

# Wearing a sign expressing a religious affiliation or opinion with the lawyer's robe: possibility for the Bar Council to prohibit it in its internal regulations (ruling 20-20.185)

02/03/2022



Ruling No. 303 FP-B+R  
Appeal No. D 20-20.185

**Dismissal**

**Public hearing of 2 March 2022**

**Dismissal**

**Mr CHAUVIN, President**

**Ruling No. 303 FP-B+R**

**Appeal No. D 20-20.185**

FRENCH REPUBLIC

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ON BEHALF OF THE FRENCH PEOPLE

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**RULING OF FIRST CIVIL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 2 MARCH 2022**

(1) Ms [M] [J], domiciled [Address 2],

(2) Mr [D] [Y], domiciled [Address 3],

Filed appeal No. D 20-20.185 against the ruling delivered on 9 July 2020 by the *cour d'appel* (Court of Appeal) of [Address 6] (official hearing), in the dispute between the latter and the Council of the Lille Bar Association, domiciled at [Address 1], respondent before the Court of Cassation.

In support of their appeal, the appellants rely on the five grounds of quashing attached to this ruling.

The Ombudsman submitted observations on 1 February 2022, pursuant to Article 33 of Organic Law No. 2011-333 of 23 March 2011;

The case file has been sent to the Prosecutor General.

Concerning Ms Le Gall's report, judge referee, the comments and arguments of SCP Waquet, Farge and Hazan, lawyers representing Ms [J] and Mr [Y], of the SCP Duhamel-Rameix-Gury-Maitre, lawyers representing the Council of the Lille Bar Association, the Ombudsman's observations and Mr Poirret's advisory opinion, first advocate-general, following debate in the public hearing of 15 February 2022 in the presence of Mr Chauvin, President, Ms

Le Gall, reporting judge referee, Ms Duval-Arnould, elder judge, Mr Vigneau, Ms Auroy, Mr Hascher, Ms Antoine, Ms Avel, Ms Mornet, Ms Poinseaux, Mr Chevalier, judges, Messrs Vitse, Duval, judge referees, Mr Poirret, first advocate-general, and Ms Tinchon, Chamber Registrar, first civil chamber of the *Cour de cassation* (Court of cassation), composed, pursuant to Articles R. 421-4-1, paragraph 2, and R. 431-5 of the Judicial Code, of the above-mentioned President and judges, following deliberation thereof in accordance with law, has delivered this ruling.

## **Facts and procedure**

1. According to the ruling under appeal (Address 6, 9 July 2020), by decision of 24 June 2019, notified to the members of the Bar Association on 27 June, the Council of the Lille Bar Association (the Bar Council of the Bar Association) amended Rule 9.6 of its Rules of Procedure, relating to relations with institutions, by adding a fifth paragraph: *'the lawyer may not wear the gown in conjunction with any decorations or signs conspicuously manifesting any religious, philosophical, community or political affiliation or opinion.'*
2. On 27 August 2019, Ms [J], a lawyer preparing for the Bar at I[8], and Mr [Y], a lawyer member of the Lille Bar Association, each filed an appeal against this decision before the Chairman of the Bar Association.

## **Reviewing pleas**

## On the first plea

3. Ms [J] complains that the ruling dismissed the action filed against the decision of the Bar Council of the Bar Association of 24 June 2019, when:

"(1) *the provisions of Article 19 of Law No. 71-1130 of 31 December 1971 relating to the profession of lawyer are contrary to the rights and freedoms guaranteed by the Constitution and, in particular, to the right to an effective judicial remedy protected by Article 16 of the Declaration of Human Rights of 1789 insofar as they only enable lawyers the possibility of referring to the Court of Appeal a decision or resolution of the Council of the Bar Association likely to prejudice their professional interests, at the exclusion of lawyers preparing for the Bar; that the declaration of unconstitutionality, which will be pronounced after the Priority Constitutional Question, made in a separate and reasoned written form, before the Constitutional Council, will deprive Article 15 of executive order No. 91-1197 of 27 November 1991 and the ruling under appeal of any legal basis;*

(2) *that a lawyer preparing for the Bar at a vocational training centre who wears a veil or headscarf has an interest in initiating an action for annulment of the deliberation by the Bar Council of the Bar Association in which she is preparing entry, prohibiting the use of the lawyer's gown in conjunction with any decorations or signs conspicuously manifesting any religious, philosophical, community or political affiliation or opinion; that the court of appeal violated Article 31 of the Civil Procedure Code;*

(3) *that any person whose rights and freedoms recognized in the European Convention on Human Rights have been violated has the right to an effective remedy before a national body; that the European Court of Human Rights admits claims of violations of the rights and freedoms of said convention by any person who, in the absence of an individual act of enforcement, is one of a category of persons at risk of directly suffering the effects of the law denounced as violating their rights and freedoms; by failing to examine whether, in her capacity as a lawyer preparing for the Bar in [4], [Address 6] and [Address 9], Ms [J], who wears a veil, was not one of a category of persons at risk of being directly affected by the decision of the Bar Council of the Bar Association prohibiting the use of a lawyer's gown in conjunction with any decorations or signs conspicuously manifesting any religious, philosophical, community or political affiliation or opinion, the Court of Appeal deprived its decision of any legal basis in the light of Article 13 of the European Convention on Human Rights."*

## Court's response

4. Firstly, by ruling of 8 April 2021 (No. 398 FS-P), the *Cour de cassation* (Court of Cassation) stated that there was no need to refer the Priority Constitutional Question to the Constitutional Council.
5. Secondly, it follows from Articles 31 of the Civil Procedure Code, 19 of Law No 71-1130 of 31 December 1971 and Articles 14, 15 and 62 of executive order No 91-1197 of 27 November 1991 that, on the one hand, only the Prosecutor-General or a lawyer who considers that his professional interests have been prejudiced, may refer the resolutions or decisions of the Bar Council of the Bar Association to the Court of Appeal; on the other hand, lawyers preparing for the Bar [5] are legally dependent on that centre, such that, in the case of an assigned action, the latter shall have no legal standing to challenge a decision of the Council of a Bar association.
6. After having acknowledged that Ms [J] was not a lawyer, but a lawyer preparing for the Bar at [7] and not yet the holder of the certificate of proficiency of the profession as an attorney, the Court of Appeal rightly concluded that the latter could not rely on section 15 of the executive order, in the absence of justification of a prejudiced professional interest, and that the oath taken by lawyers preparing for the Bar at the beginning of their training was not such as to consider them as lawyers or confer upon them the standing required by that text.

7. Thirdly, having held that Ms [J], who was not subject to wearing the gown in her capacity as a lawyer preparing for the Bar, could not rely on a current violation of her rights and freedoms recognized by the Convention for the Protection of Human Rights and Fundamental Freedoms, the Court of Appeal was not obliged to perform an enquiry which her findings and statements rendered ineffective.
8. The plea shall therefore be held inadmissible.

## On the second, third, fourth and fifth pleas initiated by Ms [J]

9. The dismissal of the first plea renders those pleas ineffective.

The second plea initiated by Mr [Y]

## Statement of plea

10. Mr [Y] appeals against the ruling rejecting his application to quash and set aside the decision of the Council of the Bar Association adopted on 24 June 2019, whereas:

*"(1) any decision or resolution of the Council of the Bar Association outside the powers of such Council or contrary to the provisions of law or regulations shall be quashed and set aside by the court of appeal; that the regulatory power of the Council of the Bar Association may be exercised only within the framework of legislative provisions and*

*regulations governing the profession and within the limits of the individual freedoms that correspond to lawyers; that, according to Article 17 of the Law 71-1130 of 31 December 1971, the Council of each Bar association has the task "to deal with all matters relating to the exercise of the profession and to ensure compliance with the duties of lawyers and protection of their rights", and has the particular task of "adopting and, if necessary, amending the rules of procedure"; that, under Article 3 of that law, lawyers "shall, in the exercise of their judicial duties, wear the gown for their profession"; that, in holding that 'since the wearing of the court gown is a matter of interest to the exercise of the profession of lawyers enrolled in the Lille Bar, the Council of said Bar Association was qualified to amend its rules of procedure in this respect', whereas the contested decision, insofar as it prohibits lawyers from "wearing the gown in conjunction with any decorations or signs conspicuously manifesting any religious, philosophical, community or political affiliation or opinion" and thus infringes the exercise of their public freedoms, does not constitute a mere rule of application or a necessary consequence of the obligation to wear the professional gown, the Court of Appeal violated Articles 3, 17 and 19 of Law No. 71-1130 of 31 December 1971;*

*(2) that the autonomy of the regulatory power of the Council of the Bar Association with regard to its rules of procedure does not enable it to restrict the individual freedoms of the lawyers enrolled in the Bar association without any legal basis; that there is no legal basis for the recognition of an obligation of neutrality attached to the lawyer's status of officer of the court, the consequences of which a Council of a Bar association would be empowered, at local level, to apply in its internal regulations; that, by nevertheless holding that the Council of the Lille Bar Association was competent to enact such a prohibition in its rules of procedure, the Court of Appeal violated Articles 17 and 19 of Law No 71-1130 of 31 December 1971, together with Articles 4 of the Declaration of the Rights of Man and of the Citizen and 34 of the Constitution."*

## Court's response

11. Article 3 of the Law of 31 December 1971 states that lawyers are officers of the court and take the following oath: "*I swear as a lawyer to carry out my duties with dignity, conscience, independence, probity and humanity*" and, in the exercise of their judicial duties, wear the gown of their profession.

12. According to Article 17, the Bar Council of the Bar Association is responsible for dealing with all matters relating to the exercise of the profession, without prejudice to the powers of the National Bar Council (NBC).
13. According to Article 21-1, the NBC unifies the rules and practices of the profession by means of general provisions.
14. In the absence of a specific legislative provision and in the absence of a regulatory provision enacted by the NBC, it is the duty of a Council of a Bar Association to regulate the wearing and use of the professional gown.
15. The Court of Appeal was therefore right to hold that the manner in which the gown was worn and used was relevant to the exercise of the profession of lawyer and that the Council of the Bar Association had the power to amend its rules of procedure on that point.
16. The plea is therefore unfounded.

## **The third plea filed by Mr [Y]**

### **Statement of plea**

17. Mr [Y] makes the same appeal against the ruling, whereas "any decision or resolution of the Council of a Bar Association beyond the powers of that council or contrary to the laws or regulations shall be quashed and set aside by the Court of Appeal; that Articles R. 66 and R. 69 of the Code of the Legion of Honour and the Military Medal, to which reference is made in Article 27 of executive order No 63-1196 of 31 December 1963 establishing a National Order of Merit, confer upon the decorated person the right to wear the insignia given by the award of a French decoration; that the wearing of a decoration on the lawyer's gown contravenes neither the basic principles of the profession nor the principle of equality between lawyers (Crim. 24 October 2017, appeal No 17-26.166, published in the gazette) nor, accordingly, the principle of equality of individuals; that, by refusing to annul the contested decision prohibiting the wearing of any decoration with the lawyer's gown, the court of appeal violated the abovementioned texts, together with Article 19 of Law No 71-1130 of 31 December 1971; the indivisibility of the decision must lead to the nullity thereof in its entirety."

### **Court's response**

18. It follows neither from the ruling nor from the evidence that Mr [Y] argued that he was the holder of a decoration, such that he is not admissible, for lack of direct, personal interest, to criticize the disputed decision in that it prohibits the lawyer from wearing any decoration on the gown.
19. The plea is therefore inadmissible.

## **The fourth plea filed by Mr [Y]**

### **Statement of plea**

20. Mr [Y] makes the same appeal against the ruling, whereas:

"(1) any measure restricting the freedoms protected by Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights, 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union, must be "*determined*" or "*provided for by law*" as defined in said provisions; that the disputed decision, which prohibits the

lawyer from "*wearing with his gown*" a "*sign conspicuously manifesting any religious, philosophical, community or political affiliation or opinion*", has no legal basis and exceeds the powers of the Council of the Bar Association; that the Court of Appeal has violated the aforementioned Articles;

(2) that the prohibition on wearing with the robe a sign conspicuously demonstrating a "community belonging or opinion", which does not make it possible to correctly identify the prohibitions and obligations likely to arise therefrom, disregards, by its very vagueness, freedom of expression, religious freedom, and contravenes the prohibition of any discrimination; that the Court of Appeal violated Articles 1 and 2 of Law 2008-496 of 27 May 2008, Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9, 10 and 14 of the European Convention on Human Rights, Articles 18, 19 and 26 of the International Covenant on Civil and Political Rights of 16 December 1966, Articles 10, 11, 21, 22 of the Charter of Fundamental Rights of the European Union of 18 December 2000;

(3) that the freedoms of thought, conscience and religion and the freedom of expression of those freedoms may not be subject to restrictions other than those provided for by law, constitute measures necessary in a democratic society for one of the following purposes: public safety, protection of order, public health or morals, protection of the rights and freedoms of others; that, by ruling that the prohibition on the lawyer wearing, in conjunction with the gown, during missions to assist and represent the person before a court, a "*sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion*" could be justified in the general, ambiguous and abstract objective of defending "*the law*", not related to one of the aforementioned lawful purposes, the Court of Appeal failed to observe Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union;

(4) that the general prohibition on the lawyer, a liberal and independent professional, nevertheless bound by ethical obligations such as to safeguard the primacy of the client's interests in the exercise of his duties as an officer of the court, to wear, in conjunction with the gown, during missions of assistance and representation of the individual before a court, a "*sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion*", is not necessary in a democratic society for the purpose of protecting the rights and freedoms of the individual; that the Court of Appeal failed to observe Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9 and 10 of the European Convention on Human Rights, Articles 18 and 19 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the Charter of Fundamental Rights of the European Union;

(5) that the general prohibition whereby a lawyer may not, during missions of assistance and representation of the individual before a court, wear a "*sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion*" is not necessary or proportionate in a democratic society to achieve the collective objective of "*testifying to this availability [of the lawyer] to every individual*", the lawyer's gown already making it exclusively possible to achieve this objective; that the Court of Appeal violated sections

10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights, 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union."

## Court's response

21. According to Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Articles 18 and 19 of the International Covenant on Civil and Political Rights that everyone has the right to freedom of thought, conscience and religion, and freedom of expression, and that the freedom to manifest one's religion or belief may be subject only to

such restrictions as are provided for by law and are necessary for the protection of security, public order, health or morals, or the protection of the rights and freedoms of others.

22. According to Article 3 of the Law of 31 December 1971 mentioned above, lawyers are officers of the court who take an oath to exercise their functions, in particular with independence, and who, in the exercise of their judicial functions, have a professional gown, as defined by the executive order of the consuls of 2 Nivôse in year XI.
23. After recalling that lawyers are officers of the court who, in defending the rights of individuals, contribute to the public service of justice, the Court of Appeal held that the intention of a Bar Association to require its members, when they appear before a court to assist or represent an individual, to wear a gown contributes to ensuring the equality of lawyers and, accordingly, the equality of individuals, a constituent element of the right to a fair trial, that in order to safeguard their rights and freedoms, each lawyer, in the exercise of their functions of defence and representation, must exclude anything personal to them and accept that the wearing of the professional gown with no distinctive sign is necessary to testify to their availability to any individual.
24. The Court of Appeal, which thus based its ruling on Article 3 above and the practice of the profession, correctly concluded that the prohibition laid down in Article 9.6 of the Rules of Procedure of the Lille Bar Association was sufficiently correct

insofar as it applied to the wearing, in conjunction with the gown, of any sign manifesting a religious, philosophical, community or political affiliation or opinion, was necessary in order to achieve the legitimate aim pursued, namely to safeguard the independence of the lawyer and ensure the right to a fair trial, and was, without discrimination, adequate and proportionate to the objective sought.

25. The plea is therefore unfounded.

### **The fifth plea filed by Mr [Y]**

26. Mr [Y] again makes the same appeal against the ruling, where:

"(1) this deliberation, insofar as it prohibits the wearing, in conjunction with the gown of a lawyer, of any sign conspicuously manifesting a religious or community affiliation or opinion, constitutes indirect discrimination based on gender and religion in that, seemingly neutral, it actually entails a particular and disproportionate disadvantage for Muslim women, except insofar as this prohibition is objectively justified by a legitimate objective, and that the means of achieving this objective are appropriate and necessary, which was to be verified by the Court of Appeal; that, however, the ruling under appeal has not justified, other than in general terms, how and under what criteria the wearing of the veil would hinder the effective exercise of the mission of assistance and representation of a client by such a lawyer, nor how and under what criteria the wearing of the veil by a lawyer duly attired in her court gown would hinder the objective of "availability [of the lawyer] to any individual"; that the Court of Appeal violated Articles 2.2 of Law 2008-496 of 27 May 2008, 2 and 4 of Directive 2000/78 of 27 November 2000, 14 of the European Convention on Human Rights, 21 of the Charter of Fundamental Rights of the European Union and 26 of the International Covenant on Civil and Political Rights;

(2) that, in order to rule out indirect discrimination against Muslim women, to note that *'the prohibition laid down by the contested decision of 24 June 2019 cannot prevent a woman wearing a veil from taking an oath and becoming a lawyer, but only restrict the possibility of keeping the veil when that lawyer intervenes before a court to assist or represent an individual'* in order to consider the requirement of proportionality fulfilled, without examining whether, in the light of its own scope of application, the contested decision did not apply disproportionately to Muslim women, the Court of Appeal deprived its decision of a legal basis in the light of Articles 2.2 of law 2008-496 of 27 May 2008, 2 and 4 of directive 2000/78 of 27 November 2000, 14 of the European Convention on Human Rights, 21 of the Charter of Fundamental Rights of the European Union and 26 of the International Covenant on Civil and Political Rights;

(3) that, by not responding to the submissions of Mr [Y], who argued that the discriminatory nature of the deliberation following the arrival of a veiled lawyer preparing for the Bar, and of the intention behind the deliberation, was apparent from the absence of any disciplinary action by the Council of the Lille Bar Association against the Lille lawyers who, in conjunction with their gown, wore signs which clearly manifested their political opinion, such as a red flap, during the strike actions and demonstrations of opposition to the pension reform project organised by some members of the profession between January and 26 March 2020, (submissions, p. 31), the Court of Appeal violated section 455 of the Civil Procedure Code."

## **Court's response**

27. First of all, Mr [Y] is inadmissible, on the grounds of a lack of personal and direct interest, to claim any particular and disproportionate disadvantage for Muslim women that may result from the disputed decision.
28. Secondly, the Court of Appeal was not obliged to respond to ineffective submissions.
29. The first and second parts of the ground of appeal are therefore inadmissible and the third part is therefore unfounded.
30. It follows that the petition to refer to the Court of Justice of the European Union a request for preliminary ruling on the interpretation of Article 2(b) of Council Directive 2000/78/EC of 27 November 2000 defining indirect discrimination is not applicable.

## **Court's response**

4. Firstly, by ruling of 8 April 2021 (No. 398 FS-P), the Court of Cassation stated that there was no need to refer the Priority Constitutional Question to the Constitutional Council.
5. Secondly, it follows from Articles 31 of the Civil Procedure Code, 19 of Law No 71-1130 of 31 December 1971 and Articles 14, 15 and 62 of executive order No 91-1197 of 27 November 1991 that, on the one hand, only the Prosecutor-General or a lawyer who considers that his professional interests have been prejudiced, may refer the resolutions or decisions of the Bar Council of the Bar Association to the Court of Appeal; on the other hand, lawyers preparing for the Bar [5] are legally dependent on that centre, such that, in the case of an individual action, the latter shall have no legal standing to challenge a decision of the Council of a Bar association.
6. After having acknowledged that Ms [J] was not a lawyer, but a lawyer preparing for the Bar at [7] and not yet the holder of the certificate of proficiency of the profession as an attorney, the Court of Appeal rightly concluded that the latter could not rely on section 15 of the executive order, in the absence of justification of a prejudiced professional interest, and that the oath taken by lawyers preparing for the Bar at the beginning of their training was not such as to consider them as lawyers or confer upon them the standing required by that text.
7. Thirdly, having held that Ms [J], who was not subject to wearing the gown in her capacity as a lawyer preparing for the Bar, could not rely on a current violation of her rights and freedoms recognized by the Convention for the Protection of Human Rights and Fundamental Freedoms, the Court of Appeal was not obliged to perform an enquiry which her findings and statements rendered ineffective.
8. The plea is therefore admissible.

## **On the second, third, fourth and fifth pleas initiated by Ms [J]**

9. The dismissal of the first plea renders those pleas ineffective.



The second plea initiated by Mr [Y]

## Statement of plea

10. Mr [Y] appeals against the ruling rejecting his application to quash and set aside the decision of the Council of the Bar Association adopted on 24 June 2019, whereas:

*"(1) any decision or resolution of the Council of the Bar Association outside the powers of such Council or contrary to the provisions of law or regulations shall be quashed and set aside by the court of appeal; that the regulatory power of the Council of the Bar Association may be exercised only within the framework of laws and regulations governing the profession and within the limits of the individual freedoms that belong to lawyers; that, according to Article 17 of the Law 71-1130 of 31 December 1971, the Council of each Bar association has the task "to deal with all matters relating to the exercise of the profession and to ensure compliance with the duties of lawyers and protection of their rights", and has the particular task of "adopting and, if necessary, amending the rules of procedure"; that, under Article 3 of that law, lawyers "shall, in the exercise of their judicial duties, wear the gown for their profession"; that, in holding that 'since the wearing of the court gown is a matter of interest to the exercise of the profession of lawyers enrolled in the Lille Bar, the Council of said Bar Association was qualified to amend its rules of procedure in this respect', whereas the contested decision, insofar as it prohibits lawyers from "wearing the gown in conjunction with any decorations or signs conspicuously manifesting any religious, philosophical, community or political affiliation or opinion" and thus infringes the exercise of their public freedoms, does not constitute a mere rule of application or a necessary consequence of the obligation to wear the professional gown, the Court of Appeal violated Articles 3, 17 and 19 of Law No. 71-1130 of 31 December 1971;*

*(2) that the autonomy of the regulatory power of the Council of the Bar Association with regard to its rules of procedure does not enable it to restrict the individual freedoms of the lawyers enrolled in the Bar association without any legal basis; that there is no legal basis for the recognition of an obligation of neutrality attached to the lawyer's status of officer of the court, the consequences of which a Council of a Bar association would be empowered, at local level, to apply in its internal regulations; that, by nevertheless holding that the Council of the Lille Bar Association was competent to enact such a prohibition in its rules of procedure, the Court of Appeal violated Articles 17 and 19 of Law No 71-1130 of 31 December 1971, together with Articles 4 of the Declaration of the Rights of Man and of the Citizen and 34 of the Constitution."*

## Court's response

11. Article 3 of the Law of 31 December 1971 states that lawyers are officers of the court and take the following oath: "*I swear as a lawyer to carry out my duties with dignity, conscience, independence, probity and humanity*" and, in the exercise of their judicial duties, wear the gown of their profession.
12. According to Article 17, the Bar Council of the Bar Association is responsible for dealing with all matters relating to the exercise of the profession, without prejudice to the powers of the National Bar Council (NBC).
13. According to Article 21-1, the NBC unifies the rules and practices of the profession by means of general provisions.
14. In the absence of a specific legislative provision and in the absence of a regulatory provision enacted by the NBC, it is the duty of a Council of a Bar Association to regulate the wearing and use of the professional gown.
15. The Court of Appeal was therefore right to hold that the manner in which the gown was worn and used was relevant to the exercise of the profession of lawyer and that the Council of the Bar Association had the power to amend its rules of procedure on that point.
16. The plea is therefore unfounded.

## The third plea filed by Mr [Y]

### Statement of plea

17. Mr [Y] makes the same appeal against the ruling, whereas "any decision or resolution of the Council of a Bar Association beyond the powers of that council or contrary to the laws or regulations shall be quashed and set aside by the court of appeal; that Articles R. 66 and R. 69 of the Code of the Legion of Honour and the Military Medal, to which reference is made in Article 27 of executive order No 63-1196 of 31 December 1963 establishing a National Order of Merit, confer upon the decorated person the right to wear the insignia given by the award of a French decoration; that the wearing of a decoration on the lawyer's gown contravenes neither the basic principles of the profession nor the principle of equality between lawyers (Crim. 24 October 2017, appeal No 17-26.166, published in the gazette) nor, accordingly, the principle of equality of individuals; that, by refusing to annul the contested decision prohibiting the wearing of any decoration with the lawyer's gown, the court of appeal violated the abovementioned texts, together with Article 19 of Law No 71-1130 of 31 December 1971; the indivisibility of the decision must lead to the nullity thereof in its entirety."

### Court's response

18. It follows neither from the ruling nor from the evidence that Mr [Y] argued that he was the holder of a decoration, such that it is not admissible, for lack of direct, personal interest, to criticize the disputed decision in that it prohibits the lawyer from wearing any decoration on the gown.
19. The plea is therefore inadmissible.

## The fourth plea filed by Mr [Y]

### Statement of plea

20. Mr [Y] makes the same appeal against the ruling, whereas:

"(1) any measure restricting the freedoms protected by Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights, 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union, must be "*determined*" or "*provided for by law*" as defined in said provisions; that the disputed decision, which prohibits the lawyer from "*wearing with his gown*" a "*sign conspicuously manifesting any religious, philosophical, community or political affiliation or opinion*", has no legal basis and exceeds the powers of the Council of the Bar Association; that the Court of Appeal has violated the aforementioned Articles;

(2) that the prohibition on wearing with the robe a sign conspicuously demonstrating a "community belonging or opinion", which does not make it possible to correctly identify the prohibitions and obligations likely to arise therefrom, disregards, by its very vagueness, freedom of expression, religious freedom, and contravenes the prohibition of any discrimination; that the Court of Appeal violated Articles 1 and 2 of Law 2008-496 of 27 May 2008, Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9, 10 and 14 of the European Convention on Human Rights, Articles 18, 19 and 26 of the International Covenant on Civil and Political Rights of 16 December 1966, Articles 10, 11, 21, 22 of the Charter of Fundamental Rights of the European Union of 18 December 2000;

(3) that the freedoms of thought, conscience and religion and the freedom of expression of those freedoms may not be subject to restrictions other than those provided for by law, constitute measures necessary in a democratic society for one of the following purposes: public safety, protection of order, public health or morals, protection of the rights and freedoms of others; that, by ruling that the prohibition on the lawyer wearing, in conjunction with the gown, during missions to assist and represent the person before a court, a *"sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion"* could be justified in the general, ambiguous and abstract objective of defending *"the law"*, not related to one of the aforementioned lawful purposes, the Court of Appeal failed to observe Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union;

(4) that the general prohibition on the lawyer, a liberal and independent professional, nevertheless bound by ethical obligations such as to safeguard the primacy of the client's interests in the exercise of his duties as an officer of the court, to wear, in conjunction with the gown, during missions of assistance and representation of the individual before a court, a *"sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion"*, is not necessary in a democratic society for the purpose of protecting the rights and freedoms of the individual; that the Court of Appeal failed to observe Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9 and 10 of the European Convention on Human Rights, Articles 18 and 19 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the Charter of Fundamental Rights of the European Union;

(5) that the general prohibition whereby a lawyer may not, during missions of assistance and representation of the individual before a court, wear a *"sign conspicuously manifesting a religious, philosophical, community or political affiliation or opinion"* is not necessary or proportionate in a democratic society to achieve the collective objective of *"testifying to this availability [of the lawyer] to every individual"*, the lawyer's gown already making it exclusively possible to achieve this objective; that the Court of Appeal violated sections

10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, 9 and 10 of the European Convention on Human Rights, 18 and 19 of the International Covenant on Civil and Political Rights and 10 and 11 of the Charter of Fundamental Rights of the European Union."

## Court's response

21. According to Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, Articles 9 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Articles 18 and 19 of the International Covenant on Civil and Political Rights that everyone has the right to freedom of thought, conscience and religion, and freedom of expression, and that the freedom to manifest one's religion or belief may be subject only to such restrictions as are provided for by law and are necessary for the protection of security, public order, health or morals, or the protection of the rights and freedoms of others.

22. According to Article 3 of the Law of 31 December 1971 mentioned above, lawyers are officers of the court who take an oath to exercise their functions, in particular with independence, and who, in the exercise of their judicial functions, have a professional gown, as defined by the executive order of the consuls of 2 Nivôse in year XI.

23. After recalling that lawyers are officers of the court who, in defending the rights of individuals, contribute to the public service of justice, the Court of Appeal held that the intention of a Bar Association to require its members, when they appear before a court to assist or represent an individual, to wear a gown contributes to ensuring the equality of lawyers and, accordingly, the equality of individuals, a constituent element of the right to a fair trial, that in order to safeguard their rights and freedoms, each lawyer, in the exercise of their functions of defence and

representation, must exclude anything personal to them and accept that the wearing of the professional gown with no distinctive sign is necessary to testify to their availability to any individual.

24. The Court of Appeal, which thus based its ruling on Article 3 above and the practice of the profession, correctly concluded that the prohibition laid down in Article 9.6 of the Rules of Procedure of the Lille Bar Association was sufficiently correct

insofar as it applied to the wearing, in conjunction with the gown, of any sign manifesting a religious, philosophical, community or political affiliation or opinion, was necessary in order to achieve the legitimate aim pursued, namely to safeguard the independence of the lawyer and ensure the right to a fair trial, and was, without discrimination, adequate and proportionate to the objective sought.

25. The plea is therefore unfounded.

### The fifth plea filed by Mr [Y]

26. Mr [Y] again makes the same appeal against the ruling, where:

"(1) this deliberation, insofar as it prohibits the wearing, in conjunction with the gown of a lawyer, of any sign conspicuously manifesting a religious or community affiliation or opinion, constitutes indirect discrimination based on gender and religion in that, seemingly neutral, it actually entails a particular and disproportionate disadvantage for Muslim women, except insofar as this prohibition is objectively justified by a legitimate objective, and that the means of achieving this objective are appropriate and necessary, which was to be verified by the Court of Appeal; that, however, the ruling under appeal has not justified, other than in general terms, how and under what criteria the wearing of the veil would hinder the effective exercise of the mission of assistance and representation of a client by such a lawyer, nor how and under what criteria the wearing of the veil by a lawyer duly attired in her court gown would hinder the objective of "availability [of the lawyer] to any individual"; that the Court of Appeal violated Articles 2.2 of Law 2008-496 of 27 May 2008, 2 and 4 of Directive 2000/78 of 27 November 2000, 14 of the European Convention on Human Rights, 21 of the Charter of Fundamental Rights of the European Union and 26 of the International Covenant on Civil and Political Rights;

(2) that, in order to rule out indirect discrimination against Muslim women, to note that *'the prohibition laid down by the contested decision of 24 June 2019 cannot prevent a woman wearing a veil from taking an oath and becoming a lawyer, but only restrict the possibility of keeping the veil when that lawyer intervenes before a court to assist or represent an individual'* in order to consider the requirement of proportionality fulfilled, without examining whether, in the light of its own scope of application, the contested decision did not apply disproportionately to Muslim women, the Court of Appeal deprived its decision of a legal basis in the light of Articles 2.2 of law 2008-496 of 27 May 2008, 2 and 4 of directive 2000/78 of 27 November 2000, 1 of the European Convention on Human Rights, 21 of the European Convention on Human Rights, 21 of the Charter of Fundamental Rights of the European Union and 26 of the International Covenant on Civil and Political Rights;

(3) that, by not responding to the submissions of Mr [Y], who argued that the discriminatory nature of the deliberation following the arrival of a veiled lawyer preparing for the Bar, and of the intention behind the deliberation, was apparent from the absence of any disciplinary action by the Council of the Lille Bar Association against the Lille lawyers who, in conjunction with their gown, wore signs which clearly manifested their political opinion, such as a red flap, during the strike actions and demonstrations of opposition to the pension reform project organised by some members of the profession between January and 26 March 2020, (submissions, p. 31), the Court of Appeal violated section 455 of the Civil Procedure Code."

### Court's response

27. First of all, Mr [Y] is inadmissible, on the grounds of a lack of personal and direct interest, to claim any particular and disproportionate disadvantage for Muslim women that may result from the disputed decision.
28. Secondly, the Court of Appeal was not obliged to respond to ineffective submissions.
29. The first and second parts of the ground of appeal are therefore inadmissible and the third part is therefore unfounded.
30. It follows that the petition to refer to the Court of Justice of the European Union a request for preliminary ruling on the interpretation of Article 2(b) of Council Directive 2000/78/EC of 27 November 2000 defining indirect discrimination is not applicable.

## ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Orders Ms [J] and Mr [Y] to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims;

Thus decided by first civil chamber of the *Cour de cassation* (Court of cassation) and pronounced by the President at a public hearing of the second day of the month of March of the year two thousand and twenty-two.

The reporting judge referee the President

The Chamber Registrar

**President : Mr Chauvin**

**Reporting Judge referee : Ms Le Gall**

**First advocate-general : Mr Poirret**

**Lawyer(s) : SCP Waquet, Farge and Hazan – SCP Duhamel-Rameix-Gury-Maitre**

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