



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

**[CASE OF S.A.S. v. FRANCE](#)**

*(Application no. 43835/11)*

*[Please click on the case title to access the full text of this case.]*

JUDGMENT

STRASBOURG

1 July 2014

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

- [10] The applicant is a French national who was born in 1990 and lives in France.
- [11] In the applicant's submission, she is a devout Muslim and she wears the burqa and niqab in accordance with her religious faith, culture and personal convictions. According to her explanation, 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 emphasised that neither her husband nor any other member of her family put pressure on her to dress in this manner.
- [12] The applicant added that she wore the niqab in public and in private, but not systematically: she might not wear it, for example, when she visited the doctor, when meeting friends in a public place, or when she wanted to socialise in public. She was thus content not to wear the niqab in public places at all times but wished to be able to wear it when she chose to do so, depending in particular on her spiritual feelings. There were certain times (for example, during religious events such as Ramadan) when she believed that she ought to wear it in public in order to express her religious, personal and cultural faith. Her aim was not to annoy others but to feel at inner peace with herself.
- [13] The applicant did not claim that she should be able to keep the niqab on when undergoing a security check, at the bank or in airports, and she agreed to show her face when requested to do so for necessary identity checks.
- [14] Since 11 April 2011, the date of entry into force of Law no. 2010-1192 of 11 October 2010 throughout France, it has been prohibited for anyone to conceal their face in public places.

### II. RELEVANT DOMESTIC LAW AND PRACTICE

#### **A. The Law of 11 October 2010 “prohibiting the concealment of one's face in public places”**

(...)

#### **(c) Study by the *Conseil d'État* on “the possible legal grounds for banning the full veil”**

- [20] On 29 January 2010 the Prime Minister asked the *Conseil d'État* to carry out a study on “the

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legal grounds for a ban on the full veil which would be “as wide and as effective as possible”.

(...)

[22] The *Conseil d'État* first observed that existing legislation already addressed this issue in various ways, whether through provisions whose effect was to ban the wearing of the full veil itself by certain persons and in certain circumstances, by imposing occasional restrictions on concealment of the face for public order reasons, or by envisaging criminal sanctions for the instigators of such practices. It noted, however, that the relevant provisions were varied in nature and that comparable democracies were like France in not having national legislation imposing a general ban on such practices in public places. In view of this finding, the *Conseil d'État* questioned the legal and practical viability of prohibiting the wearing of the full veil in public places, having regard to the rights and freedoms guaranteed by the Constitution, the Convention and European Union law. It found it impossible to recommend a ban on the full veil alone, as a garment representing values that were incompatible with those of the Republic, in that such a ban would be legally weak and difficult to apply in practice. It observed in particular that the principle of gender equality was not intended to be applicable to the individual person, i.e. to an individual's exercise of personal freedom. It further took the view that a less specific ban on the deliberate concealment of the face, based mainly on public order considerations and interpreted more or less broadly, could not legally apply without distinction to the whole of the public space under prevailing constitutional and Convention case-law.

[23] However, the *Conseil d'État* believed that, in the present state of the law, it would be possible to enact more coherent legislation, which would be binding and restrictive, comprising two types of provision: first, stipulating that it was forbidden to wear any garment or accessory that had the effect of hiding the face in such a way as to preclude identification, either to safeguard public order where it was under threat, or where identification appeared necessary for access to or movement within certain places, or for the purpose of certain formalities; secondly, strengthening enforcement measures that would particularly be directed against individuals who forced others to hide their faces and thus conceal their identity in public places.

(...)

### **B. Decision of the Constitutional Council of 7 October 2010**

[30] The Constitutional Council (*Conseil constitutionnel*) [upheld the law.]

(...)

## **III. RELEVANT INTERNATIONAL LAW AND PRACTICE**

**A. Resolution 1743 (2010) and Recommendation 1927 (2010) of the Parliamentary Assembly of the Council of Europe and Viewpoint of the Commissioner for Human Rights of the Council of Europe**

*1. Resolution 1743 (2010) and Recommendation 1927 (2010) of the Parliamentary Assembly of the Council of Europe on Islam, Islamism and Islamophobia in Europe*

[35] Adopted on 23 June 2010, Resolution 1743 (2010) states, in particular:

“14. Recalling its Resolution 1464 (2005) on women and religion in Europe, the Assembly calls on all Muslim communities to abandon any traditional interpretations of Islam which deny gender equality and limit women’s rights, both within the family and in public life. This interpretation is not compatible with human dignity and democratic standards; women are equal to men in all respects and must be treated accordingly, with no exceptions. Discrimination against women, whether based on religious traditions or not, goes against Articles 8, 9 and 14 of the Convention, Article 5 of its Protocol No. 7 and its Protocol No. 12. No religious or cultural relativism may be invoked to justify violations of personal integrity. The Parliamentary Assembly therefore urges member states to take all necessary measures to stamp out radical Islamism and Islamophobia, of which women are the prime victims.

15. In this respect, the veiling of women, especially full veiling through the *burqa* or the *niqab*, is often perceived as a symbol of the subjugation of women to men, restricting the role of women within society, limiting their professional life and impeding their social and economic activities. Neither the full veiling of women, nor even the headscarf, are recognised by all Muslims as a religious obligation of Islam, but they are seen by many as a social and cultural tradition. The Assembly considers that this tradition could be a threat to women’s dignity and freedom. No woman should be compelled to wear religious apparel by her community or family. Any act of oppression, sequestration or violence constitutes a crime that must be punished by law. Women victims of these crimes, whatever their status, must be protected by member states and benefit from support and rehabilitation measures.

16. For this reason, the possibility of prohibiting the wearing of the *burqa* and the *niqab* is being considered by parliaments in several European countries. Article 9 of the Convention includes the right of individuals to choose freely to wear or not to wear religious clothing in private or in public. Legal restrictions to this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen. However, a general prohibition of wearing the *burqa* and the *niqab* would deny women who freely desire to do so their right to cover their face.

17. In addition, a general prohibition might have the adverse effect of generating family and community pressure on Muslim women to stay at home and confine themselves to contacts with other women. Muslim women could be further excluded if they were to leave educational institutions, stay away from public places and abandon work outside their communities, in order not to break with their family tradition. Therefore, the Assembly calls on member states to develop targeted policies intended to raise Muslim women’s awareness of their rights, help them to take part in public life and offer them equal opportunities to pursue a professional life and gain social and economic independence. In this respect, the education of young Muslim women as well as of their parents and families is crucial. It is especially necessary to remove all forms of discrimination against girls and to develop education on gender equality, without stereotypes and at all levels of the education system.”

[36] In its Recommendation 1927 (2010), adopted on the same day, the Parliamentary Assembly of the Council of Europe asked the Committee of Ministers of the Council of Europe, in particular, to:

“3.13. call on member states not to establish a general ban of full veiling or other religious or special

clothing, but to protect women from all physical and psychological duress as well as to protect their free choice to wear religious or special clothing and ensure equal opportunities for Muslim women to participate in public life and pursue education and professional activities; legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen.”

## 2. Viewpoint of the Commissioner for Human Rights of the Council of Europe

- [37] The Commissioner for Human Rights of the Council of Europe, published the following “Viewpoint” (see *Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights*, Council of Europe Publishing, 2011, pp. 39-43):

“Prohibition of the burqa and the niqab will not liberate oppressed women, but might instead lead to their further exclusion and alienation in European societies. A general ban on such attire constitutes an ill-advised invasion of individual privacy and, depending on its terms, also raises serious questions about whether such legislation is compatible with the European Convention on Human Rights.

Two rights in the Convention are particularly relevant to this debate about clothing. One is the right to respect for one’s private life and personal identity (Article 8). The other is the freedom to manifest one’s religion or belief ‘in worship, teaching, practice and observance’ (Article 9).

Both Convention articles specify that these rights can only be subject 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.

Those who have argued for a general ban of the burqa and the niqab have not managed to show that these garments in any way undermine democracy, public safety, order or morals. The fact that a very small number of women wear such clothing has made such proposals even less convincing.

Nor has it been possible to prove that women wearing this attire are victims of more gender repression than others. Those interviewed in the media have presented a diversity of religious, political and personal arguments for their decision to dress as they do. There may of course be cases where women are under undue pressure to dress in a certain way – but it has not been shown that a ban would be welcomed by them.

There is of course no doubt that the status of women is an acute problem – and that this problem may be particularly true in relation to some religious communities. This needs to be discussed, but prohibiting the supposed symptoms – such as clothing – is not the way to do it. Dress, after all, may not reflect specific religious beliefs, but the exercise of broader cultural expression.

It is right and proper to react strongly against any regime ruling that women must wear these garments. This is in clear contravention of the Convention articles cited above, and is unacceptable, but it is not remedied by banning the same clothing in other countries.

(...)

In general, states should avoid legislating on dress, other than in the narrow circumstances set forth in the Convention. It is, however, legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some instances, this may require complete neutrality as between different political and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents.

Obviously, full-face coverage may be problematic in some occupations and situations. There are particular situations where there are compelling community interests that make it necessary for individuals to show themselves for the sake of safety or in order to offer the possibility of necessary identification. This is not controversial and, in fact, there are no reports of serious problems in this

regard in relation to the few women who normally wear a burqa or a niqab.

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A related problem arose in discussion in Sweden. A jobless Muslim man lost his subsidy from a state agency for employment support because he had refused to shake the hand of a female employer when turning up for a job interview. He had claimed that his action was grounded in his religious faith.

A court ruled later, after a submission from the ombudsman against discrimination, that the agency decision was discriminatory and that the man should be compensated. Though this is in line with human rights standards, it was not readily accepted by the general public and a controversial public debate ensued.

It is likely that issues of this kind will surface increasingly in the coming years and it is healthy that they should be openly discussed – as long as Islamophobic tendencies are avoided. However, such debates should be broadened to include the promotion of greater understanding of different religions, cultures and customs. Pluralism and multiculturalism are essential European values, and should remain so.

This in turn may require more discussion of the meaning of respect. In the debates about the allegedly anti-Muslim cartoons published in Denmark in 2005, it was repeatedly stated that there was a contradiction between demonstrating respect for believers whilst also protecting freedom of expression as stipulated in Article 10 of the European Convention.

The Strasbourg Court analysed this dilemma in the famous case of *Otto-Preminger- Institute v. Austria* in which it stated that ‘those who choose to exercise the freedom to manifest their religion ... cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith’.

In the same judgment the Court stated that consideration should be given to the risk that the right of religious believers – like anyone else – to have their views respected may be violated by provocative portrayals of objects of religious significance. The Court concluded that ‘such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society’.

The political challenge for Europe is to promote diversity and respect for the beliefs of others whilst at the same time protecting freedom of speech and expression. If the wearing of a full-face veil is understood as an expression of a certain opinion, we are in fact talking here about the possible conflict between similar or identical rights – though seen from two entirely different angles.

In Europe, we seek to uphold traditions of tolerance and democracy. Where conflicts of rights between individuals and groups arise, it should not be seen in negative terms, but rather as an opportunity to celebrate that rich diversity and to seek solutions which respect the rights of all involved.

A prohibition of the burqa and the niqab would in my opinion be as unfortunate as it would have been to criminalise the Danish cartoons. Such banning is alien to European values. Instead, we should promote multicultural dialogue and respect for human rights.”

## **B. The United Nations Human Rights Committee**

- [38] In its General Comment No. 22, concerning Article 18 of the International Covenant on Civil and Political Rights (freedom of thought, conscience and religion), adopted on 20 July 1993, the Human Rights Committee emphasised as follows:

“... 4. The freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private’. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The observance and practice of religion or belief may include

not only ceremonial acts but also such customs as the wearing of distinctive clothing or headcoverings ...

8. Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. ... ”

The Human Rights Committee also stated as follows in its General Comment No. 28, concerning Article 3 (equality of rights between men and women), adopted on 29 March 2000:

“13. [Regulations on clothing to be worn by women in public] may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.”

The Human Rights Committee has also adopted General Comments on freedom of movement (General Comment No. 27), and on freedom of opinion and freedom of expression (General Comment No. 34).

36. The Human Rights Committee has, moreover examined a number of cases in which individuals complained of measures restricting the wearing of clothing or symbols with a religious connotation. It found, for example, that “in the absence of any justification provided by the State party” there had been a violation of Article 18 § 2 of the Covenant where a student had been expelled from her University on account of her refusal to remove the *hijab* (headscarf) that she wore in accordance with her beliefs (*Raihon Hudoyberganova v. Uzbekistan*, Communication No. 931/2000, 18 January 2005). However, it has not yet ruled on the question of a blanket ban on the wearing of the full-face veil in public places.

#### IV. THE SITUATION IN OTHER EUROPEAN STATES

- [40] To date, only Belgium has passed a law that is comparable to the French Law of 11 October 2010, and the Belgian Constitutional Court has found it compatible with the right to freedom

of thought, conscience and religion (see paragraphs 41-42 below). However, the question of a ban on concealing one's face in public has been or is being discussed in a number of other European States. A blanket ban remains a possibility in some of them. In particular, a bill has been tabled to that end in Italy: although it has not yet passed into law, it appears that the discussion is still open. In Switzerland the Federal Assembly rejected, in September 2012, an initiative of the Canton of Aargau seeking to ban the wearing in public of clothing covering all or a large part of the face, but in Ticino there was a vote on 23 September 2013 for a ban of that kind (the text still has to be validated, however, by the Federal Assembly). Such an option is also being discussed in the Netherlands, notwithstanding unfavourable opinions by the Council of State (see paragraphs 49-52 below). It should also be noted that the Spanish Supreme Court has ruled on the legality of a ban of that kind (see paragraphs 42-47 below).

(...)

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

(...)

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION, TAKEN SEPARATELY AND TOGETHER WITH ARTICLE 14

(...)

### III. ALLEGED VIOLATION OF ARTICLES 8, 9 AND 10 OF THE CONVENTION, TAKEN SEPARATELY AND IN CONJUNCTION WITH ARTICLE 14

[74] The applicant complained ... of a violation of her right to respect for her private life, her right to freedom to manifest her religion or beliefs and her right to freedom of expression, together with discrimination in the exercise of these rights. She relied on Articles 8, 9 and 10 of the Convention, taken separately and in conjunction with Article 14.

(...)

#### A. Merits

(...)

#### 3. *The Court's assessment*

##### (a) Alleged violation of Articles 8 and 9 of the Convention

[106] The ban on wearing, in public places, clothing designed to conceal the face raises questions in terms of the right to respect for private life (Article 8 of the Convention) of women



who wish to wear the full-face veil for reasons related to their beliefs, and in terms of their freedom to manifest those beliefs (Article 9 of the Convention).

- [107] The Court is thus of the view that personal choices as to an individual's desired appearance, whether in public or in private places, relate to the expression of his or her personality and thus fall within the notion of private life. It has found to this effect previously as regards a haircut (see *Popa v. Romania* (dec.), no. 4233/09, §§ 32-33, 18 June 2013; see also the decision of the European Commission on Human Rights in *Sutter v. Switzerland*, no. 8209/78, Commission decision of 1 March 1979, Decisions and Reports (DR) 16, p. 166). It considers, like the Commission (see, in particular, the decisions in *McFeeley and Others v. the United Kingdom*, no. 8317/78, Commission decision of 15 May 1980, § 83, DR 20, p. 44, and *Kara v. the United Kingdom*, no. 36528/97, Commission decision of 22 October 1998, unreported), that this is also true for a choice of clothing. A measure emanating from a public authority which restricts a choice of this kind will therefore, in principle, constitute an interference with the exercise of the right to respect for private life within the meaning of Article 8 of the Convention (see *Kara*, cited above). Consequently, the ban

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on wearing clothing designed to conceal the face in public places, pursuant to the Law of 11 October 2010, falls under Article 8 of the Convention.

[108] That being said, in so far as that ban is criticised by individuals who, like the applicant, complain that they are consequently prevented from wearing in public places clothing that the practice of their religion requires them to wear, it mainly raises an issue with regard to the freedom to manifest one's religion or beliefs (see, in particular, *Ahmet Arslan and Others v. Turkey*, no. 41135/98, § 35, 23 February 2010). The fact that this is a minority practice and appears to be contested (see paragraphs 56 and 85 above) is of no relevance in this connection.

[109] The Court will thus examine this part of the application under both Article 8 and Article 9, but with emphasis on the second of those provisions.

*(i) Whether there has been a "limitation" or an "interference"*

[110] ... There has [been] an "interference" with or a "limitation" of the exercise of the rights protected by Articles 8 and 9 of the Convention.

[111] Such a limitation or interference will not be compatible with the second paragraphs of those Articles unless it is "prescribed by law", pursues one or more of the legitimate aims set out in those paragraphs and is "necessary in a democratic society" to achieve the aim or aims concerned.

*(ii) Whether the measure is "prescribed by law"*

[112] The Court finds that the limitation in question is prescribed by sections 1, 2 and 3 of the Law of 11 October 2010 (see paragraph 28 above)....

*(iii) Whether there is a legitimate aim*

[113] The Court reiterates that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and that their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01,

§ 132, 14 June 2007, and *Nolan and K. v. Russia*, no. 2512/04, § 73, 12 February 2009). For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision. The same approach applies in respect of Article 8 of the Convention.

- [114] The Court's practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (see, for example, *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 99, ECHR 2005-XI, and *Ahmet Arslan and Others*, cited above, § 43). However, in the present case, the substance of the objectives invoked in this connection by the Government, and strongly disputed by the applicant, call for an in-depth examination. The applicant took the view that the interference with the exercise of her freedom to manifest her religion and of her right to respect for her private life, as a result of the ban introduced by the Law of 11 October 2010, did not correspond to any of the aims listed in the second paragraphs of Articles 8 and 9. The Government argued, for their part, that the Law pursued two legitimate aims: public safety and "respect for the minimum set of values of an open and democratic society". The Court observes that the second paragraphs of Articles 8 and 9 do not refer expressly to the second of those aims or to the three values mentioned by the Government in that connection.
- [115] As regards the first of the aims invoked by the Government, the Court first observes that "public safety" is one of the aims enumerated in the second paragraph of Article 9 of the Convention (*sécurité publique* in the French text) and also in the second paragraph of Article 8 (*sûreté publique* in the French text). It further notes the Government's observation in this connection that the impugned ban on wearing, in public places, clothing designed to conceal the face satisfied the need to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. Having regard to the case file, it may admittedly be wondered whether the Law's drafters attached much weight to such concerns. [Nevertheless], the Court accepts that, in adopting the impugned ban, the legislature sought to address questions of "public safety" within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.

- [116] As regards the second of the aims invoked – to ensure “respect for the minimum set of values of an open and democratic society” – the Government referred to three values: respect for equality between men and women, respect for human dignity and respect for the minimum requirements of life in society. They submitted that this aim could be linked to the “protection of the rights and freedoms of others”, within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.
- [117] As the Court has previously noted, these three values do not expressly correspond to any of the legitimate aims enumerated in the second paragraphs of Articles 8 and 9 of the Convention. Among those aims, the only ones that may be relevant in the present case, in relation to the values in question, are “public order” and the “protection of the rights and freedoms of others”. The former is not, however, mentioned in Article 8 § 2. Moreover, the Government did not refer to it either in their written observations or in their answer to the question put to them in that connection during the public hearing, preferring to refer solely to the “protection of the rights and freedoms of others”. The Court will thus focus its examination on the latter “legitimate aim”, as it did previously in the judgments in *Leyla Şahin* and *Ahmet Arslan and Others* (both cited above, § 111 and § 43, respectively).
- [118] Firstly, the Court is not convinced by the Government’s submission in so far as it concerns respect for equality between men and women.
- [119] It does not doubt that gender equality might rightly justify an interference with the exercise of certain rights and freedoms enshrined in the Convention (see, *mutatis mutandis*, *Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), no. 58369/10, 10 July 2012). It reiterates in this connection that advancement of gender equality is today a major goal in the member States of the Council of Europe (*ibid.*; see also, among other authorities, *Schuler-Zraggen v. Switzerland*, 24 June 1993, § 67, Series A no. 263, and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 127, ECHR2012). Thus a State Party which, in the name of gender equality, prohibits anyone from forcing women to conceal their face pursues an aim which corresponds to the “protection of the rights and freedoms of others” within the meaning of the second paragraphs of Articles 8 and 9 of the Convention (see *Leyla Şahin*, cited above, § 111). The Court takes the view, however, that a State Party cannot invoke gender equality in order to ban a practice that is defended by women – such as the applicant – in the context of the exercise of the rights enshrined in those provisions, unless it were to be understood that individuals could be protected on that basis from the exercise of their own fundamental rights and freedoms. ...

Moreover, in so far as the Government thus sought to show that the wearing of the full-face veil by certain women shocked the majority of the

French population because it infringed the principle of gender equality as generally accepted in France, the Court would refer to its reasoning as to the other two values that they have invoked (see paragraphs 120-22 below).

- [120] Secondly, the Court takes the view that, however essential it may be, respect for human dignity cannot legitimately justify a blanket ban on the wearing of the full-face veil in public places. The Court is aware that the clothing in question is perceived as strange by many of those who observe it. It would point out, however, that it is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy. It notes in this connection the variability of the notions of virtuousness and decency that are applied to the uncovering of the human body. Moreover, it does not have any evidence capable of leading it to consider that women who wear the full-face veil seek to express a form of contempt against those they encounter or otherwise to offend against the dignity of others.
- [121] Thirdly, the Court finds, by contrast, that under certain conditions the “respect for the minimum requirements of life in society” referred to by the Government – or of “living together”, as stated in the explanatory memorandum accompanying the bill (see paragraph 25 above) – can be linked to the legitimate aim of the “protection of the rights and freedoms of others”.
- [122] The Court takes into account the respondent State’s point that the face plays an important role in social interaction. It can understand the view that individuals who are present in places open to all may not wish to see practices or attitudes developing there which would fundamentally call into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, forms an indispensable element of community life within the society in question. The Court is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by the respondent State as breaching the right of others to live in a space of socialisation which makes living together easier. That being said, in view of the flexibility of the notion of “living together” and the resulting risk of abuse, the Court must engage in a careful examination of the necessity of the impugned limitation.

*(iv) Whether the measure is necessary in a democratic society*

*(α) General principles concerning Article 9 of the Convention*

- [124] As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. This freedom is, in its religious dimension, 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. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion ....

- [125] While religious freedom is primarily a matter of individual conscience, it also implies 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 shares. Article 9 lists the various forms which the manifestation of one's religion or beliefs may take, namely worship, teaching, practice and observance ... .

Article 9 does not, however, protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in the public sphere in a manner which is dictated by one's religion or beliefs ....

- [126] In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. ...

- [127] The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. As indicated previously, it also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed, and that this duty requires the State to ensure mutual tolerance between opposing groups. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.

- [128] Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position. Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society. Where these "rights and freedoms of others" are themselves among those guaranteed by the Convention or the Protocols thereto, it must be accepted that the need to protect them may lead States to restrict other rights or freedoms likewise set forth in the Convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a "democratic society" (see *Chassagnou and Others*, cited above, § 113; see also *Leyla Şahin*, cited above, § 108).

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[129] It is also important to emphasise the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. This is the case, in particular, where questions concerning the relationship between State and religions are at stake. As regards Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs is "necessary". That being said, in delimiting the extent of the margin of appreciation in a given case, the Court must also have regard to what is at stake therein.

It may also, if appropriate, have regard to any consensus and common values emerging from the practices of the States Parties to the Convention

[130] In the judgment in *Leyla Şahin* (cited above), the Court pointed out that this would notably be the case when it came to regulating the wearing of religious symbols in educational institutions, especially in view of the diversity of the approaches taken by national authorities on the issue. Referring to the judgment in *Otto-Preminger-Institut v. Austria* (20 September 1994, § 50, Series A no. 295-A) and the decision in *Dahlab v. Switzerland* ((dec.), no. 42393/98, ECHR 2001-V), it added that it was thus not possible to discern throughout Europe a uniform conception of the significance of religion in society and that the meaning or impact of the public expression of a religious belief would differ according to time and context. It observed that the rules in this sphere would consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. It concluded from this that the choice of the extent and form of such rules must inevitably be left up to a point to the State concerned, as it would depend on the specific domestic context (see *Leyla Şahin*, cited above, § 109).

[131] This margin of appreciation, however, goes hand in hand with a European supervision embracing both the law and the decisions applying it. The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate (see, among other authorities, *Manoussakis and Others*, cited above, § 44, and *Leyla Şahin*, cited above, § 110).

(β) *Application of those principles in previous cases*

[132] The Court has had occasion to examine a number of situations in the light of those principles.

[133] It has thus ruled on bans on the wearing of religious symbols in State schools, imposed on teaching staff (see, *inter alia*, *Dahlab*, cited above, and *Kurtulmuş v. Turkey* (dec.), no. 65500/01, ECHR 2006-II) and on pupils and students (see, *inter alia*, *Leyla Şahin*, cited above; *Köse and Others v. Turkey* (dec.), no. 26625/02, ECHR 2006-II; *Kervanci v. France*, no. 31645/04, 4 December 2008; *Aktas v. France* (dec.), no. 43563/08, 30 June 2009; and *Ranjit Singh v. France* (dec.) no. 27561/08, 30 June 2009), on an obligation to remove clothing with a religious connotation in the context of a security check (see *Phull*, cited above, and *El Morsli*, cited above), and on an obligation to appear bareheaded on identity photos for use on official documents (see *Mann Singh v. France* (dec.), no. 24479/07, 13 November 2008). It did not find a violation of Article 9 in any of these cases.



[134] The Court has also examined two applications in which individuals complained in particular about restrictions imposed by their employers on the possibility for them to wear visibly a cross around their necks, arguing that domestic law had not sufficiently protected their right to manifest their religion. One was an employee of an airline company, the other was a nurse (see *Eweida and Others*, cited above). The first of those cases, in which the Court found a violation of Article 9, is the most pertinent for the present case. The Court took the view, *inter alia*, that the domestic courts had given too much weight to the wishes of the employer – which it nevertheless found legitimate – to project a certain corporate image, in relation to the applicant's fundamental right to manifest her religious beliefs. On the latter point, it observed that a healthy democratic society needed to tolerate and sustain pluralism and diversity and that it was important for an individual who had made religion a central tenet of her life to be able to communicate her beliefs to others. It then noted that the cross had been discreet and could not have detracted from the applicant's professional appearance. There was no evidence that the wearing of other, previously authorised, religious symbols had had any negative impact on the image of the airline company in question. While pointing out that the national authorities, in particular the courts, operated within a margin of appreciation when they were called upon to assess the proportionality of measures taken by a private company in respect of its employees, it thus found that there had been a violation of Article 9.

[135] The Court also examined, in the case of *Ahmet Arslan and Others* (cited above), the question of a ban on the wearing, outside religious ceremonies, of certain religious clothing in public places open to everyone, such as public streets or squares. The clothing in question, characteristic of the *Aczimendi tarikati* group, consisted of a turban, a sirwal and a tunic, all in black, together with a baton. The Court accepted, having regard to the circumstances of the case and the decisions of the domestic courts, and particularly in view of the importance of the principle of secularism for the democratic system in Turkey, that, since the aim of the ban had been to uphold secular and democratic values, the interference pursued a number of the legitimate aims listed in Article 9 § 2: the maintaining of public safety, the protection of public order and the protection of the rights and freedoms of others. It found, however, that the necessity of the measure in the light of those aims had not been established.

The Court thus noted that the ban affected not civil servants, who were bound by a certain discretion in the exercise of their duties, but ordinary citizens, with the result that its case-law on civil servants – and teachers in particular – did not apply. It then found that the ban was aimed at clothing worn in any public place, not only in specific public buildings, with the result that its case-law emphasising the particular weight to be given to the role of the domestic policy-maker, with regard to the wearing of religious

symbols in State schools, did not apply either. The Court, moreover, observed that there was no evidence in the file to show that the manner in which the applicants had manifested their beliefs by wearing specific clothing – they had gathered in front of a mosque for the sole purpose of participating in a religious ceremony – constituted or risked constituting a threat to public order or a form of pressure on others. Lastly, in response to the Turkish Government’s allegation of possible proselytising on the part of the applicants, the Court found that there was no evidence to show that they had sought to exert inappropriate pressure on passers-by in public streets and squares in order to promote their religious beliefs. The Court thus concluded that there had been a violation of Article 9 of the Convention.

- [136] Among all these cases concerning Article 9, *Ahmet Arslan and Others* (cited above) is the one which the present case most closely resembles. However, while both cases concern a ban on wearing clothing with a religious connotation in public places, the present case differs significantly from *Ahmet Arslan and Others* in the fact that the full-face Islamic veil has the particularity of entirely concealing the face, with the possible exception of the eyes.

(γ) *Application of those principles to the present case*

- [137] The Court would first emphasise that the argument put forward by the applicant and some of the third-party interveners, to the effect that the ban introduced by sections 1 to 3 of the Law of 11 October 2010 was based on the erroneous supposition that the women concerned wore the full-face veil under duress, is not pertinent. It can clearly be seen from the explanatory memorandum accompanying the bill (see paragraph 25 above) that it was not the principal aim of the ban to protect women against a practice which was imposed on them or would be detrimental to them.
- [138] That being clarified, the Court must verify whether the impugned interference is “necessary in a democratic society” for public safety (within the meaning of Articles 8 and 9 of the Convention; see paragraph 115 above) or for the “protection of the rights and freedoms of others” (see paragraph 116 above).
- [139] As regards the question of necessity in relation to public safety, within the meaning of Articles 8 and 9 (see paragraph 115 above), the Court understands that a State may find it essential to be able to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. It has thus found no violation of Article 9 of the Convention in cases concerning the obligation to remove clothing with a religious connotation in the context of security checks and the obligation to appear bareheaded on identity photos for use on official documents (see paragraph 133 above). However, in view of its impact on the rights of women who wish to wear the full-face veil for religious reasons, a blanket ban on the wearing in public places of clothing designed to conceal the face

can be regarded as proportionate only in a context where there is a general threat to public safety. The Government have not shown that the ban introduced by the Law of 11 October 2010 falls into such a context. As to the women concerned, they are thus obliged to give up completely an element of their identity that they consider 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 has been established, or where particular circumstances entail a suspicion of identity fraud. It cannot therefore be found that the blanket ban imposed by the Law of 11 October 2010 is necessary, in a democratic society, for public safety, within the meaning of Articles 8 and 9 of the Convention.

- [140] The Court will now examine the questions raised by the other aim that it has found legitimate: to ensure the observance of the minimum requirements of life in society as part of the “protection of the rights and freedoms of others” (see paragraphs 121-22 above).
- [141] The Court observes that this is an aim to which the authorities have given much weight. This can be seen, in particular, from the explanatory memorandum accompanying the bill, which indicates that “[t]he voluntary and systematic concealment of the face is problematic because it is quite simply incompatible with the fundamental requirements of ‘living together’ in French society” and that “[t]he systematic concealment of the face in public places, contrary to the ideal of fraternity, ... falls short of the minimum requirement of civility that is necessary for social interaction” (see paragraph 25 above). It indeed falls within the powers of the State to secure the conditions whereby individuals can live together in their diversity. Moreover, the Court is able to accept that a State may find it essential to give particular weight in this connection to the interaction between individuals and may consider this to be adversely affected by the fact that some conceal their faces in public places (see paragraph 122 above).
- [142] Consequently, the Court finds that the impugned ban can be regarded as justified in its principle solely in so far as it seeks to guarantee the conditions of “living together”.
- [143] It remains to be ascertained whether the ban is proportionate to that aim.
- [144] Some of the arguments put forward by the applicant and the intervening non-governmental organisations warrant particular attention.
- [145] Firstly, it is true that only a small number of women are affected. It can be seen, among other things, from the report “on the wearing of the full-face veil on national territory”, prepared by a commission of the National Assembly and deposited on 26 January 2010, that about 1,900 women wore the Islamic full-face veil in France at the end of 2009, of whom about 270

were living in French overseas administrative areas (see paragraph 16 above). This is a small proportion in relation to the French population of about sixty-five million and to the number of Muslims living in France. It may thus seem excessive to respond to such a situation by imposing a blanket ban.

- [146] In addition, there is no doubt that the ban has a significant negative impact on the situation of women who, like the applicant, have chosen to wear the full-face veil for reasons related to their beliefs. As stated previously, they are thus confronted with a complex dilemma, and the ban may have the effect of isolating them and restricting their autonomy, as well as impairing the exercise of their freedom to manifest their beliefs and their right to respect for their private life. It is also understandable that the women concerned may perceive the ban as a threat to their identity.
- [147] It should furthermore be observed that a large number of actors, both international and national, in the field of fundamental rights protection have found a blanket ban to be disproportionate. This is the case, for example, of the French National Advisory Commission on Human Rights (see paragraphs 18-19 above), non-governmental organisations such as the third-party interveners, the Parliamentary Assembly of the Council of Europe (see paragraphs 35-36 above) and the Commissioner for Human Rights of the Council of Europe (see paragraph 37 above).
- [148] The Court is also aware that the Law of 11 October 2010, together with certain debates surrounding its drafting, may have upset part of the Muslim community, including some members who are not in favour of the full-face veil being worn.
- [149] In this connection, the Court is very concerned by the indications of some of the third-party interveners to the effect that certain Islamophobic remarks marked the debate which preceded the adoption of the Law of 11 October 2010 (see the observations of the Human Rights Centre of Ghent University and of the non-governmental organisations Liberty and Open Society Justice Initiative, paragraphs 98, 100 and 104 above). It is admittedly not for the Court to rule on whether legislation is desirable in such matters. It would, however, emphasise that a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance. The Court reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects.
- [150] The other arguments put forward in support of the application must, however, be qualified.
- [151] Thus, while it is true that the scope of the ban is broad, since it concerns all places accessible to the public (except for places of worship), the Law of 11 October 2010 does not affect the freedom to wear in public any garment or item of clothing – with or without a religious

connotation – which does not have the effect of concealing the face. The Court is aware of the fact that the impugned ban mainly affects Muslim women who wish to wear the full-face veil. It nevertheless finds it to be of some significance that the ban is not expressly based on the religious connotation of the clothing in question but solely on the fact that it conceals the face. This distinguishes the present case from that in *Ahmet Arslan and Others* (cited above).

- [152] As to the fact that criminal sanctions are attached to the ban, this no doubt increases the impact of the measure on those concerned. It is certainly understandable that the idea of being prosecuted for concealing one's face in a public place is traumatising for women who have chosen to wear the full-face veil for reasons related to their beliefs. It should nevertheless be taken into account that the sanctions provided for by the Law's drafters are among the lightest that could be envisaged, since they consist of a fine at the rate applying to second-class petty offences (currently EUR 150 maximum), with the possibility for the court to impose, in addition to or instead of the fine, an obligation to follow a citizenship course.
- [153] Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of "living together". From that perspective, the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society (see paragraph 128 above). It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society.
- [154] In such circumstances, the Court has a duty to exercise a degree of restraint in its review of Convention compliance, since such review will lead it to assess a balance that has been struck by means of a democratic process within the society in question. The Court has, moreover, already had occasion to observe that in matters of general policy, on which opinions

within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 129 above).

[155] In other words, France had a wide margin of appreciation in the present case.

[156] This is particularly true as there is little common ground among the member States of the Council of Europe as to the question of the wearing of the full-face veil in public. The Court thus observes that, contrary to the submission of one of the third-party interveners (see paragraph 105 above), there is no European consensus against a ban. Admittedly, from a strictly normative standpoint, France is very much in a minority position in Europe: except for Belgium, no other member State of the Council of Europe has, to date, opted for such a measure. It must be observed, however, that the question of the wearing of the full-face veil in public is or has been a subject of debate in a number of European States. In some it has been decided not to opt for a blanket ban. In others, such a ban is still being considered (see paragraph 40 above). It should be added that, in all likelihood, the question of the wearing of the full-face veil in public is simply not an issue at all in a certain number of member States, where this practice is uncommon. It can thus be said that in Europe there is no consensus as to whether or not there should be a blanket ban on the wearing of the full-face veil in public places.

[157] Consequently, having regard in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, the Court finds that the ban imposed by the Law of 11 October 2010 can be regarded as proportionate to the aim pursued, namely the preservation of the conditions of “living together” as an element of the “protection of the rights and freedoms of others”.

[158] The impugned limitation can thus be regarded as “necessary in a democratic society”. This conclusion holds true with respect both to Article 8 of the Convention and to Article 9.

[159] Accordingly, there has been no violation either of Article 8 or of Article 9 of the Convention.

**(b) Alleged violation of Article 14 of the Convention taken in conjunction with Article 8 or Article 9**

[160] The Court notes that the applicant complained of indirect discrimination. It observes in this connection that, as a Muslim woman who for religious reasons wishes to wear the full-face veil in public, she belongs to a category of individuals who are particularly exposed to the ban in question and to the sanctions for which it provides.

[161] The Court reiterates that a general policy or measure that has disproportionately prejudicial effects on a particular group may be

considered discriminatory even where it is not specifically aimed at that group and there is no discriminatory intent. This is only the case, however, if such policy or measure has no “objective and reasonable” justification, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised (ibid., § 196). In the present case, while it may be considered that the ban imposed by the Law of 11 October 2010 has specific negative effects on the situation of Muslim women who, for religious reasons, wish to wear the full-face veil in public, this measure has an objective and reasonable justification for the reasons indicated previously (see paragraphs 144-59 above).

[162] Accordingly, there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 or Article 9.

(...)

#### FOR THESE REASONS, THE COURT

*Holds*, by fifteen votes to two, that there has been no violation of Article 8 of the Convention;

*Holds*, by fifteen votes to two, that there has been no violation of Article 9 of the Convention;

*Holds*, unanimously, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 or with Article 9;

*Holds*, unanimously, that no separate issue arises under Article 10 of the Convention, taken separately or together with Article 14 of the Convention.

Erik Fribergh  
Registrar

Dean Spielmann  
President

[The separate opinion of Judges Nußberger and Jäderblomis omitted.]

D.S.  
E.F.



