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# BELGIUM: Ban on wearing face covering in public in three Belgian municipalities was not in breach of the Convention

Registrar of the European Court (11.07.2017) - In today's **Chamber** judgment (1) in the case of Dakir v. Belgium (application no. 4619/12) 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 (right to freedom of thought, conscience and religion)** of the European Convention on Human Rights**, no violation of Article 14 (prohibition of discrimination), taken together with Articles 8 and 9 of the Convention, and a violation of Article 6 § 1 (right of access to a court).**

The case concerned a by-law adopted in June 2008 by three Belgian municipalities (Pepinster, Dison and Verviers) concerning a ban on the wearing in public places of clothing that conceals the face, and the subsequent proceedings before the *Conseil d'État*.

The Court found in particular that the ban imposed by the joint by-law of municipalities in the Vesdre police area 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. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society", and that – similarly to the situation which had previously arisen in France (*S.A.S. v. France2*) – the question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society.

The Court also held that the decision by the *Conseil d'État* to declare Ms Dakir's application inadmissible on the ground that it was based only on Article 113*bis* of the by-law, without reference to Article 113, had been excessively formalistic, and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. The Court noted that Ms Dakir's arguments on the merits had been set out in a substantiated and structured manner and were of particular significance.

## *Principal facts*

The applicant, Fouzia Dakir, is a Belgian national who was born in 1977 and lives in Dison (Belgium). In June 2008 the municipalities of Pepinster, Dison and Verviers adopted a

municipal by-law providing in Article 113*bis* thereof for a ban on the wearing of clothing concealing the face, at all times and in all public places.

In August 2008 Ms Dakir, presenting herself as a Muslim who had decided on her own initiative to wear the niqab – a veil covering the face except for the eyes – applied to the *Conseil d'État* for the annulment of the ban. She claimed, among other things, that the provision expressly concerned the Islamic veil that she wore and that the resulting ban constituted an interference with the rights secured by Articles 8, 9, 10 and 14 of the European Convention on Human Rights. She also contended that the interference had no legitimate aim as secularism was not a constitutional principle and the wearing of the veil could not be subject to a blanket ban. In June 2011 the *Conseil d'État* dismissed the case for failure to comply with an admissibility condition that it raised of its own motion.

## *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 Convention, Ms Dakir complained about the ban on wearing of the full veil in public spaces in the three municipalities.

Ms Dakir also relied on Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy); she submitted that the *Conseil d'État* did not examine the merits of her arguments on the grounds that she had not lodged her application against Article 113 of the by-law but instead against Article 113*bis* which, according to the *Conseil d'État*, was its duplication.

The application was lodged with the European Court of Human Rights on 22 December 2011.

The non-governmental organisation Liberty and the Human Rights Centre of Ghent University were granted leave to intervene in the written procedure as third parties.

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*

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

The Court noted, firstly, that the contested ban had a legal basis – the joint by-law of the municipalities included in the Vesdre police area – and thus met the criteria set out in its case-law concerning Articles 8 and 9 of the Convention.

Secondly, as in the case of *S.A.S. v. France*[2], the Court considered that the aim of ensuring the observance of the minimum requirements of life in society could be considered as part of the protection of the rights and freedoms of others, and that the contested ban could be regarded as justified in its principle solely in so far as it sought to guarantee the conditions of "living together".

Thirdly, the Court indicated that, by reason of their direct and continuous contact with the vital forces of their countries, the State authorities were 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 could reasonably differ widely, the role of the domestic policy-maker was to be given special weight. With regard to 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 was "necessary".

In the present case, the Belgian State had intended in adopting the contested provisions to respond to a practice that the State deemed incompatible, in Belgian society, with the ground rules of social communication and, more broadly, with the creation of the human relationships that were essential to life in society. The State was seeking to protect a principle of interaction between individuals that was, in its view, essential to the functioning of a democratic society. From this perspective, and similarly to the situation which had previously arisen in France (*S.A.S. v. France*), it seemed that the question whether or not it should be permitted to wear the full-face veil in public places constituted a choice of society. Furthermore, while it was true that the scope of the ban was broad, because all places accessible to the public were concerned, the contested provisions 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. Lastly, there was no consensus within the member States of the Council of Europe as to whether or not there should be a blanket ban on the wearing of the full-face veil in public places, which justified, in the Court's opinion, leaving the respondent State significant room for manoeuvre ("a very large margin of appreciation").

In consequence, the Court considered that the ban imposed by the joint by-law of the municipalities in the Vesdre police area 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. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society" and concluded that **there had been no violation of Articles 8 and 9 of the Convention**.

***Article 14 (prohibition of discrimination), taken together with Article 8 or with Article 9***

The Court having found that the contested measure had an objective and reasonable justification for the reasons set out above, it held that there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9.

***Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy)***

The *Conseil d'État* had rejected Ms Dakir's application on the grounds that it had been based solely on Article 113*bis* of the by-law, without referring to Article 113.

The Court noted that Article 113 could be considered as a general provision and that Article 113*bis* represented a particular application of it; the municipalities in question had used Article 113*bis* in the by-law because they considered that Article 113 was insufficient to prohibit the wearing of the burqa. It also noted that the submissions on the merits made by Ms Dakir had been set out in a substantiated and structured manner and were of particular significance, and that they had been discussed in the context of the adversarial written proceedings before the *Conseil d'État*. In consequence, the Court considered that the decision by the *Conseil d'État* to declare the application inadmissible had been excessively formalistic and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to

courts was complied with and, on the other, the right of access to the courts. In consequence, it held that **there had been a violation of Article 6 § 1 of the Convention**.

***Article 41 (just satisfaction)***

The Court held that Belgium was to pay Ms Dakir 800 euros (EUR) in respect of costs and expenses.

***Separate opinion***

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

*The judgment is available only in French at*
*http://hudoc.echr.coe.int/eng/#{"itemid":["001-175139"]}.*

(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.

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

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

Registrar of the European Court (11.07.2017) - 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. France2*, 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 noncompliance 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.

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. France2* case.

**Firstly**, the Court observed that the Law of 1 June 2011 – whose wording was very similar to that ofthe 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.

**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 at*
*http://hudoc.echr.coe.int/eng#{"itemid":["001-175141"]}*

(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.

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

# BULGARIA: Registration of a Muslim association denied

***Refusal of Bulgarian authorities to register an association promoting the rights of the Muslim minority was not "necessary in a democratic society"***

Registrar of the European Court (08.06.2017) - In today's **Chamber** judgment (1) in the case of **National Turkish Union and Kungyun v. Bulgaria** (application no. 4776/08) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the refusal of the Bulgarian authorities to register an association promoting the rights of the Muslim minority in Bulgaria.
Referring back to its case-law, the Court found that there was no "pressing social need" to require any association wishing to pursue political aims to constitute a political party if it was not the intention of the founders to take part in elections.

The Court further noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence.
It concluded that the refusal to register the applicant association had not been "necessary in a democratic society".

## *Principal facts*

The applicants are the association National Turkish Union, and Menderes Mehmet Kungyun, a Bulgarian national who was born in 1950 and lives in Kazanlak. Mr Kungyun, a founder member and chair of the association, complained of the Bulgarian authorities' refusal to register the association.

In 2006 Mr Kungyun announced his intention to form an association dedicated to promoting the rights of the Muslim minority in Bulgaria. Following his announcement several hostile articles appeared in the press, criticising the association's aims and claiming variously that the applicant wanted to create an ethnic Turkish party and that he was receiving funding from secret services abroad. In May 2006 Mr Kungyun and five other founder members applied to the Plovdiv Regional Court to have the association registered. The court refused their application on the grounds that one of the association's declared aims was political. Under the Constitution, only political parties were allowed to conduct political activities. The court also observed that commercial activities could not feature among the primary aims of a non-profit association. Lastly, the court noted a lack of precision in the association's constitution concerning its representative bodies.

Mr Kungyun appealed. The Court of Appeal upheld the original judgment and observed that an association's name should not be misleading or contrary to public morals. The name "National Turkish Union" referred to the existence of a Turkish nation in Bulgaria and implied a separatist
objective. Mr Kungyun appealed on points of law.

On 10 July 2007 the Supreme Court of Cassation dismissed his appeal and upheld the Court of Appeal's judgment.

## *Complaints, procedure and composition of the Court*

The applicants alleged that the refusal to register the association "National Turkish Union" constituted a breach of their rights under Article 11 of the Convention (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 4 January 2008.

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

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan) and,
Pavlina **Panova** (Bulgaria)*, ad hoc Judge*,
and also Milan **Blaško**, *Deputy Section Registrar.*

## *Decision of the Court*

### *Article 11*

The Court observed that, in refusing registration of the association, the Supreme Court of Cassation had based its judgment on two grounds: the fact that the purpose of the association was political in nature and that the association sought to conduct political activities; the aims and name of the association breached Article 44 of the Constitution and presented a danger to national security. The other grounds set out by the lower courts had not been used by the highest court.

As regards the political nature of the association's aims, the Court had already taken the view in its case-law that such a ground could not justify a refusal to register an association. It found that there was no "pressing social need" to require any association wishing to pursue political aims to set up a political party if it was not the intention of its founders to take part in elections. The Court took the view that in the present case, the association's declared aim to "contribute to the development of political pluralism in the country" did not seem to imply that the association wished to take part in elections or in the exercise of power. Otherwise it could have been justified to impose on its founders the more restrictive legal form of political party.

Concerning the possibility of danger to national security, the Court observed that the expression of separatist views did not in itself imply a threat to the territorial integrity of the State or national security and did not as such justify a restriction of the rights secured by Article 11 of the Convention.

The use of the words "National Turkish" in the name of the association did not appear capable of undermining the territorial integrity or unity of the Bulgarian nation. Moreover, the Court did not see how the association's challenge to the monopoly of a political party in ethnically mixed regions would represent a risk for ethnic peace and would thus compromise the country's security.

The Court noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence. It further observed that the national authorities would not have been powerless if that were the case. The regional court could order the dissolution of an association whose activities were incompatible with the Constitution, with the law, or with public morals. The

mere supposition that an association could have engaged in such activities did not therefore justify a refusal to register it.

The Court thus concluded that the refusal to register the applicant association was not "necessary in a democratic society" and constituted a violation of Article 11.

***Article 14***

Having regard to its finding of a violation of Article 11, the Court took the view that it did not need to examine the complaint under Article 14 of the Convention.

***Just satisfaction (Article 41)***

The Court held that Bulgaria was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

*The judgment is available only in French.*

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.

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# GREECE: Application of shariah law to an inheritance dispute

### *Relinquishment in favour of the Grand Chamber in a case concerning the application of Islamic religious (Sharia) law to an inheritance dispute between Greek citizens who are Muslims*

Registrar of the European Court (08.06.2017) - The Chamber of the European Court of Human Rights to which the case **Molla Sali v. Greece** (application no. 20452/14) was allocated has **relinquished jurisdiction in favour of the GrandC hamber of the Court [1].**

**Molla Sali v. Greece** (application no. 20452/14) concerns the application by the Greek courts of Islamic religious (Sharia) law to a dispute concerning inheritance rights over the estate of the late husband of Ms Molla Sali, a Greek national belonging to the country's Muslim minority.

***Principal facts***

The applicant, Ms Chatitze Molla Sali, is a Greek national who was born in 1950 and lives in Komotini (Greece).

On the death of her husband, Ms Molla Sali inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested

the will, on the grounds that their brother had belonged to the Thrace Muslim community and that all matters relating to his estate were therefore subject to Islamic law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. They relied in particular on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for Islamic customs and Islamic religious law to be applied to Greek nationals who were Muslims.

The two sisters' claims were dismissed by the Greek courts at first instance and on appeal. In September 2011 the Thrace Court of Appeal found that the decision by the deceased, a Greek Muslim and a member of the Thrace religious minority, to request a notary to draw up a public will,

determining for himself the persons to whom he wished to leave his property and the manner in which this was done, was an expression of his statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens. However, the Court of Cassation quashed that judgment on the grounds that questions of inheritance within the Muslim minority should be dealt with by the mufti in accordance with the rules of Islamic law. It therefore remitted the case to a different bench of the Court of Appeal for fresh consideration. On 15 December 2015 the Court of Appeal ruled that the law applicable to the deceased's estate was Islamic religious law and that the public will in question did not produce any legal effects. Ms Molla Sali appealed against that judgment on points of law.

***Complaints and procedure***

Relying on Article 6 § 1 (right to a fair hearing), taken alone and in conjunction with Article 14 (prohibition of discrimination), Ms Molla Sali complains of the application to her inheritance dispute of Sharia law rather than the ordinary law applicable to all Greek citizens, despite the fact that her husband's will was drawn up in accordance with the provisions of the Greek Civil Code. She also alleges that she was subjected to a difference in treatment on grounds of religion.

Under Article 1 of Protocol No. 1 (protection of property), Ms Molla Sali contends that, by applying Islamic religious law rather than Greek civil law to her husband's will, the Court of Cassation deprived her of three-quarters of her inheritance.

The application was lodged with the European Court of Human Rights on 5 March 2014. It was communicated2 to the Greek Government, with questions from the Court, on 23 August 2016. A statement of facts (http://bit.ly/2sm7X98) submitted to the Government can be found on the Court's website.

On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

[1] Article 30 of the European Convention of Human Rights and Article 72 of the Rules of the Court.

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# Swiss Muslim girls must learn to swim with boys, court rules

***Switzerland has won a case at the European Court of Human Rights (ECHR) obliging Muslim parents to send their children to mixed swimming lessons.***

BBC (10.01.17) - http://bbc.in/2ii28n3 - It said authorities were justified in giving precedence to enforcing "the full school curriculum" and the children's "successful integration" into society.

The ECHR acknowledged that religious freedom was being interfered with.

But judges said it did not amount to a violation.

The case was brought by two Swiss nationals, of Turkish origin, who refused to send their teenage daughters to the compulsory mixed lessons in the city of Basel.

Education officials, however, said that exemptions were available only for girls who had reached the age of puberty - which the girls had not reached at the time.

In 2010, after a long-running dispute, the parents were ordered to pay a combined fine of 1,400 Swiss Francs ($1,380, £1,136) "for acting in breach of their parental duty".

They argued that such treatment was a violation of article nine of the European Convention on Human Rights, which covers the right to freedom of thought, conscience and religion.

In a statement, the ECHR said the refusal to exempt the girls had interfered with the right to freedom of religion.

But it also said the law involved was designed to "protect foreign pupils from any form of social exclusion" and Switzerland was free to design its education system according to its own needs and traditions.

Schools, it said, played an important role in social integration, and exemptions from some lessons are "justified only in very exceptional circumstances".

"Accordingly, the children's interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents' wish to have their children exempted from mixed swimming lessons," the court said.

The court also noted that "very flexible arrangements" had been offered as a compromise, including allowing the girls to wear burkinis during lessons rather than traditional swimwear, and allowing them to change clothes with no boys in the room.

***Additional Information***

***Swimming, burkinis, and integration***

- In 2016, officials in Basel suspended the citizenship process for the family of two teenage Muslim brothers who refused to shake hands with female teachers.

- Switzerland has also applied the law to other cases - a man of Bosnian origin was fined last year for refusing to allow his daughter to take part in swimming lessons during school hours, among other activities.

- Germany also battled with the issue of mixed swimming lessons in 2013, when a judge ruled that a 13-year-old girl must attend - but allowed the wearing of a burkini.

- In France, in 2009, a woman was banned from swimming in a public pool in her burkini. That would be followed in 2016 by a controversial official ban on the garment in public spaces - which was eventually overturned by French courts.

- France, Belgium, and the Netherlands all have bans on Muslim veils in public, to varying degrees.

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# The European Court rejects the exemption of Muslim girls from compulsory mixed swimming lessons

***By refusing to exempt two Muslim pupils from compulsory mixed swimming lessons, the Swiss authorities had given precedence to the children's obligation to follow the full school curriculum and had not infringed the right to freedom of religion***

Registrar of the Court (10.01.17) - http://bit.ly/2j0ckzt - In today's Chamber judgment in the case of Osmanoğlu and Kocabaş v. Switzerland (application no. 29086/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned the refusal of Muslim parents to send their daughters, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of their schooling and the authorities' refusal to grant them an exemption.

The Court found that the applicants' right to manifest their religion was in issue and observed that the authorities' refusal to grant them an exemption from swimming lessons had been an interference with the freedom of religion, that interference being prescribed by law and pursuing a legitimate aim (protection of foreign pupils from any form of social exclusion).

The Court emphasised, however, that school played a special role in the process of social integration, particularly where children of foreign origin were concerned. It observed that the children's interest in a full education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish to have their daughters exempted from mixed swimming lessons and that the children's interest in attending swimming lessons was not just to learn to swim, but above all to take part in that activity with all the other pupils, with no exception on account of the children's origin or their parents' religious or philosophical convictions. The Court also noted that the authorities had offered the applicants very flexible arrangements to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions, such as allowing their daughters to wear a burkini. It also noted that the procedure in the present case had been accessible and had enabled the applicants to have the merits of their application for an exemption examined.

The Court accordingly found that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

***Principal facts***

The applicants, Aziz Osmanoğlu and Sehabat Kocabaş, are two Swiss nationals who also have Turkish nationality. They were born in 1976 and 1978 respectively and live in Basle (Switzerland).

Mr Osmanoğlu and Ms Kocabaş refused to send their daughters, born in 1999 and 2001, to compulsory swimming lessons as part of their schooling, on the ground that their beliefs prohibited them from allowing their children to take part in mixed swimming lessons. They were advised by the Public Education Department of the Canton of Basle Urban that they risked a maximum fine of 1,000 Swiss francs (CHF) each if their daughters did not attend the compulsory lessons, as the girls had not yet reached the age of puberty and as such could not claim exemption under the legislation.

Despite attempts at mediation by the school, Mr Osmanoğlu's and Ms Kocabaş's daughters continued not to attend the swimming lessons. As a result, in July 2010 the education authorities ordered Mr Osmanoğlu and Ms Kocabaş to pay a fine of CHF 350 per parent and per child (a total of approximately 1,292 euros (EUR)) for acting in breach of their parental duty. The applicants appealed to the Court of Appeal of the Canton of Basle Urban, which dismissed their claims in May 2011. They lodged a further appeal with the Federal Court which was dismissed in March 2012 on the grounds that there had been no breach of the applicants' right to freedom of conscience and belief.

## *Complaints, procedure and composition of the Court*

Relying on Article 9 (right to freedom of thought, conscience and religion), Mr Osmanoğlu and Ms Kocabaş alleged that the requirement to send their daughters to mixed swimming lessons was contrary to their religious convictions.

The application was lodged with the European Court of Human Rights on 23 April 2012. Judgment was given by a Chamber of seven judges, composed as follows:

Luis López Guerra (Spain), *President*,
Helena Jäderblom (Sweden),
Helen Keller (Switzerland),
Branko Lubarda (Serbia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
and also Stephen Phillips, *Section Registrar.*

## *Decision of the Court*

**Article 9 (right to freedom of thought, conscience and religion)**
The Court observed that the case concerned a situation in which the applicants' right to manifest their religion was in issue. It also noted that the refusal by the authorities to exempt the applicants' daughters from compulsory mixed swimming lessons had been an interference with the applicants' right to their freedom of religion, that interference being prescribed by law and seeking to protect foreign pupils from any form of social exclusion. It also pointed out that the States enjoyed a considerable discretion ("margin of appreciation") concerning matters relating to the relationship between State and religions and the significance to be given to religion in society, particularly where these matters arose in the sphere of teaching and State education. Whilst refraining from pursuing any aim of indoctrination, the States were nonetheless free to devise their school curricula according to their needs and traditions.

With regard to weighing up the competing interests, the Court observed that school played a special role in the process of social integration, and one that was all the more decisive where pupils of foreign origin were concerned; that given the importance of compulsory

education for children's 3 development, an exemption from certain lessons was justified only in very exceptional circumstances, in well-defined conditions and having regard to equality of treatment of all religious groups; and that the fact that the relevant authorities did allow exemptions from swimming lessons on medical grounds showed that their approach was not an excessively rigid one.

Accordingly, the children's interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents' wish to have their children exempted from mixed swimming lessons. Sports education, of which swimming was an integral part in the school attended by the applicants' children, was of special importance for children's development and health. A child's interest in attending those lessons was not just to learn to swim and to take physical exercise, but above all to take part in that activity with all the other pupils, with no exception on account of the child's origin or the parents' religious or philosophical convictions. Moreover, the authorities had offered the applicants very flexible arrangements: their daughters had been allowed to wear a burkini during the swimming lessons and to undress with no boys present. Those arrangements had been such as to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions.

Another factor to be taken into consideration was the seriousness of the punishment imposed on the applicants. The fines (a total of CHF 1,400) imposed by the authorities on the applicants, after duly warning them, had been proportionate to the aim pursued, namely, to ensure that the parents sent their children to the compulsory lessons, above all in their own interests: the children's successful socialisation and integration.

With regard to the procedure followed in the present case, the authorities had published a guideline on dealing with religious matters in schools, in which the applicants were able to find the relevant information; the relevant authority had warned them of the fine they would incur; following a meeting with the school authorities and two letters sent to the applicants, the relevant authority had imposed the fines prescribed under domestic law which the applicants had been able to challenge first before the Court of Appeal of the Canton of Basle Urban and then before the Federal Court. At the end of fair and adversarial proceedings those two courts, in duly reasoned decisions, had arrived at the conclusion that the public interest in following the full school curriculum should prevail over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters. The applicants had therefore had the benefit of an accessible procedure enabling them to have the merits of their application for an exemption examined for the purposes of Article 9 of the Convention.

Consequently, the Court found that, by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education. The Court therefore held that there had been no violation of Article 9 of the Convention.

See the judgement (only in French) at http://hudoc.echr.coe.int/eng#{"itemid":["001-170346"]}