



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

Information Note on the Court's case-law 176

July 2014

S.A.S. v. France [GC] - 43835/11

Judgment 1.7.2014 [GC]

Article 8

Article 8-1

Respect for private life

Ban on wearing religious face covering in public: *no violation*

Article 9

Article 9-1

Manifest religion or belief

Ban on wearing religious face covering in public: *no violation*

Article 14

Discrimination

Ban on wearing religious face covering in public: *no violation*

Facts – The applicant is a practising Muslim and said that she wore the burqa and niqab, which covered her whole body except for her eyes, to live in accordance with her religious faith, culture and personal convictions. She added that she wore this clothing of her own accord in public and in private, but not systematically. She was thus content not to wear it 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. Since 11 April 2011, the date of the entry into force of Law no. 2010-1192 of 11 October 2010 throughout France, it had been against the law to conceal one's face in a public place.

Law – Article 8 and Article 9: The ban on wearing, in public places, clothing designed to conceal one's face raised issues with regard to the right to respect for the private life (Article 8 of the Convention) of women who wished to wear the full-face veil for reasons relating to their beliefs; and to the extent that the ban was complained of by individuals such as the applicant who were thus prevented from wearing in public places clothing that they were required to wear by their religion, it particularly raised an issue with regard to the freedom to manifest one's religion or beliefs (Article 9).

The Law of 11 October 2010 confronted the applicant 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 comply and would face criminal sanctions.* There had thus

been an “interference” or a “limitation” prescribed by law as regards the exercise of rights protected by Articles 8 and 9 of the Convention.

The Government had argued that the interference pursued two legitimate aims: “public safety” and “respect for the minimum set of values of an open democratic society”. However, the second paragraph of Articles 8 and 9 did not expressly refer to the second of those aims or to the three values invoked by the Government in that connection.

The Court accepted that the legislature had sought, by adopting the ban in question, to address concerns of “public safety” within the meaning of the second paragraph of Articles 8 and 9.

As regards the second aim, “respect for the minimum set of values of an open democratic society”**, the Court was not convinced by the Government’s submission in so far as it concerned respect for gender equality. A State Party could not invoke gender equality in order to ban a practice that was defended by women – such as the applicant – in the context of the exercise of the rights enshrined in those Articles, 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 referred to its reasoning (below) as to the other two values that they had invoked.

Secondly, respect for human dignity could not legitimately justify a blanket ban on the wearing of the full-face veil in public places. The clothing in question might be perceived as strange by many of those who observed it, but it was the expression of a cultural identity which contributed to the pluralism inherent in democracy.

Thirdly, in certain conditions, what the Government had described as “respect for the minimum requirements of life in society” – or of “living together”, as stated in the explanatory memorandum accompanying the Bill – could be linked to the legitimate aim of the “protection of the rights and freedoms of others”. The respondent State took the view that the face played an important role in social interaction. 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. That being said, in view of the flexibility of the notion of “living together” and the resulting risk of abuse, the Court had to engage in a careful examination of the necessity of the impugned limitation.

First, it could be seen clearly from the explanatory memorandum accompanying the Bill 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.

As regards the question of necessity in relation to public safety, within the meaning of Articles 8 and 9, the Court understood that a State might 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. However, 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 the 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 had been established, or

where particular circumstances entailed a suspicion of identity fraud. It could not therefore be found that the blanket ban imposed by the Law of 11 October 2010 was necessary, in a democratic society, for public safety, within the meaning of Articles 8 and 9 of the Convention.

The Court then examined the questions raised by the need to meet the minimum requirements of life in society as part of the “protection of the rights and freedoms of others”. It took the view that the ban in question could be regarded as justified in its principle solely in so far as it sought to guarantee the conditions of “living together”.

In the light of the number of women concerned, about 1,900 women in relation to the French population of about sixty-five million and to the number of Muslims living in France, it might seem excessive to respond to such a situation by imposing a blanket ban. In addition, there was no doubt that the ban had a significant negative impact on the situation of women who, like the applicant, had chosen to wear the full-face veil for reasons related to their beliefs. A large number of actors, both international and national, in the field of fundamental rights protection had found a blanket ban to be disproportionate. The Law of 11 October 2010, together with certain debates surrounding its drafting, might have upset part of the Muslim community, including some members who were not in favour of the full-face veil being worn. In this connection, the Court was very concerned by the fact that the debate which preceded the adoption of the Law of 11 October 2010 was marked by certain Islamophobic remarks. It was admittedly not for the Court to rule on whether legislation was desirable in such matters. It nevertheless emphasised 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 certain categories of the population and of encouraging the expression of intolerance, when it had a duty, on the contrary, to promote tolerance. Remarks which constituted a general, vehement attack on a religious or ethnic group were incompatible with the values of tolerance, social peace and non-discrimination underlying the Convention and did not fall within the right to freedom of expression that it protected.

However, the Law of 11 October 2010 did not affect the freedom to wear in public any garment or item of clothing – with or without a religious connotation – which did not have the effect of concealing the face. The impugned ban mainly affected Muslim women who wished to wear the full-face veil. Nevertheless, 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.***

As to the fact that criminal sanctions were attached to the ban, the sanctions provided for by the legislature were among the lightest that could be envisaged, consisting 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.

By prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State had to a certain extent restricted the reach of pluralism, since the ban prevented certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, the Government had 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 was seeking to protect a principle of interaction between individuals, which in its view was essential for the expression not only of pluralism, but also of tolerance and broadmindedness, without which there was no democratic society. It could thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constituted a choice of society.

In such circumstances, the Court had a duty to exercise a degree of restraint in its review of Convention compliance, since such review would lead it to assess a balance that had been struck by means of a democratic process within the society in question. In matters of general policy, on which opinions within a democratic society might reasonably differ widely, the role of the domestic policy-maker had to be given special weight. In the present case France thus had a wide margin of appreciation.

This was particularly true as there was no European consensus as to the question of the wearing of the full-face veil in public. While, from a strictly normative standpoint, France was very much in a minority position in Europe, it had to be observed that the question of the wearing of the full-face veil in public was or had been a subject of debate in a number of European States. In addition, this question was probably not an issue at all in a certain number of member States, where this practice was uncommon.

Consequently, having regard in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, the Court found that the ban imposed by the Law of 11 October 2010 could 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". The impugned limitation was therefore "necessary in a democratic society". This conclusion held true with respect both to Article 8 of the Convention and to Article 9.

Conclusion: no violation (fifteen votes to two).

Article 14 of the Convention taken together with Article 8 or Article 9: The applicant had complained of indirect discrimination. As a Muslim woman who for religious reasons wished to wear the full-face veil in public, she belonged to a category of individuals who were particularly exposed to the ban in question and to the sanctions for which it provided.

A general policy or measure that had disproportionately prejudicial effects on a particular group might be considered discriminatory even where it was not specifically aimed at that group and there was no discriminatory intent. This was only the case, however, if such policy or measure had no "objective and reasonable" justification, that is, if it did not pursue a "legitimate aim" or if there was not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised. In the present case, while it might be considered that the ban imposed by the Law of 11 October 2010 had specific negative effects on the situation of Muslim women who, for religious reasons, wished to wear the full-face veil in public, this measure had an objective and reasonable justification.

Conclusion: no violation (unanimously).

* See *Dudgeon v. the United Kingdom*, 7525/76, 22 October 1981.

** See *Leyla Şahin v. Turkey* [GC], 44774/98, 10 November 2005, [Information Note 80](#); and *Ahmet Arslan and Others v. Turkey*, 41135/98, 23 February 2010, [Information Note 127](#).

*** Contrast *Ahmet Arslan and Others v. Turkey*, op. cit.