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

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Ban on wearing face covering in public in Belgium did not violate Convention rights

In today's **Chamber** judgment[1] in the case of Belcacemi and Oussar v. Belgium (application no. 37798/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights**, and**

no violation of Article 14 (prohibition of discrimination) taken together with Articles 8 and 9.

The case concerned the ban on the wearing in public of clothing that partly or totally covers the face under the Belgian law of 1 June 2011.

The Court found in particular that the restriction sought to guarantee the conditions of "living together" and the "protection of the rights and freedoms of others" and that it was "necessary in a democratic society".

Firstly, as in the case of *S.A.S v. France*[2], the Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of "living together". In that connection, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Therefore, in adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which, for the State, was essential to ensure the functioning of a democratic society. The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society.

Secondly, as regards the proportionality of the restriction, the Court noted that the sanction for non-compliance with the ban under Belgian law could range from a fine to a prison sentence. Imprisonment was reserved, however, for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, alternative measures were possible and taken in practice at municipal level.

Principal facts

The applicants, Samia Belcacemi (a Belgian national) and Yamina Oussar (a Moroccan national), were born in 1981 and 1973 respectively and live in Schaerbeek and Liège (Belgium).

The case concerns the Belgian law of 1 June 2011 banning the wearing in public places of clothing which partially or totally covers the face.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Ms Belcacemi and Ms Oussar present themselves as Muslims who have decided on their own initiative to wear the niqab – a veil covering the face except for the eyes – on account of their religious convictions.

Following the enactment on 1 June 2011 of the law in question, Ms Belcacemi initially decided to continue wearing the veil in the street. However, under pressure, she subsequently decided to remove her veil temporarily, being afraid that she might be stopped in the street and then heavily fined or even sent to prison. Ms Oussar, for her part, states that she has decided to stay at home, with the resulting restriction on her private and social life.

On 26 July 2011 Ms Belcacemi and Ms Oussar brought actions for the suspension and annulment of the law before the Constitutional Court. Their cases were dismissed by that court in October 2011 (application for suspension) and in December 2012 (application for annulment).

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), and 10 (freedom of expression), taken separately and together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights, Ms Belcacemi and Ms Oussar complained about the ban on wearing the full-face veil.

Ms Belcacemi and Ms Oussar also relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security), 11 (freedom of assembly and association) and Article 2 of Protocol No. 4 (freedom of movement) to the Convention, taken separately or together with Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 31 May 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion)

The Court took the view that this part of the application had to be examined in the light of the liberty secured by Article 9 of the Convention, as in the *S.A.S. v. France*[2] case.

Firstly, the Court observed that the Law of 1 June 2011 – whose wording was very similar to that of the French Law of 11 October 2010[2]– could be regarded as worded with sufficient precision to satisfy the requirement of foreseeability required by Articles 8 and 9 of the Convention.

[2] *S.A.S. v. France* [GC] (no. 43835/11, ECHR 2014).

Secondly, the Court found that the drafting history of the Belgian Law used three aims to justify the ban in Belgium: public safety, gender equality, and a certain conception of "living together" in society. It noted that, as it had found in *S.A.S. v. France*[2], the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle solely to the extent that it sought to guarantee the conditions of "living together".

Thirdly, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Where questions of general policy were at stake, concerning which there might be profound disagreements in a democratic society, particular importance had to be given to the national decision-maker. In addition, under Article 9 of the Convention the State had a broad margin of appreciation to decide whether and to what extent a restriction on the right to manifest one religion or convictions was "necessary". In adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which for the State was essential to ensure the functioning of a democratic society. The question whether the full-face veil was accepted in the Belgian public sphere was thus a choice of society. As it had emphasised in *S.A.S. v. France*, the Court explained that in such cases it had to show reserve in its scrutiny of Convention compliance, in this case in assessing a decision taken democratically within Belgian society. It noted that the decision-making process leading to the ban in question had taken several years and had been marked by comprehensive debate in the lower house of Parliament and by a detailed examination of the various interests by the Constitutional Council. In addition, there was currently no consensus in such matters among the member States of the Council of Europe, whether for or against a blanket ban of the full-face veil, thus justifying a broad margin of appreciation for the Belgian State.

Fourthly, as regards the proportionality of the restriction, the Court noted that that the sanction for non-compliance with the ban under Belgian law could range from a fine to a prison sentence. The main sanction was the fine, being the lightest penalty. Imprisonment was reserved for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, and contrary to what the applicants had contended, alternative measures were possible and taken in practice at municipal level. Moreover, the present application did not concern a specific sanction imposed on the applicants themselves. Consequently, having regard to the broad margin of appreciation afforded to the Belgian authorities, the Court found that the ban under the Law of 1 June 2011, even though it was controversial and undeniably carried risks in terms of the promotion of tolerance in society (see *S.A.S. v. France*), 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 Court thus found that the impugned restriction could be regarded as "necessary in a democratic society", explaining that this conclusion applied both under Article 8 of the Convention and under Article 9. **Consequently, there had been no violation either of Article 8 or of Article 9 of the Convention.**

Article 14 (prohibition of discrimination), taken together with Articles 8 and 9

The Court reiterated that a general policy or measure which had disproportionate prejudicial effects on a group of individuals could be regarded as discriminatory – even if it did not specifically target the group and there was no discriminatory intent – if that policy or measure lacked "objective and reasonable" justification, if it did not pursue a "legitimate aim" or if there was no "reasonable relationship of proportionality" between the means used and the aim pursued. In the present case,

the measure had an objective and reasonable justification for the same reasons as those developed above. **Consequently, there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9 of the Convention.**

Other Articles

The Court took the view that no separate question arose under Article 10 (freedom of expression), taken separately and in conjunction with Article 14 of the Convention, and it dismissed the other complaints raised by Ms Belcacemi and Ms Oussar, pursuant to Article 35 §§ 3 and 4 (conditions of admissibility) of the Convention.

Separate opinion

Judge Spano expressed a concurring opinion, joined by judge Karakaş, which is appended to the judgment.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08
Inci Ertekin (tel: + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)