

SWITZERLAND/EUROPEAN COURT: 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 judgment¹ 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 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.

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