[TRANSLATION]

...

THE FACTS

The applicant [Lucia Dahlab], a Swiss national born in 1965, is a primary-school teacher and lives in Geneva (Switzerland). She was represented before the Court by Mr M. Lironi and Mr C. Aellen, both of the Geneva Bar.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was appointed as a primary-school teacher by the Geneva cantonal government (*Conseil d'Etat*) on 1 September 1990, having taught at Châtelaine Primary School in the Canton of Geneva since the 1989-90 school year.

After a period of spiritual soul-searching, the applicant abandoned the Catholic faith and converted to Islam in March 1991. On 19 October 1991 she married an Algerian national, Mr A. Dahlab. The marriage has produced three children, born in 1992, 1994 and 1998.

The applicant began wearing an Islamic headscarf in class towards the end of the 1990-91 school year, her intention being to observe a precept laid down in the Koran whereby women were enjoined to draw their veils over themselves in the presence of men and male adolescents.

The applicant went on maternity leave from 21 August 1992 to 7 January 1993 and from 12 January 1994 to 1 June 1994.

In May 1995 the schools inspector for the Vernier district informed the Canton of Geneva Directorate General for Primary Education that the applicant regularly wore an Islamic headscarf at school; the inspector added that she had never had any comments from parents on the subject.

On 27 June 1996 a meeting was held between the applicant, the Director General of Primary Education ("the Director General") and the head of the teaching-personnel department concerning the fact that the applicant wore a headscarf. In a letter of 11 July 1996 the Director General confirmed the position she had adopted at the meeting, requesting the applicant to stop wearing the headscarf while carrying out her professional duties, as such conduct was incompatible with section 6 of the Public Education Act.

In a letter of 21 August 1996 the applicant requested the Director General to issue a formal ruling on the matter.

On 23 August 1996 the Directorate General for Primary Education confirmed its previous decision. It prohibited the applicant from wearing a

headscarf in the performance of her professional duties on the grounds that such a practice contravened section 6 of the Public Education Act and constituted "an obvious means of identification imposed by a teacher on her pupils, especially in a public, secular education system".

On 26 August 1996 the applicant appealed against that decision to the Geneva cantonal government.

The cantonal government dismissed the appeal in an order of 16 October 1996, on the following grounds:

> "Teachers must ... endorse both the objectives of the State school system and the obligations incumbent on the education authorities, including the strict obligation of denominational neutrality...
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> The clothing in issue ... represents ..., regardless even of the appellant's intention, a means of conveying a religious message in a manner which in her case is sufficiently strong ... to extend beyond her purely personal sphere and to have repercussions for the institution she represents, namely the State school system."

On a public-law appeal lodged by the applicant on 25 November 1996, in which she had alleged a violation of Article 9 of the Convention and submitted that the prohibition on wearing a headscarf interfered with the "inviolable core of her freedom of religion", the Federal Court upheld the Geneva cantonal government's decision in a judgment of 12 November 1997, which was served on 18 November 1997.

It held, in particular:

> "Firstly, it should be observed that the appellant's main argument is that her clothing, consisting of items that may be purchased at the hypermarket, should be treated not as a religious symbol but in the same way as any other perfectly inoffensive garments that a teacher may decide to wear for his or her own reasons, notably for aesthetic reasons or in order to emphasise or conceal part of his or her anatomy (a scarf around the neck, a cardigan, a hat, etc.). She accordingly submits that the impugned decision is tantamount to prohibiting teachers, without sufficient justification, from dressing as they please.
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> However, there is no doubt that the appellant wears the headscarf and loose-fitting clothes not for aesthetic reasons but in order to obey a religious precept which she derives from the following passages of the Koran.
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> ...
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> The wearing of a headscarf and loose-fitting clothes consequently indicates allegiance to a particular faith and a desire to behave in accordance with the precepts laid down by that faith. Such garments may even be said to constitute a 'powerful' religious symbol – that is to say, a sign that is immediately visible to others and provides a clear indication that the person concerned belongs to a particular religion.
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> What is in issue, therefore, is the wearing of a powerful religious symbol by a teacher at a State school in the performance of her professional duties. No restrictions have been imposed on the appellant as regards her clothing when she is not teaching. Nor does the case concern the wearing of a religious attribute by a pupil or the

wearing of outlandish or unusual clothing with no religious connotations by a teacher at school.

...

Similarly, by Article 9 § 2 of the European Convention on Human Rights, freedom to manifest one's religion or beliefs may be subject to restrictions (see the European Court of Human Rights' judgment of 25 May 1993 in the case of *Kokkinakis v. Greece*, Series A no. 260-A, § 33, and Frowein and Peukert, *Europäische Menschenrechtskonvention*, 2nd ed., 1996, note 1 on Article 9, p. 368). Conversely, freedom of thought is absolute; since it cannot by nature give rise to any interference with public order, it is not subject to any restrictions (see Velu and Ergec, *La Convention européenne des droits de l'homme*, Brussels, 1990, note 714, p. 584).

In the instant case, even if it is particularly important to the appellant and does not merely represent an expression of a particular religious belief but complies with an imperative requirement of that belief, the wearing of a headscarf and loose-fitting clothes remains an outward manifestation which, as such, is not part of the inviolable core of freedom of religion.

...

3. The appellant maintains that the impugned order does not have a sufficient basis in law.

...

Serious interferences with constitutional freedoms must be clearly and unequivocally provided for, as to their substance, by a law in the strict sense (*ATF* [*Arrêts du Tribunal fédéral suisse*], vol. 122 I, p. 360, ground 5(b)(bb), at p. 363, and vol. 118 Ia, p. 305, ground 2(a), at pp. 309-10). However, where interference with freedom of conscience and belief results from a rule of conduct that is very specific or would be regarded by the average citizen as being of minor importance (in this case, prohibiting a teacher from wearing a headscarf at school), the requisite basis in law cannot be too precise. In such circumstances it is sufficient for the rule of conduct to derive from a more general obligation laid down by the law in the strict sense.

Furthermore, the decision appealed against concerns the appellant in her capacity as a civil servant of the Canton of Geneva. Civil servants are bound by a special relationship of subordination to the public authorities, a relationship which they have freely accepted and from which they benefit; it is therefore justifiable that they should enjoy public freedoms to a limited extent only. In particular, the legal basis for restrictions on such freedoms does not have to be especially precise. The manifold, varying nature of daily relations between a civil servant and the authority to which he or she is answerable means that it is impossible to lay down an exhaustive list of types of conduct to be restricted or prohibited. It is therefore sufficient for the law to give a general indication, by means of indeterminate legal concepts, of the values which must be adhered to and which may subsequently be made explicit in an order or in an individual decision. However, as to their substance, any restrictions on public freedoms must be justified by the aim pursued and by the proper functioning of the institution. Lastly, observance of the principles of public interest and proportionality is to be monitored all the more rigorously where the interference with the civil servant's interests is serious and the basis in law imprecise (*ATF*, vol. 120 Ia, p. 203, ground

3(a), at p. 205; vol. 119 Ia, p. 178, ground 6(b), at p. 188; vol. 101 I a, p. 172, ground 6, at p. 181; *SJ* [*La Semaine Judiciaire*], 1995, p. 681, ground 3; *ZBl* [*Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht*] 85/1984, p. 308, ground 2(b); Pierre Moor, *Droit administratif*, Berne, vol. III, 1992, note 5.1.2.3., pp. 213-14, and note 5.3.1.2., pp. 223-24; vol. I, 1994, note 4.2.4.5., pp. 362 et seq.; Thomas Wyss, *Die dienstrechtliche Stellung des Volksschullehrers im Kanton Zürich*, thesis, Zürich, 1986, pp. 224 et seq.; Paul Richli, 'Grundrechtliche Aspekte der Tätigkeit von Lehrkräften', in *PJA* [*Pratique juridique actuelle*] 6/93, pp. 673 et seq., in particular p. 677).

In Geneva, section 6 of the cantonal Public Education Act of 6 November 1940 provides: 'The public education system shall ensure that the political and religious beliefs of pupils and parents are respected'. It also follows from Articles 164 et seq. of the cantonal Constitution that there is a clear separation between Church and State in the canton, the State being secular (Ueli Friederich, *Kirchen und Glaubensgemeinschaften im pluralistischen Staat*, thesis, Berne, 1993, p. 239, and Häfelin, op. cit. [*Commentaire de la Constitution fédérale*], notes 26-27 on Article 49). In the education system, this separation is given practical effect by section 120(2) of the Public Education Act, which provides: 'Civil servants must be lay persons; derogations from this provision shall be permitted only in respect of university teaching staff'.

In the instant case the measure prohibiting the appellant from wearing a headscarf that clearly identified her as a member of a particular faith reflects an increasing desire on the part of the Geneva legislature, as expressed in the provisions cited above, to ensure that the education system observes the principles of denominational neutrality (cf. Article 27 § 3 of the Constitution) and of separation between Church and State. Accordingly, even if the impugned order entailed serious interference with the appellant's freedom of religion, it had a sufficient basis in law.

...

4. (a) The appellant further submits that there were no public-interest grounds for the impugned decision.

In displaying a powerful religious attribute on the school premises – indeed, in the classroom – the appellant may have interfered with the religious beliefs of her pupils, other pupils at the school and the pupils' parents. Admittedly, there have been no complaints from parents or pupils to date. But that does not mean that none of them has been affected. Some may well have decided not to take any direct action so as not to aggravate the situation, in the hope that the education authorities will react of their own motion. Moreover, the matter has caused a stir among the public, the appellant has given numerous interviews and the Grand Council [cantonal parliament] has passed a resolution along the same lines as the decision taken by the cantonal government. In addition, while it is true that the education authorities did not intervene by taking a decision immediately after the inspector had informed them of the appellant's clothing, that attitude should not be construed as implicit approval. It is understandable that the authorities should first have attempted to settle the matter without resorting to confrontation.

The impugned decision is fully in accordance with the principle of denominational neutrality in schools, a principle that seeks both to protect the religious beliefs of pupils and parents and to ensure religious harmony, which in some respects is still

fragile. In this connection, it should be noted that schools would be in danger of becoming places of religious conflict if teachers were allowed to manifest their religious beliefs through their conduct and, in particular, their clothing.

There are therefore significant public-interest grounds for prohibiting the appellant from wearing an Islamic headscarf.

(b) It remains to be determined whether the impugned order observes the principle of proportionality; the interests at stake must be weighed up with the utmost care (Häfelin, op. cit., note 139 on Article 49).

Here, the appellant's freedom of conscience and belief should be weighed against the public interest in ensuring the denominational neutrality of the school system; in other words, the appellant's interest in obeying a precept laid down by her faith should be set against the interest of pupils and their parents in not being influenced or offended in their own beliefs, and the concern to maintain religious harmony in schools. Lastly, regard must also be had to the need for tolerance – a further element of the principle of denominational neutrality – between members of different religious faiths...

It should, however, be emphasised at the outset that religious freedom cannot automatically absolve a person of his or her civic duties – or, as in this case, of the duties attaching to his or her post (*ATF*, vol. 119 Ia, p. 178, ground 7(a), at p. 190). Teachers must tolerate proportionate restrictions on their freedom of religion (Hafner, *La liberta religiosa chiede la tolleranza per i simboli religiosi*, J+P Text 2/95, note III/D4, p. 9; Thomas Wyss, op. cit., p. 232).

(aa) Before the points in issue are examined in greater detail, it may be helpful to consider the solutions adopted by other countries in identical cases or by the Federal Court in similar cases.

...

Freedom of conscience and belief requires the State to observe denominational and religious neutrality; citizens may assert individual rights in this domain (*ATF*, vol. 118 Ia, p. 46, ground 3(b) at p. 53, and ground 4(e)(aa) at p. 58; vol. 113 Ia, p. 304, ground 4c at p. 307). There may be an infringement of freedom of religion where the State unlawfully takes sides in religious or metaphysical disputes, in particular by offering financial support to one of the protagonists (*ATF*, vol. 118 Ia, p. 46, ground 4(e)(aa) at p. 58). However, the neutrality requirement is not absolute, as is illustrated by the fact that national churches recognised by public law are allowed to exist (*ATF*, vol. 118 Ia, p. 46, ground 4(e)(aa) at p. 58; vol. 116 Ia, p. 252, ground 5(d) at pp. 258-59). Neutrality does not mean that all religious or metaphysical aspects are to be excluded from the State's activities; however, an attitude that is anti-religious, such as militant secularism, or irreligious does not qualify as neutral. The principle of neutrality seeks to ensure that consideration is given, without any bias, to all conceptions existing in a pluralistic society. The principle that the State may not discriminate in favour of or against anybody on religious grounds is general in scope and results directly from Articles 49 and 50 of the Constitution (*ATF*, vol. 118 Ia, p. 46, ground 4(e)(aa) at p. 58; Karlen, 'Umstrittene Religionsfreiheit', op. cit. [in *Revue du droit suisse ('RDS')* 1997 I, p. 193] at pp. 199-200; *idem*, *Das Grundrecht* [*der Religionsfreiheit in der Schweiz*], op. cit. [Zürich, 1988], p. 188). Lastly, the secular nature of the State entails an obligation to remain neutral, which means that in all official dealings it must

refrain from any denominational or religious considerations that might jeopardise the freedom of citizens in a pluralistic society (*ATF*, vol. 116 Ia, p. 252, ground 5(e) at p. 260, and the references cited). In that respect, the principle of secularism seeks both to preserve individual freedom of religion and to maintain religious harmony in a spirit of tolerance (see Gut, op. cit. ['Kreuz und Kruzifix in öffentlichen Räumen im säkularen Staat', in *RDS* 1997 I, p. 63], note 11 at p. 76; and Martin Philipp Wyss, op. cit. ['Glaubens- und Religionsfreiheit zwischen Integration und Isolation', in *ZBl* 95/1994, p. 385], at pp. 400-01).

This neutrality assumes particular importance in State schools, because education is compulsory for all, without any distinction being made between different faiths. In this respect, Article 27 § 3 of the Federal Constitution, according to which 'it shall be possible for members of all faiths to attend State schools without being affected in any way in their freedom of conscience or belief', is the corollary of freedom of conscience and belief.

...

Accordingly, the attitude of teachers plays an important role. Their mere conduct may have a considerable influence on their pupils; they set an example to which pupils are particularly receptive on account of their tender age, their daily contact with them – which, in principle, is inescapable – and the hierarchical nature of this relationship. Teachers are both participants in the exercise of educational authority and representatives of the State, which assumes responsibility for their conduct. It is therefore especially important that they should discharge their duties – that is to say, imparting knowledge and developing skills – while remaining denominationally neutral."

After a lengthy discussion of the scope of the neutrality requirement, the Federal Court concluded as follows:

"(cc) In the instant case, on the one hand, as was outlined above, prohibiting the appellant from wearing a headscarf forces her to make a difficult choice between disregarding what she considers to be an important precept laid down by her religion and running the risk of no longer being able to teach in State schools.

On the other hand, however, the headscarf is a manifest religious attribute in this case. Furthermore, the appellant teaches in a primary school; her pupils are therefore young children who are particularly impressionable. Admittedly, she is not accused of proselytising or even of talking to her pupils about her beliefs. However, the appellant can scarcely avoid the questions which her pupils have not missed the opportunity to ask. It would seem somewhat awkward for her to reply by citing aesthetic considerations or sensitivity to the cold – the approach she claims to have adopted to date, according to the file – because the children will realise that she is evading the issue. It is therefore difficult for her to reply without stating her beliefs. However, the appellant participates in the exercise of educational authority and personifies school in the eyes of her pupils; as a result, even if other teachers from the same school display different religious views, the manifestation of such an image of oneself appears hard to reconcile with the principle of non-identification with a particular faith in so far as her status as a civil servant means that the State must assume responsibility for her conduct. Lastly, it should be emphasised that the Canton of Geneva has opted for a clear separation between Church and State, reflected in particular by the distinctly secular nature of the State education system.

It must also be acknowledged that it is difficult to reconcile the wearing of a headscarf with the principle of gender equality (see Sami Aldeeb, 'Musulmans en terre européenne', in *PJA* 1/96, pp. 42 et seq., in particular section (d) at p. 49), which is a fundamental value of our society enshrined in a specific provision of the Federal Constitution (Article 4 § 2) and must be taken into account by schools.

Furthermore, religious harmony ultimately remains fragile in spite of everything, and the appellant's attitude is likely to provoke reactions, or even conflict, which are to be avoided. When the various interests at stake are weighed up, regard must also be had to the fact that allowing headscarves to be worn would result in the acceptance of garments that are powerful symbols of other faiths, such as soutanes or kippas (in this connection, the principle of proportionality has led the cantonal government to allow teachers to wear discreet religious symbols at school, such as small pieces of jewellery – an issue that does not require further discussion here). Such a consequence might undermine the principle of denominational neutrality in schools. Lastly, it may be observed that it is scarcely conceivable to prohibit crucifixes from being displayed in State schools and yet to allow the teachers themselves to wear powerful religious symbols of whatever denomination."

B. Relevant domestic law

Section 6 of the Canton of Geneva Public Education Act of 6 November 1940 provides:

"The public education system shall ensure that the political and religious beliefs of pupils and parents are respected."

Section 120(2) of the Public Education Act provides:

"Civil servants must be lay persons; derogations from this provision shall be permitted only in respect of university teaching staff."

Article 27 § 3 of the Federal Constitution of 29 May 1874 reads:

"It shall be possible for members of all faiths to attend State schools without being affected in any way in their freedom of conscience or belief."

COMPLAINTS

1. The applicant submitted that the measure prohibiting her from wearing a headscarf in the performance of her teaching duties infringed her freedom to manifest her religion, as guaranteed by Article 9 of the Convention. She further complained that the Swiss courts had erred in accepting that the measure had a sufficient basis in law and in considering that there was a threat to public safety and to the protection of public order. She observed that the fact that she wore an Islamic headscarf had gone unnoticed for four years and did not appear to have caused any obvious disturbance within the school.

2. In conjunction with Article 9, the applicant submitted that the prohibition imposed by the Swiss authorities amounted to discrimination on the ground of sex within the meaning of Article 14 of the Convention, in that a man belonging to the Muslim faith could teach at a State school without being subject to any form of prohibition.

THE LAW

1. The applicant submitted that the measure prohibiting her from wearing a headscarf in the performance of her teaching duties infringed her freedom to manifest her religion, as guaranteed by Article 9 of the Convention, the relevant parts of which provide:

> "1. Everyone has the right to freedom of ... religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion ... in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion ... shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Government made the preliminary observation that, in the opinion of the applicant herself, the Islamic headscarf was a powerful religious symbol and was directly recognisable by others. They further noted that the scope of the present case was delimited by the Federal Court's judgment of 12 November 1997, which drew a fundamental distinction between the wearing of a religious attribute by a teacher and similar conduct on the part of a pupil. The Federal Court had held that the prohibition on wearing an Islamic headscarf applied solely to the applicant in her capacity as a teacher at a State school and could not extend to the alleged effects on the freedom of conscience and religion of pupils who wore veils.

In their analysis, the Government stated that the measure prohibiting the applicant from wearing a headscarf in her capacity as a teacher at a State school did not amount to interference with her right to freedom of religion. In that connection, they drew attention to the principle that State schools were non-denominational, as laid down in Article 27 § 3 of the Federal Constitution, a principle that applied in every State school in Switzerland. In the Canton of Geneva, that constitutional guarantee was given effect by sections 6 and 120(2) of the Public Education Act. In the instant case the applicant had chosen to pursue her profession as a teacher at a State school, an institution that was required to observe the principle of secularism in accordance with the provisions cited above. She had satisfied that requirement when she had been appointed on a permanent basis in December 1990. At that time she had been a member of the Catholic faith

and had not manifested her religious beliefs by wearing any conspicuous religious symbols. It was after her appointment that she had decided, on 23 March 1991, to convert to Islam and to go to school wearing a headscarf.

The Government submitted that the applicant was qualified to teach children aged between four and eight and that she accordingly had the option of teaching infant classes at private schools; such classes, of which there were many in the Canton of Geneva, were not bound by the requirement of secularism.

In the eventuality of the Court's holding that the measure in issue amounted to interference with the applicant's right to freedom of religion, the Government submitted, in the alternative, that the interference was justified under paragraph 2 of Article 9 of the Convention.

The interference, they maintained, had a basis in law. Article 27 § 3 of the Federal Constitution made it compulsory to observe the principle of denominational neutrality in schools. Section 6 of the Public Education Act established the principle that the State education system had to respect the religious beliefs of pupils and parents, and section 120(2) of the Act laid down the rule that civil servants had to be lay persons. Furthermore, even before the applicant had decided to convert to Islam in March 1991, the Federal Court had ruled on the scope of the secularism requirement in Article 27 § 3 of the Constitution. In particular, in a published judgment of 26 September 1990 it had held that the presence of a crucifix in State primary-school classrooms fell foul of the requirement of denominational neutrality (*ATF*, vol. 116 Ia, p. 252).

The Government argued that the aims pursued in the instant case were undeniably legitimate and were among those listed in the second paragraph of Article 9 of the Convention. In their submission, the measure prohibiting the applicant from wearing an Islamic headscarf was based on the principle of denominational neutrality in schools and, more broadly, on that of religious harmony.

Lastly, the prohibition was necessary in a democratic society. In the Government's view, where an applicant was bound to the State by a special status, the national authorities enjoyed a wider margin of appreciation in restricting the exercise of a freedom. As a teacher at a State school, the applicant had freely accepted the requirements deriving from the principle of denominational neutrality in schools. As a civil servant, she represented the State; on that account, her conduct should not suggest that the State identified itself with one religion rather than another. That was especially valid where allegiance to a particular religion was manifested by a powerful religious symbol, such as the wearing of an Islamic headscarf.

The Government pointed out that the State's neutrality as regards religious beliefs was all the more valuable as it made it possible to preserve individual freedom of conscience in a pluralistic democratic society. The need to preserve such pluralism was even more pressing where the pupils

came from different cultural backgrounds. In the applicant's case, her class comprised pupils of a wide range of nationalities. Lastly, it should not be forgotten that teachers were important role models for their pupils, especially when, as in the applicant's case, the pupils were very young children attending compulsory primary school. Experience showed that such children tended to identify with their teacher, particularly on account of their daily contact and the hierarchical nature of their relationship.

In the light of those considerations, the Government were satisfied that the Swiss authorities had not exceeded the margin of appreciation which they enjoyed in the light of the Court's case-law.

In the applicant's submission, the secular nature of State schools meant that teaching should be independent of all religious faiths, but did not prevent teachers from holding beliefs or from wearing any religious symbols whatever. She argued that the measure prohibiting her from wearing a headscarf amounted to manifest interference with her right to freedom of conscience and religion.

The applicant pointed out that, after her appointment as a civil servant in the public education service, she had converted to Islam in March 1991 following a period of spiritual soul-searching. Since that time, she had worn a headscarf in class, a fact that had not bothered the school's head teacher, his immediate superior or the district inspector whom she had met regularly. Furthermore, her teaching, which was secular in nature, had never given rise to the slightest problem or to any complaints from pupils or their parents. The Geneva authorities had consequently been in full knowledge of the facts in endorsing, until June 1996, the applicant's right to wear a headscarf. Only then, without stating any reasons, had the authorities required her to stop wearing the headscarf.

The applicant further maintained that, contrary to the Government's submissions, she had no choice but to teach within the State school system. In practice, State schools had a virtual monopoly on infant classes. Private schools, of which there were not many in the Canton of Geneva, were not non-denominational and were governed by religious authorities other than those of the applicant; accordingly, they were not accessible to her. Lastly, the applicant contended that it had never been established that her clothing had had any impact on pupils. The mere fact of wearing a headscarf was not likely to influence the children's beliefs. Indeed, some of the children or their parents wore similar garments, both at home and at school.

Under the second paragraph of Article 9 of the Convention, the applicant submitted that the interference in question infringed her freedom of religion because it had no basis in law and was not justified. She pointed out that section 6 of the Public Education Act referred expressly to the education system alone and not to teachers themselves, and that section 120(2) of the Act did not clarify the situation.

Furthermore, the fact that no complaints had been made by pupils or parents during a period of more than five years constituted sufficient proof that the religious beliefs of others had been respected. Lastly, religious harmony had never been disturbed within the school, because the applicant had always shown tolerance towards her pupils, all the more so as they encompassed a wide range of nationalities and were therefore particularly accustomed to diversity and tolerance.

The Court refers, in the first place, to its case-law to the effect that freedom of thought, conscience and religion, as enshrined by Article 9 of the Convention, represents one of the foundations of a "democratic society" within the meaning of the Convention. In its religious dimension, it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Kokkinakis v. Greece*, 25 May 1993, Series A no. 260-A, p. 17, § 31, and *Otto-Preminger-Institut v. Austria*, 20 September 1994, Series A no. 295-A, p. 17, § 47).

The Court further observes that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, p. 18, § 33).

The applicant argued, firstly, that the impugned measure did not have a sufficient basis in law. In The Sunday Times *v. the United Kingdom (no. 1)* (26 April 1979, Series A no. 30, p. 31, § 49) the Court made the following observations about the expression "prescribed by law" in paragraph 2 of Article 9:

> "In the Court's opinion, the following are two of the requirements that flow from the expression 'prescribed by law'. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

The wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. The interpretation and application of such enactments depend on practice (see *Kokkinakis*, cited above, p. 19, § 40).

Having examined the Federal Court's reasoning on this point, the Court observes that sections 6 and 120(2) of the cantonal Act of 6 November 1940 were sufficiently precise to enable those concerned to regulate their conduct. The measure in issue was therefore prescribed by law within the meaning of Article 9 § 2 of the Convention.

The applicant further argued that the measure did not pursue a legitimate aim. Having regard to the circumstances of the case and to the actual terms of the decisions of the three relevant authorities, the Court considers that the measure pursued aims that were legitimate for the purposes of Article 9 § 2, namely the protection of the rights and freedoms of others, public safety and public order.

Lastly, as to whether the measure was "necessary in a democratic society," the Court reiterates that, according to its settled case-law, the Contracting States have a certain margin of appreciation in assessing the existence and extent of the need for interference, but this margin is subject to European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court's task is to determine whether the measures taken at national level were justified in principle – that is, whether the reasons adduced to justify them appear "relevant and sufficient" and are proportionate to the legitimate aim pursued (see The Sunday Times *v. the United Kingdom (no. 2)*, 26 November 1991, Series A no. 217, pp. 28-29, § 50). In order to rule on this latter point, the Court must weigh the requirements of the protection of the rights and liberties of others against the conduct of which the applicant stood accused. In exercising its supervisory jurisdiction, the Court must look at the impugned judicial decisions against the background of the case as a whole (see *Kokkinakis v. Greece*, cited above, p. 21, § 47).

Applying these principles in the instant case, the Court notes that the Federal Court held that the measure by which the applicant was prohibited, purely in the context of her activities as a teacher, from wearing a headscarf was justified by the potential interference with the religious beliefs of her pupils, other pupils at the school and the pupils' parents, and by the breach of the principle of denominational neutrality in schools. In that connection, the Federal Court took into account the very nature of the profession of State school teachers, who were both participants in the exercise of educational authority and representatives of the State, and in doing so weighed the protection of the legitimate aim of ensuring the neutrality of the State education system against the freedom to manifest one's religion. It further noted that the impugned measure had left the applicant with a difficult choice, but considered that State school teachers had to tolerate proportionate restrictions on their freedom of religion. In the Federal Court's view, the interference with the applicant's freedom to manifest her religion was justified by the need, in a democratic society, to protect the right of State school pupils to be taught in a context of denominational

neutrality. It follows that religious beliefs were fully taken into account in relation to the requirements of protecting the rights and freedoms of others and preserving public order and safety. It is also clear that the decision in issue was based on those requirements and not on any objections to the applicant's religious beliefs.

The Court notes that the applicant, who abandoned the Catholic faith and converted to Islam in 1991, by which time she had already been teaching at the same primary school for more than a year, wore an Islamic headscarf for approximately three years, apparently without any action being taken by the head teacher or the district schools inspector or any comments being made by parents. That implies that during the period in question there were no objections to the content or quality of the teaching provided by the applicant, who does not appear to have sought to gain any kind of advantage from the outward manifestation of her religious beliefs.

The Court accepts that it is very difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children. The applicant's pupils were aged between four and eight, an age at which children wonder about many things and are also more easily influenced than older pupils. In those circumstances, it cannot be denied outright that the wearing of a headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which, as the Federal Court noted, is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.

Accordingly, weighing the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony, the Court considers that, in the circumstances of the case and having regard, above all, to the tender age of the children for whom the applicant was responsible as a representative of the State, the Geneva authorities did not exceed their margin of appreciation and that the measure they took was therefore not unreasonable.

In the light of the above considerations and those set out by the Federal Court in its judgment of 12 November 1997, the Court is of the opinion that the impugned measure may be considered justified in principle and proportionate to the stated aim of protecting the rights and freedoms of others, public order and public safety. The Court accordingly considers that the measure prohibiting the applicant from wearing a headscarf while teaching was "necessary in a democratic society."

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

2. In conjunction with the alleged violation of Article 9 of the Convention, the applicant submitted that the prohibition amounted to discrimination on the ground of sex within the meaning of Article 14 of the Convention, in that a man belonging to the Muslim faith could teach at a State school without being subject to any form of prohibition, whereas a woman holding similar beliefs had to refrain from practising her religion in order to be able to teach.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court reiterates that the Convention institutions have consistently held that Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, Series A no. 216, p. 35, § 73, and The Sunday Times *v. the United Kingdom (no. 1)*, cited above, p. 43, § 70). For the purposes of Article 14 a difference in treatment is discriminatory if it does not pursue a legitimate aim or if there is not a relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Van Raalte v. the Netherlands*, 21 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 186, § 39).

The Court also reiterates that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference in treatment on the ground of sex could be regarded as compatible with the Convention (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94, p. 38, § 78, and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, Series A no. 263, pp. 21-22, § 67).

The Court notes in the instant case that the measure by which the applicant was prohibited, purely in the context of her professional duties, from wearing an Islamic headscarf was not directed at her as a member of the female sex but pursued the legitimate aim of ensuring the neutrality of the State primary-education system. Such a measure could also be applied to a man who, in similar circumstances, wore clothing that clearly identified him as a member of a different faith.

The Court accordingly concludes that there was no discrimination on the ground of sex in the instant case.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.