



French ban on the wearing in public of clothing designed to conceal one's face does not breach the Convention

In today's Grand Chamber judgment in the case of **S.A.S. v. France** (application no. 43835/11), which is final¹, the European Court of Human Rights held,

by a majority, that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights, and **no violation of Article 9** (right to respect for freedom of thought, conscience and religion);

unanimously, that there had been **no violation of Article 14** (prohibition of discrimination) of the European Convention combined with Articles 8 or 9.

The case concerned the complaint of a French national, who is a practising Muslim, that she is no longer allowed to wear the full-face veil in public following the entry into force, on 11 April 2011, of a law prohibiting the concealment of one's face in public places (Law no. 2010-1192 of 11 October 2010).

The Court emphasised that respect for the conditions of "living together" was a legitimate aim for the measure at issue and that, particularly as the State had a lot of room for manoeuvre ("a wide margin of appreciation") as regards this general policy question on which there were significant differences of opinion, the ban imposed by the Law of 11 October 2010 did not breach the Convention.

Principal facts

The applicant is a French national who was born in 1990 and lives in France. She is a devout Muslim and in her submissions she said that she wore the burqa and niqab in accordance with her religious faith, culture and personal convictions. As she explained, the burqa is a full-body covering including a mesh over the face, and the niqab is a full-face veil leaving an opening only for the eyes. The applicant also emphasised that neither her husband nor any other member of her family put pressure on her to dress in this manner. She added that she wore the niqab in public and in private, but not systematically. She was thus content not to wear the niqab in certain circumstances but wished to be able to wear it when she chose to do so. Lastly, her aim was not to annoy others but to feel at inner peace with herself.

Complaints, procedure and composition of the Court

Relying in particular on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion) and 10 (freedom of expression), the applicant complained that she was unable to wear the full-face veil in public. Lastly, under Article 14 (prohibition of discrimination) she complained that the ban led to discrimination on grounds of sex, religion and ethnic origin, to the detriment of women who, like herself, wore the full-face veil.

The application was lodged with the European Court of Human Rights on 11 April 2011. On 28 May 2013 the Chamber to which the case had been allocated [relinquished](#) jurisdiction in favour of the Grand Chamber. A public [hearing](#) took place before the Grand Chamber in the Human

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Rights Building, Strasbourg, on 27 November 2013. The following were authorised to intervene as third parties (under Article 36 § 2 of the Convention) in the written procedure: the Belgian Government, the Human Rights Centre of the University of Ghent, and the non-governmental organisations Amnesty international, ARTICLE 19, Liberty, and Open Society Justice Initiative.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Boštjan M. **Zupančič** (Slovenia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** (the “Former Yugoslav Republic of Macedonia”),
Ledi **Bianku** (Albania),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany),
Erik **Møse** (Norway),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Erik **Fribergh**, *Registrar*.

Decision of the Court

The Government questioned the applicant’s status as “victim”, particularly as no individual measure had been taken against her pursuant to the Law of 11 October 2010. The Court dismissed that preliminary objection. It reiterated that individuals were entitled to argue that a law breached their rights if they were required either to modify their conduct or risk being prosecuted, or if they were part of a category of persons who risked being directly affected by the legislation at issue. The present application was not therefore an *actio popularis*². The Court also dismissed the Government’s preliminary objections alleging a failure to exhaust domestic remedies and an abuse of the right of individual application.

The Court further declared inadmissible the applicant’s complaints under Articles 3 (prohibition of inhuman or degrading treatment) and 11 (freedom of assembly and association), taken separately and together with Article 14 (prohibition of discrimination).

Articles 8 and 9

The Court examined the applicant’s complaints under Articles 8 and 9, with emphasis on the latter. While personal choices as to one’s appearance related to the expression of an individual’s personality, and thus fell within the notion of private life, the applicant had complained that she was prevented from wearing in public places clothing that she was required to wear by her religion, thus mainly raising an issue with regard to the freedom to manifest one’s religion or beliefs.

The Court found that there had been a “continuing interference” with the exercise of the applicant’s rights under Articles 8 and 9, as she was confronted with a dilemma: either she complied with the ban and thus refrained from dressing in accordance with her approach to religion, or she refused to

² Action by which an individual challenges in abstract terms the law or legal practice of a State in the collective interest.

comply and would face criminal sanctions. The Court further noted that the limitation in question was prescribed by the Law of 11 October 2010.

The Court accepted that the interference pursued two of the legitimate aims listed in Articles 8 and 9: “public safety” and the “protection of the rights and freedoms of others”.

As regards the aim of “public safety”, the Court noted that the legislature had sought, by passing the Law in question, to satisfy the need to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. It considered, however, that the ban was not “necessary in a democratic society” in order to fulfil that aim. In the Court’s opinion, in view of its impact on the rights of women who wished to wear the full-face veil for religious reasons, a blanket ban on the wearing in public places of clothing designed to conceal one’s face could be regarded as proportionate only in a context where there was a general threat to public safety. The Government had not shown that the ban introduced by the Law of 11 October 2010 fell into such a context. As to the women concerned, they were thus obliged to give up completely an element of their identity that they considered important, together with their chosen manner of manifesting their religion or beliefs, whereas the objective alluded to by the Government could be attained by a mere obligation to show their face and to identify themselves where a risk for the safety of persons and property was established, or where particular circumstances prompted a suspicion of identity fraud.

As to the “protection of the rights and freedoms of others”, the Government referred to the need to ensure “respect for the minimum set of values of an open democratic society”, listing three values in that connection: respect for gender equality, respect for human dignity and respect for the minimum requirements of life in society (or of “living together”). While dismissing the arguments relating to the first two of those values, the Court accepted that the barrier raised against others by a veil concealing the face in public could undermine the notion of “living together”. In that connection, it indicated that it took into account the State’s submission that the face played a significant role in social interaction. The Court was also able to understand the view that individuals might not wish to see, in places open to all, practices or attitudes which would fundamentally call into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, formed an indispensable element of community life within the society in question. The Court was therefore able to accept that the barrier raised against others by a veil concealing the face was perceived by the respondent State as breaching the right of others to live in a space of socialisation which made living together easier. It added, however, that in view of the flexibility of the notion of “living together” and the resulting risk of abuse, it had to engage in a careful examination of the necessity of the measure at issue.

Proceeding with that examination, the Court had to ascertain, in particular, whether the ban was proportionate to the aim pursued. It admitted that it might appear excessive, in view of the small number of women concerned, to opt for a blanket ban. It further noted that the ban had a significant negative impact on the situation of women who chose to wear the full-face veil for reasons related to their beliefs, and that many national and international human rights bodies³ regarded a blanket ban as disproportionate. The Court also stated that it was very concerned by indications that the debate which preceded the adoption of the Law of 11 October 2010 had been marked by certain Islamophobic remarks. It emphasised in this connection that a State which entered into a legislative process of this kind took the risk of contributing to the consolidation of the stereotypes which affected specific groups of people and of encouraging the expression of intolerance, when it had a duty, on the contrary, to promote tolerance. The Court reiterated that remarks which constituted a general, vehement attack on a religious or ethnic group were

³ Among others, the French National Advisory Commission on Human Rights (see paragraphs 18-19 of the judgment), non-governmental organisations such as the third-party interveners, the Parliamentary Assembly of the Council of Europe (paragraphs 35-36) and the Commissioner for Human Rights of the Council of Europe (paragraph 37).

incompatible with the Convention's underlying values of tolerance, social peace and non-discrimination and did not fall within the right to freedom of expression that it protected.

While the Court was aware that the disputed ban mainly affected certain Muslim women, it nevertheless noted that there was no restriction on the freedom to wear in public any item of clothing which did not have the effect of concealing the face and that the ban was not expressly based on the religious connotation of the clothing in question but solely on the fact that it concealed the face. In addition, the sanctions provided for by the Law were among the lightest that could have been envisaged: a fine of 150 euros maximum and the possible obligation to follow a citizenship course, in addition to or instead of the fine. Furthermore, as the question whether or not it should be permitted to wear the full-face veil in public places constituted a choice of society, France had a wide margin of appreciation. In such circumstances, the Court had a duty to exercise a degree of restraint in its review of Convention compliance, since such review led it to assess a balance that had been struck by means of a democratic process within the society in question. In the Court's view, the lack of common ground between the member States of the Council of Europe as to the question of the wearing of the full-face veil in public places⁴ supported its finding that the State had a wide margin of appreciation. The ban complained of could therefore be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together". The Court held that there had not been a violation of either Article 8 or Article 9 of the Convention.

Other Articles

The ban imposed by the Law of 11 October 2010 admittedly had specific negative effects on the situation of Muslim women who, for religious reasons, wished to wear the full-face veil in public. However, that measure had an objective and reasonable justification for the reasons previously indicated. There had not therefore been a violation of Article 14 taken together with Articles 8 or 9.

The Court was also of the view that no separate issue arose under Article 10 of the Convention, taken separately or together with Article 14.

Separate opinion

Judges Nußberger and Jäderblom expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

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The **European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

⁴ From a strictly normative standpoint, except for Belgium, no member State of the Council of Europe other than France has, to date, opted for a ban on the wearing of the full-face veil in public. This question, nevertheless, is or has been a subject of debate in a number of European States (see §§ 40-52 of the judgment).