photographed bareheaded is not necessary in order to maintain public safety. The State party requires a photograph showing a person bareheaded, but has no objection to one showing a person with a beard covering half of the face. His first residence card bore a photograph showing him with a turban, while Decree No. 46-1574 of 30 June 1946, which requires individuals to appear bareheaded in identity photographs, was already in existence. He also notes that other European countries have issued residence cards with photographs of Sikhs wearing turbans[8] and that it is difficult to understand how a person wearing a turban can be considered identifiable in some European countries but not in France.

3.5 He submits that the authorities' explanation that a turban would prevent them from distinguishing facial features and would thus make identification more difficult is not a valid argument, since he wears a turban at all times. He would therefore be more readily identifiable from a photograph showing him wearing a turban than from one showing him bareheaded. He submits that requiring him to appear without his turban in identity photographs is disproportionate to the aims pursued.[9]

3.6 He also submits that the State party's refusal to renew his residence card constitutes a breach of article 12 of the Covenant on the liberty of movement. Unless his residence card is renewed, the author cannot obtain valid travel documents and cannot leave France.[10]

3.7 Furthermore, he maintains that the requirement to appear bareheaded in identity photographs also violates article 26 of the Covenant. Under Decree No. 46-1574 of 30 June 1946, as applied by the French authorities, he does not receive the same treatment as the

[6] See general comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993). See also communication No. 931/2000, *Hudoyberganova v. Uzbekistan*, Views adopted on 5 November 2004, paras. 6.2 and 7.

[7] See general comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993).

[8] For example, Belgium, Germany, Italy, Norway, Portugal and Sweden.

[9] The author cites the case of *Phull v. France*, application No. 35753/03, ECHR 2005-I, decision of 11 January 2005, but maintains that the State's objective was not the same as in his case. In the Phull case, the purpose of requiring a Sikh to remove his turban at an airport security check was to ensure the safety of the other passengers; however, in the communication that he has submitted to the Committee, the purpose of requiring the removal of his turban is his identification.

[10] General comment No. 27, CCPR/C/21/Rev.1/Add.9 (1999), para. 9.

majority of the population, since wearing a turban is an integral part of a Sikh's identity.[11] The author is compelled to choose between his religious duty and access to the public health-care system, a choice which most French citizens are not forced to make.

3.8 While taking due account of the State party's reservation to article 27 of the Covenant, the author submits that his communication constitutes an opportunity for the Committee to express its concerns regarding respect for the rights of minorities in France[12] and to recognize the Sikh community as an ethnic and religious minority.[13]

State party's observations on admissibility

4.1 On 22 April 2010, the State party contested the admissibility of the communication. It clarifies the facts as presented by the author and notes that in 1992 the author received a residence card, valid for 10 years, under article 15-10 of Ordinance No. 45-2658 of 2 November 1945 relating to the conditions applying to foreign nationals' admission to and residence in France. In his renewal application, the author refused to provide photographs showing him full face and bareheaded, as required since 1994 by article 11-1 of Decree No. 46-1574 of 30 June 1946 governing the conditions applying to foreign nationals' admission to and residence in France. On 12 July 2002, the Minister of the Interior implicitly rejected the author's appeal. On 24 May 2007, the Administrative Appeal Court of Paris rejected his appeal, ruling that the provisions at issue were not liable to make identification of the author during identity checks more difficult merely because he was wearing a turban and would not necessarily result in his having to remove his turban. The State party maintains that the one-off nature of the requirement to bare one's head in order to have a photograph taken is not disproportionate to the objective of public safety and does not involve discrimination.

4.2 The State party submits that the author brought his case to the Committee prior to 23 April 2009, when the Council of State ruled on his appeal. It maintains that, in his appeal before the Council of State, the author did not allege a violation of the provisions of the Covenant, but instead invoked articles 9 (freedom of religion) and 14 (non-discrimination) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. He has not, however, brought the matter before the European Court of Human Rights, evidently believing that the case law of the Court would not be favourable to him. On 13 November 2008, the Court had rejected as manifestly unfounded an appeal against a decision of the Council of State which alleged violations of articles 9 and 14 of the Convention.[14] The State party argues that the author chose to submit his complaint only to the Committee in an attempt to obtain a different decision from that reached by the Court. The State party considers that the author should have referred to the Covenant in the proceedings before the Council of State, since the case law of the European Court of Human Rights cannot be applied to complaints brought before the Committee because of the singular nature of the Covenant.

4.3 As to the alleged violation of article 12 of the Covenant, the State party submits that the author has never brought his claim regarding freedom of movement before the domestic courts, neither in a broad sense nor specifically on the basis of the Covenant. Consequently, this claim is not admissible.

[11] See general comment No. 18, 1989, para. 9.

[12] Concluding observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.72, 2001, paras. 15 and 25.

[13] The author cites the House of Lords decision in *Mandla v. Dowell Lee*, [1983] AC548.

[14] Ruling of the Council of State of 15 December 2006, Association United Sikhs and Mr. Singh Mann (No. 289946); decision of the European Court of Human Rights, No. 24479/07 of 13 November 2008.

State party's observations on the merits

5.1 On 23 August 2010, the State party submitted its observations on the merits. It considers that communication No. 931/2000, *Hudoyberganova v. Uzbekistan*,[15] which has been cited by the author, is not comparable to his situation. Unlike the circumstances in that case, the author has not been prohibited from wearing religious clothing. He has only been asked to provide identity photographs showing him bareheaded so that a residence permit can be issued, which involves removing religious clothing only while the photographs are being taken. The State party recalls the case law of the European Court of Human Rights, which has maintained that article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (freedom of thought, conscience and religion) does not protect every act motivated or inspired by a religion or belief and does not confer on people who behave in a manner governed by a religious belief the right to disregard rules that have proved to be justified.[16] The Court has found, for example, that neither the requirement that a student of the Muslim faith must provide a photograph showing her bareheaded for the purpose of the award of a degree certificate[17] nor the requirement that people remove their turban or veil for security checks at airports or consulates[18] interferes with the exercise of the right to freedom of religion.

5.2 The State party submits that, in a case very similar to the author's in which the applicant considered that the requirement to appear bareheaded in a driving licence photograph constituted a violation of privacy and of freedom of religion and conscience, the European Court of Human Rights rejected the application (No. 24479/07) as manifestly unfounded, without communicating the matter to the Government. The Court accepted the proposition that identity photographs showing people bareheaded are needed by the authorities responsible for ensuring public safety and for maintaining law and order and that the arrangements made for implementing security checks fall within the scope of the discretion of the State. It also maintained that the requirement to remove a turban for security checks or the issuance of a driving licence arises only occasionally.

5.3 The State party refers to article 18, paragraph 3, of the Covenant and to general comment No. 22 of the Committee,[19] which specify what limitations the State may place on the freedom to manifest one's religion. It submits that the measure at issue is prescribed by law, in particular article 11-1 of 1994 of the decree of 30 June 1946. The requirement to provide two identity photographs showing applicants bareheaded is designed to minimize the risk of fraud or falsification of residence permits and is justified in order to protect public order and public safety. It also considers that this regulation spares the administrative authorities the difficult task of trying to assess to what extent a specific type of headgear covers the face and facilitates or impedes the identification of an individual, thus ensuring security and equality before the law.

5.4 While acknowledging that the requirement to provide identity photographs in which people appear bareheaded may be an imposition for some individuals, the State party submits that such an imposition is of a limited nature. People who are accustomed to wearing a turban are not compelled to stop wearing it on a permanent or regular basis, but

[15] See communication No. 931/2000 *Hudoyberganova v. Uzbekistan*, Views adopted on 5 November 2004.

[16] *Leyla Sahin v. Turkey*, application No. 44774/98, ECHR 2005 XI, para. 104.

[17] *Karaduman v. Turkey*, application No. 16278/90, decision of the Commission of 3 May 1993, Decisions and reports (DR) 74, p. 93; *Araç v. Turkey*, application No. 9907/02, 19 September 2006.

[18] *Phull v. France*, application No. 35753/03, ECHR 2005-I; *El Morsli v. France*, application No. 15585/06, 4 March 2008.

[19] General comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993), para. 8.

only on a very occasional basis in order for a photograph to be taken. It also submits that any resulting discomfort for the author should be balanced against the public interest in combating the falsification of residence permits. Moreover, the fact that some States have adopted different measures in this area and the fact that the author was previously authorized to appear with a turban in the photograph affixed to his residence permit cannot be used as a justification. In conclusion, the State party maintains that the author has not been the victim of a violation of article 18 of the Covenant, since the domestic legislation at issue is justified by the need to protect public safety and order and since the means used are proportionate to the aims.

5.5 As to the alleged violation of articles 2 and 26 of the Covenant, the State party recalls the Committee's general comment No. 18[20] and submits that the author has not been discriminated against in any way, since the decree of 30 June 1946 applies to all residence permit applicants, without distinction. The State party points out that, in the present case, there are no grounds for exempting certain individuals on the basis of their religious views from rules that apply to everyone and that are designed to ensure public order and safety or for taking affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination.[21] As to the author's complaint regarding the loss of entitlement to a number of social benefits, it points out that some benefits are subject to a condition of legal residence, but that others are not, such as State medical assistance, emergency treatment and benefits connected with an occupational accident or disease. Furthermore, the State party points out that the author himself is responsible for the situation. It considers, therefore, that the author has not been a victim of a violation of articles 2 or 26 of the Covenant.

5.6 The State party submits that the author's complaint under article 12 of the Covenant raises no issue other than those figuring in the other complaints and that any restrictions on freedom of movement caused by the failure to issue a residence permit to the author are a result of his refusal to comply with the general rules governing the issuance of such permits. In conclusion, the State party submits that the Committee should reject the author's complaints under articles 2, 12, 18 and 26 of the Covenant as unfounded.

The author's comments on the State party's observations on admissibility and the merits

6.1 On 3 January 2011, the author argued that the requirement that domestic remedies must be exhausted as set forth under article 5, paragraph 2 (b), of the Optional Protocol had been fully met. In his first submission, made in English, on 15 December 2008, he referred to the Committee's case law, which indicates that the requirement to exhaust all domestic remedies does not necessarily oblige the complainant to obtain a decision from the highest national court. This exception applies if all the remedies have already been exhausted by another complainant in a case on the same subject.[22] On 15 December 2006, the Council of State issued a decision enforcing a very similar law under almost identical circumstances. The French authorities had refused to renew a driving licence because the identity photographs provided by the applicant showed him wearing a Sikh turban. On 26 January 2010, when the French translation of the initial complaint was submitted, the author referred to the negative decision of the Council of State dated 14 April 2009. As to the provisions invoked by the author before the national courts, he recalls the case law of the Committee, which indicates that authors must invoke the substantive rights contained in the Covenant before the national courts, but that they are not required, under the Optional

[20] General comment No. 18 on non-discrimination (1989), para. 7.

[21] General comment No. 18 on non-discrimination (1989), paras. 8 and 10.

[22] See communication No. 024/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981.

Protocol, to refer to articles of the Covenant.[23] In the proceedings before the Council of State, the author claimed that his right to freedom of religion and the principle of non-discrimination had been violated, and his complaint was based on the same circumstances as those presented to the Committee.

6.2 With regard to his complaint under article 12 of the Covenant, the author recalls the case law of the Committee, which states that remedies that are manifestly futile need not be exhausted in order to meet the requirements of article 5, paragraph 2 (b), of the Optional Protocol.[24] He submits that the decision of the Council of State would not have been different if he had raised the issue of a violation of the freedom of movement because that violation is closely connected to the violation of his freedom of religion.

6.3 On the merits, the author maintains that the State party has failed to demonstrate, under the circumstances of the case in question, the legitimate aim of Decree No. 46-1574 of 30 June 1946 or the necessity and proportionality of the restriction of his freedom of religion as set forth in article 18 of the Covenant.[25] The State party claims that the requirement to appear bareheaded in an identity photograph is a way of minimizing the risk of fraud and falsification of residence permits, but it makes no case for the need for such a measure in order to achieve that aim. The author reiterates that the requirement to appear bareheaded in an identity photograph is arbitrary and is also applied to situations in which head coverings do not hinder identification. The author maintains that a turban which is worn at all times does not impede identification in any way, unlike the case of people who radically change their appearance by cutting, growing out or colouring their hair or beards, wearing a wig, shaving their head or wearing heavy make-up.

6.4 In 1992, the author was allowed to appear in his turban in the identity photograph taken for his first residence permit, even though Decree No. 46-1574 of 30 June 1946, which requires photographs showing applicants bareheaded, was already in force. During the 10-year validity period of his residence permit, no identification problems arose. Moreover, most European countries that have the same concerns about fraud and public security allow religious head coverings to be worn in the photographs affixed to identity documents. As to the State party's argument that the regulation spares the authorities the difficult task of assessing to what extent a specific type of headgear covers the face and facilitates or impedes the identification of an individual, the author submits that the State party could easily establish administrative guidelines that would enable public officials to determine whether headgear also covers the face or not.[26]

6.5 The author submits that, even if the regulation were to be considered legitimate, it would still be disproportionate to the aim pursued. The author reiterates his deep

[23] See communication No. 273/1989, *B.d.B. et al. v. The Netherlands*, decision on admissibility of 30 March 1989, para. 6.3; communication No. 305/1988, *Van Alphen v. The Netherlands*, Views adopted on 23 July 1990.

[24] See, for example, communication No. 1184/2003, *Brough v. Australia*, Views adopted on 17 March 2006, para. 8.6; communication No. 1156/2003, *Escolar v. Spain*, Views adopted on 28 March 2006, paras. 5.2, 6; communication No. 1036/2001, *Faure v. Australia*, Views adopted on 31 October 2005, para. 6.1.

[25] See communication No. 202/1986, *Ato del Avellanal v. Peru*, Views adopted on 28 October 1988, para. 14; communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.1–13.3; communication No. 107/1981, *Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 11; communication No. 1085/2002, *Taright et al. v. Algeria*, Views adopted on 15 March 2006; communication No. 146/1983 and 148–153/1983, *Baboeram-Adhin et al. v. Suriname*, Views adopted on 4 April 1985, para. 14.2.

[26] See, for example, the instructions provided by the United States of America for passport applicants, para. 7: http://travel.state.gov/passport/get/first/first_830.html.

attachment to using a turban because of his religion and rejects the State party's argument that the restriction would be applied only on an occasional basis. He points out that a photograph showing him without a turban would exist on a continuing basis and would be an affront to his religion and ethnic identity. He also submits that a photograph showing him bareheaded would, in all probability, result in repeated requests from the authorities for him to remove his turban for ease of identification and, even if that were not the case, he would feel humiliated and feel like a traitor to his faith whenever the authorities examined his residency card containing a photograph in which he appeared bareheaded. He also points out that the State party has not established that a regulation prohibiting any head covering at all for everyone is the least restrictive measure for achieving the objective. He maintains that he is a victim of a continuing violation of his rights under article 18, paragraph 3, of the Covenant.

6.6 The author also restates that his case is comparable to that of *Hudoyberganova v. Uzbekistan*[27] because a complete ban on appearing in an identity photograph with a head covering, including religious head coverings, is a ban on wearing clothes that have a religious connotation. Moreover, as in the *Hudoyberganova v. Uzbekistan* case, France has not cited any specific reason why the restriction on the author is necessary within the meaning of article 18, paragraph 3. As to the case law of the European Court of Human Rights cited by the State party, the author stresses that it is not comparable with the Committee's case law, in particular with regard to the scope of discretion which the European Court accords to its member States. He also maintains that the case law in question cannot be applied to his situation because the aims invoked to justify the limitation of freedom of religion in the cases in question are not at issue in this instance. In the case of *Leyla Sahin v. Turkey*,[28] the Court was dealing with the principles of secularism, religious indoctrination and gender equality; in the case of *Phull v. France*,[29] the issue was ensuring the safety of air travellers. With respect to the case of *Shingara Mann Singh v. France*,[30] the Court had agreed that the regulation requiring Sikhs to appear bareheaded in identity photographs for driving licences interfered with their freedom of religion. While noting that the Court had rejected that complaint, the author maintains that it differs from his case, which involves an identity photograph for a residency card. Moreover, the Court had not considered the merits of that issue.

6.7 The author reiterates that he is the victim of indirect discrimination under articles 2 and 26 of the Covenant because Decree No. 46-1574 of 30 June 1946, which is supposed to be neutral, is an affront to the Sikh minority in France.[31] The majority of the population in France is Christian and is not bound by that religion to wear a religious item and is therefore not affected by the regulation in question. Once the author has established a prima facie case of discrimination, the State party must establish either that the effects of the regulation are not discriminatory or that the discrimination is justified. Yet the State party has merely argued that the regulation is not discriminatory in intent and is not applied in a discriminatory fashion, which does not rule out the presence of indirect discrimination.[32]

[27] See also communication No. 931/2000, *Hudoyberganova v. Uzbekistan*, Views adopted on 5 November 2004, paras. 6.2 and 7.

[28] *Leyla Sahin v. Turkey*, application No. 44774/98, para. 104 ECHR 2005 XI, see, in particular, the dissenting opinion of Judge Tukens, para. 8.

[29] *Phull v. France*, application No. 35753/03, ECHR 2005-I.

[30] *Shingara Mann Singh v. France*, application No. 24479/07, ECHR 1523, 27 November 2008.

[31] See communication No. 998/2001, *Althammer v. Austria*, Views adopted on 8 August 2003, para. 10.2; communication No. 208/1986, *Bhinder v. Canada*, Views adopted on 9 November 1989.

[32] See communication No. 172/1984, *Brooks v. The Netherlands*, Views adopted on 9 April 1987, paras. 12.3–16; communication No. 516/1992, *Simunek et al. v. the Czech Republic*, Views adopted on 19 July 1995, para. 11.7.

The author emphasizes that fully equal treatment is achieved, not by applying a regulation to everyone, but by applying it to similar situations and by handling different situations in different ways. The author also maintains that this discrimination continues to affect him and that it is false to say that he has had access to medical treatment other than emergency care. The author also maintains that the observations that he has made with regard to necessity and proportionality in relation to his claim under article 18 also apply to his complaint under articles 2 and 26 of the Covenant.

6.8 As to his claim under article 12 of the Covenant, the author reiterates that freedom of movement may be subject to restrictions only if they are necessary in order to safeguard national security and that any restrictive measure must be the least intrusive instrument amongst those which might achieve the desired result.[33] He restates his comments regarding necessity and proportionality and maintains that he is the victim of a violation under article 12 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 With regard to the question of the exhaustion of domestic remedies, the Committee takes note of the State party's argument that, at the time that the case was submitted to the Committee, the Council of State had not yet issued a decision concerning the author's complaint and that he had not invoked the Covenant before the Council of State but had instead based his claims on articles 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Committee refers to its jurisprudence and recalls that, when examining complaints, it seeks to determine whether or not all remedies have been exhausted at the time that a communication is taken under consideration.[34] On 23 April 2009, the Council of State dismissed the author's appeal on points of law.

7.4 The Committee also recalls that, for the purposes of the Optional Protocol, an author is not required to cite specific articles of the Covenant before domestic courts, but need only invoke the substantive rights protected under the Covenant.[35] The Committee notes that, in the domestic courts, the author claimed violations of the right to freedom of religion and of the principle of non-discrimination, which are protected under articles 18, 2 and 26 of the Covenant. The Committee is therefore not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering the case on its merits.

[33] General comment No. 27, CCPR/C/21/Rev.1/Add.9 (1999), para. 12.

[34] See communication No. 1228/2003, *Lemercier et al. v. France*, decision on inadmissibility of 27 March 2006, para. 6.4; communication No. 1045/2002, *Baroy v. Philippines*, Views of 31 October 2003, para. 8.3; communication No. 1069/2002, *Bakhtiyari v. Australia*, Views of 29 October 2003, para. 8.2.

[35] See communication No. 273/1989, *B.d.b et al. v. The Netherlands*, decision on admissibility of 30 March 1989, para. 6.3; communication No. 305/1988, *Van Alphen v. The Netherlands*, Views of 23 July 1990, para. 5.5.

7.5 With regard to the complaint of a violation of article 12 of the Covenant, the Committee observes that the author did not claim a violation in the domestic courts of his right to liberty of movement as protected under article 12 of the Covenant. The Committee therefore 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.

Consideration of the merits

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

8.2 The Committee takes note of the author's claim that the requirement that an individual appear bareheaded in the identity photograph used for a residence permit violates his right to freedom of religion under article 18 of the Covenant and is neither necessary for the protection of public safety and order nor a proportionate measure for purposes of identification. It also takes note of the author's claim that, because he does not have a residence permit, he no longer has access to the public health-care system or to social benefits. It takes note of the State party's view that requiring a person to remove his turban for the specific purpose of taking an identity photograph in which he appears bareheaded is a proportionate measure for the objective of protecting public safety and order and is motivated by a desire to limit the risk of fraud or falsification of residence permits.

8.3 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.[36] The fact that the Sikh religion requires its members to wear a turban in public is not contested. The wearing of a turban is regarded as a religious duty and 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 11-1 of Decree No. 46-1574 of 30 June 1946 (as amended in 1994), which deals with the conditions applying to foreign nationals' admission to and residence in France and which requires that people appear bareheaded in the identity photographs used on residence permits, interferes with the exercise of freedom of religion.

8.4 The Committee must therefore determine whether the limitation of the author's freedom to manifest his religion or beliefs (art. 18, para. 1) is authorized under article 18, paragraph 3, of the Covenant. The Committee notes that 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 order. It is therefore the responsibility of the Committee to decide whether that limitation is necessary and proportionate to the end that is sought.[37] The Committee recognizes the State party's need to ensure and verify, for the purposes of public safety and order, that the person appearing in the photograph on a residence permit is in fact the rightful holder of that document. It 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 than if he were to appear bareheaded, since he wears his turban at all times. Nor has the State party explained how, specifically, identity photographs in which people appear bareheaded help to avert the risk of fraud or falsification of residence permits. Consequently, the Committee is of the view that the State party has not demonstrated that the limitation placed on the author is

[36] See general comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993), para. 4.

[37] See general comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993), para. 8.

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 therefore be compelled to remove his turban during identity checks. The Committee therefore concludes that the regulation requiring persons to appear bareheaded in the identity photographs used on their residence permits is a limitation that infringes the author's freedom of religion and in this case constitutes a violation of article 18 of the Covenant.

8.5 Having ascertained that a violation of article 18 of the Covenant occurred, the Committee will not examine the claim based on a separate violation of the principle of non-discrimination guaranteed by article 26 of the Covenant.

9. 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.

10. 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 a renewal of his residence permit and a review of the relevant legislative framework and its 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.

11. 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 there has been a violation of the Covenant or not 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 in the event that 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 these Views. The State party is also requested to publish the Committee's 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.]

Appendix

Individual opinion of Mr. Fabián Omar Salvioli

1. I concur with the decision of the Human Rights Committee finding a violation of article 18 of the International Covenant on Civil and Political Rights in the case of *Ranjit Singh v. France* (communication No. 1876/2009). The Committee has correctly determined that the facts reveal a violation of the right to freedom of religion, to the detriment of the author of the communication.

2. I nonetheless consider, for reasons explained below, that in this case the Committee ought to have concluded that the State party is also responsible for a violation of article 2, paragraph 2, of the Covenant, and it ought to have concluded that as part of the reparations, the State party must amend its legislation to bring it into line with the Covenant.

Violation of article 2, paragraph 2, of the Covenant and the need for the Committee to grant clearer reparation

3. Ever since I became a member of the Committee, I have maintained that possible violations of article 2, paragraph 2, of the Covenant can be found in the context of an individual complaint, in accordance with current standards governing the international responsibility of States in respect of human rights. I have no reason to depart from the observations I made in paragraphs 6 to 11 of the individual opinion appended to communication No. 1406/2005 regarding the emergence of international responsibility through legislative acts, the Committee's capacity to apply article 2, paragraph 2, in the context of individual complaints, the interpretative criteria that should guide the Committee's work when considering and finding possible violations, and I refer to those arguments with regard to the consequences in terms of reparation.[38]

4. State parties to the Covenant cannot order action which violates the rights and freedoms established in the Covenant itself; such an action constitutes, in my estimation, a violation in and of itself of the obligations set out in article 2, paragraph 2, of the Covenant on Civil and Political Rights.

5. In the present case, furthermore; the question of public interest "*action*" does not arise, since what we have is the actual application, to the detriment of Mr. Ranjit Singh, of legislation (Decree No. 46-1574 of 30 June 1946) governing the conditions applying to foreign nationals' admission to and residence in France.

6. The aforementioned legislation requires applicants to be photographed full face and bareheaded. The latter requirement did not appear in the original version; it was added in 1994 with the amendment of article 11-1 of the decree, as expressly recognized by the State party (see paragraph 4.1 of the Committee's Views).

7. In 1994, when Decree No. 46-1574 was amended, the Covenant and its first Optional Protocol were fully in force for France.

8. This new legislation itself, irrespective of its application, breaches article 2, paragraph 2, of the Covenant inasmuch as France has not taken the requisite action under its domestic law to give effect to the right covered by article 18 of the International

[38] See partially dissenting individual opinion of Mr. Fabián Salvioli issued in the case of *Anura Weerawansa v. Sri Lanka*, communication No. 1406/2005.

Covenant on Civil and Political Rights. The author expressly cited a violation of article 2 of the Covenant and, in its decision, the Committee has remained silent with regard to this allegation.

9. The finding of a violation of article 2, paragraph 2, in a specific case has practical consequences in terms of reparation, especially as regards the prevention of any recurrence. The fact that in the present case there is indeed a victim of the application of a legal standard incompatible with the Covenant vitiates any interpretation relating to a possible ruling *in abstracto* by the Human Rights Committee.

10. Paragraph 10 of the Committee's Views, which informed the State party that "… a review of the relevant legislative framework and its application in practice, in the light of its obligations under the Covenant …" is a step forward in relation to its previous jurisprudence, but is still insufficient. What would happen if the State party were to "review" the framework but conclude that it does not have to amend its provision? Legislation that the Committee had found to be incompatible with the Covenant would remain in effect.

11. The Committee customarily ends its Views by stating that the State party is "*under an obligation to take steps to prevent similar violations in the future*". At this stage of progress of the Committee's work, it is vital for the Committee, rather than to talk in general terms, to indicate more explicitly the measures needed to prevent any recurrence of events such as those that led to the violation. This would assist State parties in duly honouring the obligations that they freely assumed on becoming parties to the Covenant and the Protocol.

12. In the present case there is no choice whatsoever: the legislation is in itself incompatible with the Covenant and, as a result, in order to guarantee that such events would not recur, the Committee ought to have indicated that the State party must amend Decree No. 46-1574, dated 30 June 1946, to remove the requirement that applicants must be photographed "*bareheaded*". This in no way prevents the State party from regulating the measures for the correct identification of persons, provided they are applied reasonably in terms of article 18, paragraph 3, of the Covenant.

(*Signed*) Fabián **Salvioli**

[Done in English, French and Spanish, the Spanish 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.]