

November 2008

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## ***Mann Singh v. France - 24479/07***

Decision 13.11.2008 [Section V]

### **Article 9**

#### **Article 9-1**

##### **Manifest religion or belief**

Obligation to remove turban for driving licence photograph:*inadmissible*

The applicant is a practising Sikh. The Sikh religion requires its male followers to wear a turban at all times. In 2004 the prefecture refused twice to issue the applicant with a duplicate of his driving licence, which had been stolen, because the identity photos he supplied showed him wearing a turban. The applicant took various steps before the domestic courts with a view, in particular, to have the refusals set aside and seeking an order requiring the prefecture to issue the duplicate licence or pay a pecuniary penalty. He also made an urgent application to the court seeking a stay of execution of the impugned decisions.

Meanwhile, in December 2005 the Minister of Transport, Public Works, Tourism and the Sea sent prefects a circular concerning identity photographs for use on driving licences, stipulating that applications for driving licences or duplicate licences had to be accompanied by a photograph showing the person "bareheaded and facing forward". In December 2006 the *Conseil d'Etat* rejected an appeal for abuse of authority lodged by the applicant and the "United Sikhs" association against the December 2005 circular, taking the view that the impugned provisions, which were designed to minimise the risk of fraud or falsification of driving licences by enabling the holder to be identified with the maximum degree of certainty, were neither unsuited nor disproportionate to that aim. It added that the fact that photographs showing persons wearing head coverings had been tolerated in the past did not prevent a decision being taken to put an end to that policy in view of the increased incidence of falsification. Finally, it ruled that the specific instance of interference complained of with the tenets and rites of the Sikh religion had not been disproportionate to the aim pursued, bearing in mind, in particular, that the requirement for persons to remove head coverings for the purpose of having their photograph taken "bareheaded" was a sporadic one and did not imply that persons of the Sikh faith should be accorded special treatment.

*Inadmissible:* The impugned regulations, which required subjects to be shown "bareheaded" in identity photographs for use on driving licences, amounted to interference with exercise of the right to freedom of religion and conscience. The interference in question was prescribed by law and pursued at least one of the legitimate aims listed in the second paragraph of Article 9 of the Convention, namely ensuring public safety. While religious freedom was primarily a matter of individual conscience, it also implied freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shared. However, Article 9 did not protect every act motivated or inspired by a religion or belief. Furthermore, it did not always guarantee the right to behave in a manner governed by a religious belief and did

not confer on people who did so the right to disregard rules that had proved to be justified.

In the present case the Court noted that identity photographs on driving licences which showed the subject bareheaded were needed by the authorities in charge of public safety and law and order, particularly in the context of checks carried out under the road traffic regulations, to enable them to identify the driver and verify that he or she was authorised to drive the vehicle concerned. It stressed that checks of that kind were necessary to ensure public safety within the meaning of Article 9 § 2.

The Court considered that the detailed arrangements for implementing such checks fell within the respondent State's margin of appreciation, especially since the requirement for persons to remove their turbans for that purpose or for the initial issuance of the licence was a sporadic one. It therefore held that the impugned interference had been justified in principle and proportionate to the aim pursued: *manifestly ill- founded*.

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