

EUROPEAN COURT/BELGIUM: Exclusion from a courtroom of a woman wearing the Islamic headscarf (hijab)

Lachiri v. Belgium: Case 3413/09

Judgment in French – <https://bit.ly/2Q7z0lu>

Lachiri v. Belgium (no. 3413/09) [Judgment in French only] – Second Section Chamber Judgment 18 September 2018. The applicant complained before the Court that the decision of a magistrate of a court of appeals to exclude her from the courtroom when she refused to remove her hijab to testify at the trial of the man who had killed her brother infringed her rights under ECHR Article 9 to freedom of thought, conscience, and religion. In its judgment of 18 September 2018, the Court found by six votes a violation of Article 9. [From the Court's press release:] "The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a restriction" on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of "protecting public order", with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri's conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was

not justified in a democratic society.”

Registrar of the court (18.09.2018) – <https://bit.ly/2zv4M1A> – In today’s Chamber judgment in the case of Lachiri v. Belgium (application no. 3413/09) the European Court of Human Rights held, by a majority (six votes to one), that there had been: a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned Mrs Lachiri’s exclusion from a courtroom on account of her refusal to remove her *hijab*. The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a “restriction” on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of “protecting public order”, with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri’s conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri’s right to freedom to manifest her religion was not justified in a democratic society.

Principal facts

Mrs Lachiri, and other members of her family, applied to join the proceedings as civil parties seeking damages in a crime case in which her brother had been killed. In 2007 the accused was committed to stand trial before the Criminal Court on charges of premeditated assault and wounding resulting in unintentional death. Mrs Lachiri and the other civil parties

appealed against that decision, submitting that the offence should be classified as murder and that the accused should be tried by an Assize Court. On the day of the hearing before the Indictments Division, in accordance with a decision of the presiding judge the court usher informed Mrs Lachiri that she could not enter the hearing room unless she removed her headscarf. Mrs Lachiri refused to comply and did not attend the hearing. Subsequently Mrs Lachiri unsuccessfully challenged that decision in an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Mrs Lachiri complained that her exclusion from the hearing room had infringed her freedom to express her religion. The application was lodged with the European Court of Human Rights on 24 December 2008. On 22 March 2016 the Government submitted a unilateral declaration, which the Court decided not to accept.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 9 (freedom of thought, conscience and religion)

Observing that, according to its case-law, wearing the *hijab* (headscarf covering the hair and neck while leaving the face uncovered) could be regarded as an act “motivated or inspired by a religion or religious belief”, the Court considered that excluding Mrs Lachiri from the courtroom on the grounds that she had refused to remove her headscarf had amounted to a “restriction” on the exercise of her right to manifest her religion. The purpose of that restriction, which had been based on Article 759 of the Judicial Code requiring persons entering a courtroom to do so without wearing headgear, had in the present case been to prevent conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court concluded that the legitimate aim pursued had been the “protection of public order”.

With regard to the necessity of the restriction in a democratic society, the Court specified first of all that the Islamic headscarf was headgear and not, as in the case of *S.A.S. v. France*³, a garment which entirely concealed the face with the possible exception of the eyes. It then noted that Mrs Lachiri was a mere citizen: she was not a representative of the State engaged in public service and could not therefore be bound, on account of any official status, by a duty of discretion in the public expression of her religious beliefs. Moreover, the Court indicated that whilst a court could be part of the “public arena”, as opposed to the workplace for example, it was not a public place comparable to a public street or square. A court was indeed a “public” institution in which respect for neutrality towards beliefs could prevail over the free exercise of the right to manifest one’s religion, like public educational establishments. In the present case, however, the aim pursued in excluding the applicant from the courtroom had not been to

maintain the neutrality of the public arena. The Court therefore limited its examination to determining whether that measure had been justified by the aim of maintaining order. In that connection it noted that Mrs Lachiri's conduct when entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. Consequently, the Court held that the need for the restriction in issue had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was not justified in a democratic society.

There had therefore been a violation of Article 9 of the Convention.

Article 41 (just satisfaction)

The Court held (by six votes to one) that Belgium was to pay Mrs Lachiri 1,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Vučinić and Gritco expressed a joint concurring opinion. Judge Mourou-Vikström expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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