

GRAND CHAMBER

CASE OF S.A.S. v. FRANCE

(Application no. 43835/11)

JUDGMENT, STRASBOURG, 1 July 2014

3. *The Court's assessment*

(a) **Alleged violation of Articles 8 and 9 of the Convention**

106. The ban on wearing clothing designed to conceal the face, in public places, raises questions in terms of the right to respect for private life (Article 8 of the Convention) of women who wish to wear the full-face veil for reasons related to their beliefs, and in terms of their freedom to manifest those beliefs (Article 9 of the Convention).

107. The Court is thus of the view that personal choices as to an individual's desired appearance, whether in public or in private places, relate to the expression of his or her personality and thus fall within the notion of private life. It has found to this effect previously as regards a haircut (see *Popa v. Romania* (dec), no. [4233/09](#), §§ 32-33, 18 June 2013; see also the decision of the European Commission on Human Rights in *Sutter v. Switzerland*, no. [8209/78](#), 1 March 1979). It considers, like the Commission (see, in particular, the decisions in *McFeeley and Others v. the United Kingdom*, no. [8317/78](#), 15 May 1980, § 83, Decisions and Reports (DR) 20, and *Kara v. the United Kingdom*, no. [36528/97](#), 22 October 1998), that this is also true for a choice of clothing. A measure emanating from a public authority which restricts a choice of this kind will therefore, in principle, constitute an interference with the exercise of the right to respect for private life within the meaning of Article 8 of the Convention (see the *Kara* decision, cited above). Consequently, the ban on wearing clothing designed to conceal the face in public places, pursuant to the Law of 11 October 2010, falls under Article 8 of the Convention.

108. That being said, in so far as that ban is criticised by individuals who, like the applicant, complain that they are consequently prevented from wearing in public places clothing that the practice of their religion requires them to wear, it mainly raises an issue with regard to the freedom to manifest one's religion or beliefs (see, in particular, *Ahmet Arslan and Others v. Turkey*, no. [41135/98](#), § 35, 23 February 2010). The fact that this is a minority practice and appears to be contested (see paragraphs 56 and 85 above) is of no relevance in this connection.

109. The Court will thus examine this part of the application under both Article 8 and Article 9, but with emphasis on the second of those provisions.

(i) *Whether there has been a "limitation" or an "interference"*

110. As the Court has already pointed out (see paragraph 57 above), the Law of 11 October 2010 confronts the applicant with a dilemma comparable to that which it identified in the *Dudgeon* and *Norris* judgments: either she complies with the ban and thus refrains from dressing in accordance with her approach to religion; or she refuses to comply and faces criminal sanctions. She thus finds herself, in the light of both Article 9 and Article 8 of the Convention, in a similar situation to that of the applicants in *Dudgeon* and *Norris*, where the Court found a "continuing interference" with the exercise of the rights guaranteed by the second of those provisions (judgments both cited above, § 41 and § 38, respectively; see also, in

particular, *Michaud*, cited above, § 92). There has therefore been, in the present case, an “interference” with or a “limitation” of the exercise of the rights protected by Articles 8 and 9 of the Convention.

111. Such a limitation or interference will not be compatible with the second paragraphs of those Articles unless it is “prescribed by law”, pursues one or more of the legitimate aims set out in those paragraphs and is “necessary in a democratic society”, to achieve the aim or aims concerned.

(ii) Whether the measure is “prescribed by law”

112. The Court finds that the limitation in question is prescribed by sections 1, 2 and 3 of the Law of 11 October 2010 (see paragraph 28 above). It further notes that the applicant has not disputed that these provisions satisfy the criteria laid down in the Court’s case-law concerning Article 8 § 2 and Article 9 § 2 of the Convention.

(iii) Whether there is a legitimate aim

113. The Court reiterates that the enumeration of the exceptions to the individual’s freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and that their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. [77703/01](#), § 132, 14 June 2007, and *Nolan and K. v. Russia*, no. [2512/04](#), § 73, 12 February 2009). For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision. The same approach applies in respect of Article 8 of the Convention.

114. The Court’s practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (see, for example, the above-cited judgments of *Leyla Şahin*, § 99, and *Ahmet Arslan and Others*, § 43). However, in the present case, the substance of the objectives invoked in this connection by the Government, and strongly disputed by the applicant, call for an in-depth examination. The applicant took the view that the interference with the exercise of her freedom to manifest her religion and of her right to respect for her private life, as a result of the ban introduced by the Law of 11 October 2010, did not correspond to any of the aims listed in the second paragraphs of Articles 8 and 9. The Government argued, for their part, that the Law pursued two legitimate aims: public safety and “respect for the minimum set of values of an open and democratic society”. The Court observes that the second paragraphs of Articles 8 and 9 do not refer expressly to the second of those aims or to the three values mentioned by the Government in that connection.

115. As regards the first of the aims invoked by the Government, the Court first observes that “public safety” is one of the aims enumerated in the second paragraph of Article 9 of the Convention (*sécurité publique* in the French text) and also in the second paragraph of Article 8 (*sûreté publique* in the French text). It further notes the Government’s observation in this connection that the impugned ban on wearing, in public places, clothing designed to conceal the face satisfied the need to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. Having regard to the case file, it may admittedly be wondered whether the Law’s drafters attached much weight to such concerns. It must nevertheless be observed that the explanatory memorandum which accompanied the Bill indicated – albeit secondarily – that the practice of concealing the face “could also represent a danger for public safety in certain situations” (see paragraph 25 above), and that the Constitutional Council noted that the legislature had been of the

view that this practice might be dangerous for public safety (see paragraph 30 above). Similarly, in its study report of 25 March 2010, the *Conseil d'État* indicated that public safety might constitute a basis for prohibiting concealment of the face, but pointed out that this could be the case only in specific circumstances (see paragraphs 22-23 above). Consequently, the Court accepts that, in adopting the impugned ban, the legislature sought to address questions of “public safety” within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.

116. As regards the second of the aims invoked – to ensure “respect for the minimum set of values of an open and democratic society” – the Government referred to three values: respect for equality between men and women, respect for human dignity and respect for the minimum requirements of life in society. They submitted that this aim could be linked to the “protection of the rights and freedoms of others”, within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.

117. As the Court has previously noted, these three values do not expressly correspond to any of the legitimate aims enumerated in the second paragraphs of Articles 8 and 9 of the Convention. Among those aims, the only ones that may be relevant in the present case, in relation to the values in question, are “public order” and the “protection of the rights and freedoms of others”. The former is not, however, mentioned in Article 8 § 2. Moreover, the Government did not refer to it either in their written observations or in their answer to the question put to them in that connection during the public hearing, preferring to refer solely to the “protection of the rights and freedoms of others”. The Court will thus focus its examination on the latter “legitimate aim”, as it did previously in the cases of *Leyla Şahin* and *Ahmet Arslan and Others* (both cited above, § 111 and § 43, respectively).

118. First, the Court is not convinced by the Government’s submission in so far as it concerns respect for equality between men and women.

119. It does not doubt that gender equality might rightly justify an interference with the exercise of certain rights and freedoms enshrined in the Convention (see, *mutatis mutandis*, *Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), 10 July 2012). It reiterates in this connection that advancement of gender equality is today a major goal in the member States of the Council of Europe (*ibid.*; see also, among other authorities, *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 67, Series A no. 263, and *Konstantin Markin v. Russia* [GC], no. [30078/06](#), § 127, ECHR 2012). Thus a State Party which, in the name of gender equality, prohibits anyone from forcing women to conceal their face pursues an aim which corresponds to the “protection of the rights and freedoms of others” within the meaning of the second paragraphs of Articles 8 and 9 of the Convention (see *Leyla Şahin*, cited above, § 111). The Court takes the view, however, that a State Party cannot invoke gender equality in order to ban a practice that is defended by women – such as the applicant – in the context of the exercise of the rights enshrined in those provisions, unless it were to be understood that individuals could be protected on that basis from the exercise of their own fundamental rights and freedoms. It further observes that the *Conseil d'État* reached a similar conclusion in its study report of 25 March 2010 (see paragraph 22 above).

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 would refer to its reasoning as to the other two values that they have invoked (see paragraphs 120-122 below).

120. Secondly, the Court takes the view that, however essential it may be, respect for human dignity cannot legitimately justify a blanket ban on the wearing of the full-face veil in public places. The Court is aware that the clothing in question is perceived as strange by many of those who observe it. It would point out, however, that it is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy. It notes in this connection the variability of the notions of virtuousness and decency that are applied to the uncovering of the human body. Moreover, it does not have any evidence capable of leading it to consider that women who wear the full-face veil seek to express a form of contempt against those they encounter or otherwise to offend against the dignity of others.

121. Thirdly, the Court finds, by contrast, that under certain conditions the “respect for the minimum requirements of life in society” referred to by the Government – or of “living together”, as stated in the explanatory memorandum accompanying the Bill (see paragraph 25 above) – can be linked to the legitimate aim of the “protection of the rights and freedoms of others”.

122. The Court takes into account the respondent State’s point that the face plays an important role in social interaction. It can understand the view that individuals who are present in places open to all may not wish to see practices or attitudes developing there which would fundamentally call into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, forms an indispensable element of community life within the society in question. The Court is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by the respondent State as breaching the right of others to live in a space of socialisation which makes 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 must engage in a careful examination of the necessity of the impugned limitation.

(iv) Whether the measure is necessary in a democratic society

(a) General principles concerning Article 9 of the Convention

123. As the Court has decided to focus on Article 9 of the Convention in examining this part of the application, it finds it appropriate to reiterate the general principles concerning that provision.

124. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. [24645/94](#), § 34, ECHR 1999-I; and *Leyla Şahin*, cited above, § 104).

125. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one’s religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which the manifestation of one’s religion or beliefs may take, namely worship, teaching, practice and observance (see, *mutatis mutandis*, *Cha’are*

Shalom Ve Tsedek v. France [GC], no. [27417/95](#), § 73, ECHR 2000-VII, and *Leyla Şahin*, cited above, § 105).

Article 9 does not, however, protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in the public sphere in a manner which is dictated by one's religion or beliefs (see, for example, *Arrowsmith v. the United Kingdom*, no. [7050/75](#), Commission's report of 12 October 1978, DR 19; *Kalaç v. Turkey*, 1 July 1997, § 27, *Reports of Judgments and Decisions* 1997-IV; and *Leyla Şahin*, cited above, §§ 105 and 121).

126. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). This follows both from paragraph 2 of Article 9 and from the State's positive obligations under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined therein (see *Leyla Şahin*, cited above, § 106).

127. The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. As indicated previously, it also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Manoussakis and Others v. Greece*, 26 September 1996, § 47, *Reports* 1996-IV; *Hasan and Chaush v. Bulgaria* [GC], no. [30985/96](#), § 78, ECHR 2000-XI; and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. [41340/98](#), [41342/98](#), [41343/98](#) and [41344/98](#), § 91, ECHR 2003-II), and that this duty requires the State to ensure mutual tolerance between opposing groups (see, among other authorities, *Leyla Şahin*, cited above, § 107). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. [38178/97](#), § 53, ECHR 1999-IX; see also *Leyla Şahin*, cited above, § 107).

128. Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. [25088/94](#), [28331/95](#) and [28443/95](#), § 112, ECHR 1999-III). Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society (see, *mutatis mutandis*, *the United Communist Party of Turkey and Others*, cited above, § 45, and *Refah Partisi (the Welfare Party) and Others*, cited above § 99). Where these "rights and freedoms of others" are themselves among those guaranteed by the Convention or the Protocols thereto, it must be accepted that the need to protect them may lead States to restrict other rights or freedoms likewise set forth in the Convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a

“democratic society” (see *Chassagnou and Others*, cited above, § 113; see also *Leyla Şahin*, cited above, § 108).

129. It is also important to emphasise the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, 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 may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see, for example, *Maurice v. France* [GC], no. [11810/03](#), § 117, ECHR 2005-IX). This is the case, in particular, where questions concerning the relationship between State and religions are at stake (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek*, cited above, § 84, and *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports* 1996-V; see also *Leyla Şahin*, cited above, § 109). As regards 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 is “necessary”. That being said, in delimiting the extent of the margin of appreciation in a given case, the Court must also have regard to what is at stake therein (see, among other authorities, *Manoussakis and Others*, cited above, § 44, and *Leyla Şahin*, cited above, § 110). It may also, if appropriate, have regard to any consensus and common values emerging from the practices of the States parties to the Convention (see, for example, *Bayatyan v. Armenia* [GC], no. [23459/03](#), § 122, ECHR 2011).

130. In the *Leyla Şahin* judgment, the Court pointed out that this would notably be the case when it came to regulating the wearing of religious symbols in educational institutions, especially in view of the diversity of the approaches taken by national authorities on the issue. Referring to the *Otto-Preminger-Institut v. Austria* judgment (20 September 1994, § 50, Series A no. 295-A) and the *Dahlab v. Switzerland* decision (no. [42393/98](#), ECHR 2001-V), it added that it was thus not possible to discern throughout Europe a uniform conception of the significance of religion in society and that the meaning or impact of the public expression of a religious belief would differ according to time and context. It observed that the rules in this sphere would consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. It concluded from this that the choice of the extent and form of such rules must inevitably be left up to a point to the State concerned, as it would depend on the specific domestic context (see *Leyla Şahin*, cited above, § 109).

131. This margin of appreciation, however, goes hand in hand with a European supervision embracing both the law and the decisions applying it. The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate (see, among other authorities, *Manoussakis and Others*, cited above, § 44, and *Leyla Şahin*, cited above, § 110).

(β) *Application of those principles in previous cases*

132. The Court has had occasion to examine a number of situations in the light of those principles.

133. It has thus ruled on bans on the wearing of religious symbols in State schools, imposed on teaching staff (see, *inter alia*, *Dahlab*, decision cited above, and *Kurtulmuş v. Turkey* (dec.), no. [65500/01](#), ECHR 2006-II) and on pupils and students (see, *inter alia*, *Leyla Şahin*, cited above; *Köse and Others v. Turkey* (dec.),

no. [26625/02](#), ECHR 2006-II; *Kervanci v. France*, no. [31645/04](#), 4 December 2008; *Aktas v. France* (dec.), no. [43563/08](#), 30 June 2009; and *Ranjit Singh v. France* (dec.) no. [27561/08](#), 30 June 2009), on an obligation to remove clothing with a religious connotation in the context of a security check (*Phull v. France* (dec.), no. [35753/03](#), ECHR 2005-I, and *El Morsli v. France* (dec.), no. [15585/06](#), 4 March 2008), and on an obligation to appear bareheaded on identity photos for use on official documents (*Mann Singh v. France* (dec.), no. [24479/07](#), 11 June 2007). It did not find a violation of Article 9 in any of these cases.

134. The Court has also examined two applications in which individuals complained in particular about restrictions imposed by their employers on the possibility for them to wear a cross visibly around their necks, arguing that domestic law had not sufficiently protected their right to manifest their religion. One was an employee of an airline company, the other was a nurse (see *Eweida and Others*, cited above). The first of those cases, in which the Court found a violation of Article 9, is the most pertinent for the present case. The Court took the view, *inter alia*, that the domestic courts had given too much weight to the wishes of the employer – which it nevertheless found legitimate – to project a certain corporate image, in relation to the applicant's fundamental right to manifest her religious beliefs. On the latter point, it observed that a healthy democratic society needed to tolerate and sustain pluralism and diversity and that it was important for an individual who had made religion a central tenet of her life to be able to communicate her beliefs to others. It then noted that the cross had been discreet and could not have detracted from the applicant's professional appearance. There was no evidence that the wearing of other, previously authorised, religious symbols had had any negative impact on the image of the airline company in question. While pointing out that the national authorities, in particular the courts, operated within a margin of appreciation when they were called upon to assess the proportionality of measures taken by a private company in respect of its employees, it thus found that there had been a violation of Article 9.

135. The Court also examined, in the case of *Ahmet Arslan and Others* (cited above), the question of a ban on the wearing, outside religious ceremonies, of certain religious clothing in public places open to everyone, such as public streets or squares. The clothing in question, characteristic of the *Aczimendi tarikati* group, consisted of a turban, a sirwal and a tunic, all in black, together with a baton. The Court accepted, having regard to the circumstances of the case and the decisions of the domestic courts, and particularly in view of the importance of the principle of secularism for the democratic system in Turkey, that, since the aim of the ban had been to uphold secular and democratic values, the interference pursued a number of the legitimate aims listed in Article 9 § 2: the maintaining of public safety, the protection of public order and the protection of the rights and freedoms of others. It found, however, that the necessity of the measure in the light of those aims had not been established.

The Court thus noted that the ban affected not civil servants, who were bound by a certain discretion in the exercise of their duties, but ordinary citizens, with the result that its case-law on civil servants – and teachers in particular – did not apply. It then found that the ban was aimed at clothing worn in any public place, not only in specific public buildings, with the result that its case-law emphasising the particular weight to be given to the role of the domestic policy-maker, with regard to the wearing of religious symbols in State schools, did not apply either. The Court, moreover, observed that there was no evidence in the file to show that the manner in which the

applicants had manifested their beliefs by wearing specific clothing – they had gathered in front of a mosque for the sole purpose of participating in a religious ceremony – constituted or risked constituting a threat to public order or a form of pressure on others. Lastly, in response to the Turkish Government’s allegation of possible proselytising on the part of the applicants, the Court found that there was no evidence to show that they had sought to exert inappropriate pressure on passers-by in public streets and squares in order to promote their religious beliefs. The Court thus concluded that there had been a violation of Article 9 of the Convention.

136. Among all these cases concerning Article 9, *Ahmet Arslan and Others* is that which the present case most closely resembles. However, while both cases concern a ban on wearing clothing with a religious connotation in public places, the present case differs significantly from *Ahmet Arslan and Others* in the fact that the full-face Islamic veil has the particularity of entirely concealing the face, with the possible exception of the eyes.

(γ) Application of those principles to the present case

137. The Court would first emphasise that the argument put forward by the applicant and some of the third-party interveners, to the effect that the ban introduced by sections 1 to 3 of the Law of 11 October 2010 was based on the erroneous supposition that the women concerned wore the full-face veil under duress, is not pertinent. It can be seen clearly from the explanatory memorandum accompanying the Bill (see paragraph 25 above) 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.

138. That being clarified, the Court must verify whether the impugned interference is “necessary in a democratic society” for public safety (within the meaning of Articles 8 and 9 of the Convention; see paragraph 115 above) or for the “protection of the rights and freedoms of others” (see paragraph 116 above).

139. As regards the question of necessity in relation to public safety, within the meaning of Articles 8 and 9 (see paragraph 115 above), the Court understands that a State may 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. It has thus found no violation of Article 9 of the Convention in cases concerning the obligation to remove clothing with a religious connotation in the context of security checks and the obligation to appear bareheaded on identity photos for use on official documents (see paragraph 133 above). However, in view of its impact on the rights of women who wish 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 can be regarded as proportionate only in a context where there is a general threat to public safety. The Government have not shown that the ban introduced by the Law of 11 October 2010 falls into such a context. As to the women concerned, they are thus obliged to give up completely an element of their identity that they consider 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 has been established, or where particular circumstances entail a suspicion of identity fraud. It cannot therefore be found that the blanket ban imposed by the Law of 11 October 2010 is necessary, in a democratic society, for public safety, within the meaning of Articles 8 and 9 of the Convention.

140. The Court will now examine the questions raised by the other aim that it has found legitimate: to ensure the observance of the minimum requirements of life in society as part of the “protection of the rights and freedoms of others” (see paragraphs 121-122 above).

141. The Court observes that this is an aim to which the authorities have given much weight. This can be seen, in particular, from the explanatory memorandum accompanying the Bill, which indicates that “[t]he voluntary and systematic concealment of the face is problematic because it is quite simply incompatible with the fundamental requirements of ‘living together’ in French society” and that “[t]he systematic concealment of the face in public places, contrary to the ideal of fraternity, ... falls short of the minimum requirement of civility that is necessary for social interaction” (see paragraph 25 above). It indeed falls within the powers of the State to secure the conditions whereby individuals can live together in their diversity. Moreover, the Court is able to accept that a State may find it essential to give particular weight in this connection to the interaction between individuals and may consider this to be adversely affected by the fact that some conceal their faces in public places (see paragraph 122 above).

142. Consequently, the Court finds that the impugned ban can be regarded as justified in its principle solely in so far as it seeks to guarantee the conditions of “living together”.

143. It remains to be ascertained whether the ban is proportionate to that aim.

144. Some of the arguments put forward by the applicant and the intervening non-governmental organisations warrant particular attention.

145. First, it is true that only a small number of women are concerned. It can be seen, among other things, from the report “on the wearing of the full-face veil on national territory” prepared by a commission of the National Assembly and deposited on 26 January 2010, that about 1,900 women wore the Islamic full-face veil in France at the end of 2009, of whom about 270 were living in French overseas administrative areas (see paragraph 16 above). This is a small proportion in relation to the French population of about sixty-five million and to the number of Muslims living in France. It may thus seem excessive to respond to such a situation by imposing a blanket ban.

146. In addition, there is no doubt that the ban has a significant negative impact on the situation of women who, like the applicant, have chosen to wear the full-face veil for reasons related to their beliefs. As stated previously, they are thus confronted with a complex dilemma, and the ban may have the effect of isolating them and restricting their autonomy, as well as impairing the exercise of their freedom to manifest their beliefs and their right to respect for their private life. It is also understandable that the women concerned may perceive the ban as a threat to their identity.

147. It should furthermore be observed that a large number of actors, both international and national, in the field of fundamental rights protection have found a blanket ban to be disproportionate. This is the case, for example, of the French National Advisory Commission on Human Rights (see paragraphs 18-19 above), non-governmental organisations such as the third-party interveners, the Parliamentary Assembly of the Council of Europe (see paragraphs 35-36 above) and the Commissioner for Human Rights of the Council of Europe (see paragraph 37 above).

148. The Court is also aware that the Law of 11 October 2010, together with certain debates surrounding its drafting, may have upset part of the Muslim

community, including some members who are not in favour of the full-face veil being worn.

149. In this connection, the Court is very concerned by the indications of some of the third-party interveners to the effect that certain Islamophobic remarks marked the debate which preceded the adoption of the Law of 11 October 2010 (see the observations of the Human Rights Centre of Ghent University and of the non-governmental organisations Liberty and Open Society Justice Initiative, paragraphs 98, 100 and 104 above). It is admittedly not for the Court to rule on whether legislation is desirable in such matters. It would, however, emphasise that a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance (see paragraph 128 above; see also the “Viewpoint” of the Commissioner for Human Rights of the Council of Europe, paragraph 37 above). The Court reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects (see, among other authorities, *Norwood v. the United Kingdom* (dec.), no. [23131/03](#), ECHR 2004-XI, and *Ivanov v. Russia* (dec.), no. [35222/04](#), 20 February 2007).

150. The other arguments put forward in support of the application must, however, be qualified.

151. Thus, while it is true that the scope of the ban is broad, because all places accessible to the public are concerned (except for places of worship), the Law of 11 October 2010 does not affect the freedom to wear in public any garment or item of clothing – with or without a religious connotation – which does not have the effect of concealing the face. The Court is aware of the fact that the impugned ban mainly affects Muslim women who wish to wear the full-face veil. It nevertheless finds it to be of some significance that the ban is not expressly based on the religious connotation of the clothing in question but solely on the fact that it conceals the face. This distinguishes the present case from that of *Ahmet Arslan and Others* (cited above).

152. As to the fact that criminal sanctions are attached to the ban, this no doubt increases the impact of the measure on those concerned. It is certainly understandable that the idea of being prosecuted for concealing one’s face in a public place is traumatising for women who have chosen to wear the full-face veil for reasons related to their beliefs. It should nevertheless be taken into account that the sanctions provided for by the Law’s drafters are among the lightest that could be envisaged, because they consist of a fine at the rate applying to second-class petty offences (currently 150 euros maximum), with the possibility for the court to impose, in addition to or instead of the fine, an obligation to follow a citizenship course.

153. Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government 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 is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and

broadmindedness without which there is no democratic society (see paragraph 128 above). It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society.

154. In such circumstances, the Court has a duty to exercise a degree of restraint in its review of Convention compliance, since such review will lead it to assess a balance that has been struck by means of a democratic process within the society in question. The Court has, moreover, already had occasion to observe that in matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 129 above).

155. In other words, France had a wide margin of appreciation in the present case.

156. This is particularly true as there is little common ground amongst the member States of the Council of Europe (see, *mutatis mutandis*, *X, Y and Z v. the United Kingdom*, 22 April 1997, § 44, *Reports* 1997-II) as to the question of the wearing of the full-face veil in public. The Court thus observes that, contrary to the submission of one of the third-party interveners (see paragraph 105 above), there is no European consensus against a ban. Admittedly, from a strictly normative standpoint, France is very much in a minority position in Europe: except for Belgium, no other member State of the Council of Europe has, to date, opted for such a measure. It must be observed, however, that the question of the wearing of the full-face veil in public is or has been a subject of debate in a number of European States. In some it has been decided not to opt for a blanket ban. In others, such a ban is still being considered (see paragraph 40 above). It should be added that, in all likelihood, the question of the wearing of the full-face veil in public is simply not an issue at all in a certain number of member States, where this practice is uncommon. It can thus be said that in Europe there is no consensus as to whether or not there should be a blanket ban on the wearing of the full-face veil in public places.

157. Consequently, having regard in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, the Court finds that the ban imposed by the Law of 11 October 2010 can 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”.

158. The impugned limitation can thus be regarded as “necessary in a democratic society”. This conclusion holds true with respect both to Article 8 of the Convention and to Article 9.

159. Accordingly, there has been no violation either of Article 8 or of Article 9 of the Convention.

(b) Alleged violation of Article 14 of the Convention taken together with Article 8 or Article 9 of the Convention

160. The Court notes that the applicant complained of indirect discrimination. It observes in this connection that, as a Muslim woman who for religious reasons wishes to wear the full-face veil in public, she belongs to a category of individuals who are particularly exposed to the ban in question and to the sanctions for which it provides.

161. The Court reiterates that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group and there is no discriminatory intent (see, among other authorities, *D.H. and Others v. the Czech*

Republic [GC], no. [57325/00](#), §§ 175 and 184-185, ECHR 2007-IV). This is only the case, however, if such policy or measure has no “objective and reasonable” justification, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised (ibid., § 196). In the present case, while it may be considered that the ban imposed by the Law of 11 October 2010 has specific negative effects on the situation of Muslim women who, for religious reasons, wish to wear the full-face veil in public, this measure has an objective and reasonable justification for the reasons indicated previously (see paragraphs 144-159 above).

162. Accordingly, there has been no violation of Article 14 of the Convention taken together with Article 8 or Article 9 of the Convention.

(c) Alleged violation of Article 10 of the Convention, taken separately and together with Article 14 of the Convention

163. The Court is of the view that no issue arises under Article 10 of the Convention, taken separately or together with Article 14 of the Convention, that is separate from those that it has examined under Articles 8 and 9 of the Convention, taken separately and together with Article 14 of the Convention.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government’s preliminary objections;
2. *Declares*, unanimously, the complaints concerning Articles 8, 9 and 10 of the Convention, taken separately and together with Article 14 of the Convention, admissible, and the remainder of the application inadmissible;
3. *Holds*, by fifteen votes to two, that there has been no violation of Article 8 of the Convention;
4. *Holds*, by fifteen votes to two, that there has been no violation of Article 9 of the Convention;
5. *Holds*, unanimously, that there has been no violation of Article 14 of the Convention taken together with Article 8 or with Article 9 of the Convention;
6. *Holds*, unanimously, that no separate issue arises under Article 10 of the Convention, taken separately or together with Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 1 July 2014.

Erik Fribergh
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Nußberger and Jäderblom is annexed to this judgment.

D.S.
E.F.

JOINT PARTLY DISSENTING OPINION OF JUDGES NUSSBERGER AND JÄDERBLOM

A. Sacrificing of individual rights to abstract principles

1. We acknowledge that the judgment, even if no violation has been found, pursues a balanced approach, carefully ponders many important arguments of those opposed to the prohibition on concealing one's face in public places and assesses the problems connected with it.

2. Nevertheless, we cannot share the opinion of the majority as, in our view, it sacrifices concrete individual rights guaranteed by the Convention to abstract principles. It is doubtful that the blanket ban on wearing a full-face veil in public pursues a legitimate aim (B). In any event, such a far-reaching prohibition, touching upon the right to one's own cultural and religious identity, is not necessary in a democratic society (C). Therefore we come to the conclusion that there has been a violation of Articles 8 and 9 of the Convention (D).

B. No legitimate aim under the Convention

3. The majority rightly argue that neither respect for equality between men and women, nor respect for human dignity, can legitimately justify a ban on the concealment of the face in public places (see paragraphs 118, 119 and 120). It is also correct to assume that the need to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud is a legitimate aim protected by the Convention (see paragraph 115), but can be regarded as proportionate only in a context where there is a general threat to public safety (see paragraph 139).

4. Nevertheless, the majority see a legitimate aim in ensuring "living together", through "the observance of the minimum requirements of life in society", which is understood to be one facet of the "rights and freedoms of others" within the meaning of Article 8 § 2 and Article 9 § 2 of the Convention (see paragraphs 140-142). We have strong reservations about this approach.

5. The Court's case-law is not clear as to what may constitute "the rights and freedoms of others" outside the scope of rights protected by the Convention. The very general concept of "living together" does not fall directly under any of the rights and freedoms guaranteed within the Convention. Even if it could arguably be regarded as touching upon several rights, such as the right to respect for private life (Article 8) and the right not to be discriminated against (Article 14), the concept seems far-fetched and vague.

6. It is essential to understand what is at the core of the wish to protect people against encounters with others wearing full-face veils. The majority speak of "practices or attitudes ... which would fundamentally call into question the possibility of open interpersonal relationships" (see paragraph 122). The Government of the Netherlands, justifying a Bill before that country's Parliament, pointed to a threat not only to "social interaction", but also to a subjective "feeling of safety" (see paragraph 50). It seems to us, however, that such fears and feelings of uneasiness are not so much caused by the veil itself, which – unlike perhaps certain other dress-codes – cannot be perceived as aggressive *per se*, but by the philosophy that is presumed to be linked to it. Thus the recurring motives for not tolerating the full-face veil are based on interpretations of its symbolic meaning. The first report on "the wearing of the full-

face veil on national territory”, by a French parliamentary commission, saw in the veil “a symbol of a form of subservience” (see paragraph 17). The explanatory memorandum to the French Bill referred to its “symbolic and dehumanising violence” (see paragraph 25). The full-face veil was also linked to the “self-confinement of any individual who cuts himself off from others whilst living among them” (ibid.). Women who wear such clothing have been described as “effaced” from public space (see paragraph 82).

7. All these interpretations have been called into question by the applicant, who claims to wear the full-face veil depending only on her spiritual feelings (see paragraph 12) and does not consider it an insurmountable barrier to communication or integration. But even assuming that such interpretations of the full-face veil are correct, it has to be stressed that there is no right not to be shocked or provoked by different models of cultural or religious identity, even those that are very distant from the traditional French and European life-style. In the context of freedom of expression, the Court has repeatedly observed that the Convention protects not only those opinions “that are favourably received or regarded as inoffensive or as a matter of indifference, but also ... those that offend, shock or disturb”, pointing out that “[s]uch are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’” (see, among other authorities, *Mouvement raëlien suisse v. Switzerland* [GC], no. [16354/06](#), § 48, ECHR 2012, and *Stoll v. Switzerland* [GC], no. [69698/01](#), § 101, ECHR 2007-V). The same must be true for dress-codes demonstrating radical opinions.

8. Furthermore, it can hardly be argued that an individual has a right to enter into contact with other people, in public places, against their will. Otherwise such a right would have to be accompanied by a corresponding obligation. This would be incompatible with the spirit of the Convention. While communication is admittedly essential for life in society, the right to respect for private life also comprises the right not to communicate and not to enter into contact with others in public places – the right to be an outsider.

9. It is true that “living together” requires the possibility of interpersonal exchange. It is also true that the face plays an important role in human interaction. But this idea cannot be turned around, to lead to the conclusion that human interaction is impossible if the full face is not shown. This is evidenced by examples that are perfectly rooted in European culture, such as the activities of skiing and motorcycling with full-face helmets and the wearing of costumes in carnivals. Nobody would claim that in such situations (which form part of the exceptions provided for in the French Law) the minimum requirements of life in society are not respected. People can socialise without necessarily looking into each other’s eyes.

10. We cannot find that the majority have shown which concrete rights of others within the meaning of Article 8 § 2 and Article 9 § 2 of the Convention could be inferred from the abstract principle of “living together” or from the “minimum requirements of life in society”.

11. In so far as these ideas may have been understood to form part of “public order”, we agree with the majority that it would not be appropriate to focus on such an aim (see paragraph 117), as the “protection of public order” may justify limitations only on the rights guaranteed by Article 9, but not on the rights under Article 8, whereas the latter provision is undoubtedly also infringed by the restrictive measure in question.

12. Thus it is doubtful that the French Law prohibiting the concealment of one's face in public places pursues any legitimate aim under Article 8 § 2 or Article 9 § 2 of the Convention.

C. Proportionality of a blanket ban on the full-face veil

1. Different approaches to pluralism, tolerance and broadmindedness

13. If it is already unclear which rights are to be protected by the restrictive measure in question, it is all the more difficult to argue that the rights protected outweigh the rights infringed. This is especially true as the Government have not explained or given any examples of how the impact on others of this particular attire differs from other accepted practices of concealing the face, such as excessive hairstyles or the wearing of dark glasses or hats. In the legislative process, the supporters of a blanket ban on the full-face veil mainly advanced "the values of the Republic, as expressed in the maxim 'liberty, equality, fraternity'" (see paragraph 17). The Court refers to "pluralism", "tolerance" and "broadmindedness" as hallmarks of a democratic society (see paragraph 128) and argues in substance that it is acceptable to grant these values preference over the life-style and religiously inspired dress-code of a small minority if such is the choice of society (see paragraph 153).

14. However, all those values could be regarded as justifying not only a blanket ban on wearing a full-face veil, but also, on the contrary, the acceptance of such a religious dress-code and the adoption of an integrationist approach. In our view, the applicant is right to claim that the French legislature has restricted pluralism, since the measure prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public (see paragraph 153). Therefore the blanket ban could be interpreted as a sign of selective pluralism and restricted tolerance. In its jurisprudence the Court has clearly elaborated on the State's duty to ensure mutual tolerance between opposing groups and has stated that "the role of the authorities ... is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other" (see *Serif v. Greece*, no. [38178/97](#), § 53, ECHR 1999-IX, cited by the majority in paragraph 127). By banning the full-face veil, the French legislature has done the opposite. It has not sought to ensure tolerance between the vast majority and the small minority, but has prohibited what is seen as a cause of tension.

2. Disproportionate interference

15. Even if we were to accept that the applicant's rights under Articles 8 and 9 of the Convention could be balanced against abstract principles, be it tolerance, pluralism and broadmindedness, or be it the idea of "living together" and the "minimum requirements of life in society", we cannot, in any event, agree with the majority that the ban is proportionate to the aim pursued.

(a) Margin of appreciation

16. Although we agree with the majority that, in matters of general policy on which opinions within a democratic society may differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 154), we are unable to

conclude that in this particular situation the respondent State should be accorded a broad margin of appreciation (see paragraph 155).

17. First, the prohibition targets a dress-code closely linked to religious faith, culture and personal convictions and thus, undoubtedly, an intimate right related to one's personality.

18. Second, it is not convincing to draw a parallel between the present case and cases concerning the relationship between State and religion (see paragraph 129). As shown by the legislative process, the Law was deliberately worded in a much broader manner, generally targeting "clothing that is designed to conceal the face" and thus going far beyond the religious context (see the Study by the *Conseil d'État* on "the possible legal grounds for banning the full veil", paragraphs 20 et seq., and its influence on the Bill before Parliament). Unlike the situation in the case of *Leyla Şahin v. Turkey* ([GC], no. [44774/98](#), § 109, ECHR 2005-XI), which concerned a regulation on the wearing of religious symbols in educational institutions, the French Law itself does not expressly have any religious connotation.

19. Third, it is difficult to understand why the majority are not prepared to accept the existence of a European consensus on the question of banning the full-face veil (see paragraph 156). In the Court's jurisprudence, three factors are relevant in order to determine the existence of a European consensus: international treaty law, comparative law and international soft law (see *Marckx v. Belgium*, 13 June 1979, § 41, Series A no. 31). The fact that 45 out of 47 member States of the Council of Europe, and thus an overwhelming majority, have not deemed it necessary to legislate in this area is a very strong indicator for a European consensus (see *Bayatyan v. Armenia* [GC], no. [23459/03](#), § 103, 108, ECHR 2011, and *A, B and C v. Ireland* [GC], no. [25579/05](#), § 235, ECHR 2010). Even if there might be reform discussions in some of the member States, while in others the practice of wearing full-face veils is non-existent, the status quo is undeniably clear. Furthermore, as amply documented in the judgment, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe (see paragraphs 35 et seq.), as well as non-governmental organisations (paragraphs 89 et seq.), are strongly opposed to any form of blanket ban on full-face veils. This approach is fortified by reference to other international human rights treaties, especially the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. Although the Human Rights Committee has not made any pronouncement as regards a general ban on the wearing of the full-face veil in public, it has concluded, for example, that expelling a student wearing a *hijab* from university amounted to a violation of Article 18 § 2 of the Covenant (see paragraph 39). The Committee has stated that regulations on clothing for women may involve a violation of a number of rights (see paragraph 38).

20. The arguments drawn from comparative and international law militate against the acceptance of a broad margin of appreciation and in favour of close supervision by the Court. While it is perfectly legitimate to take into account the specific situation in France, especially the strong and unifying tradition of the "values of the French Revolution" as well as the overwhelming political consensus which led to the adoption of the Law, it still remains the task of the Court to protect small minorities against disproportionate interferences.

(b) Consequences for the women concerned

21. Ample evidence has been provided to show the dilemma of women in the applicant's position who wish to wear a full-face veil in accordance with their religious

faith, culture and personal conviction. Either they are faithful to their traditions and stay at home or they break with their traditions and go outside without their habitual attire. Otherwise they face a criminal sanction (see the Resolution of the Parliamentary Assembly, paragraph 35, the Viewpoint of the Commissioner for Human Rights of the Council of Europe, paragraph 37, and the judgment of the Spanish Constitutional Court, paragraph 47). In our view, the restrictive measure cannot be expected to have the desired effect of liberating women presumed to be oppressed, but will further exclude them from society and aggravate their situation.

22. With regard to the majority's assumption that the punishment consists of mild sanctions only (see paragraph 152), we consider that, where the wearing of the full-face veil is a recurrent practice, the multiple effect of successive penalties has to be taken into account.

23. Furthermore, as the majority note, there are still only a small number of women who are concerned by the ban. That means that it is only on rare occasions that the average person would encounter a woman in a full-face veil and thus be affected as regards his or her possibility of interacting with another person.

(c) Less restrictive measures

24. Furthermore, the Government have not explained why it would have been impossible to apply less restrictive measures, instead of criminalising the concealment of the face in all public places. No account has been given as to whether or to what extent any efforts have been made to discourage the relatively recent phenomenon of the use of full-face veils, by means, for example, of awareness-raising and education. The legislative process shows that much less intrusive measures have been discussed. The above-mentioned report "on the wearing of the full-face veil on national territory" devised a four-step programme with measures aimed at releasing women from the subservience of the full-face veil, without recommending any blanket ban or criminal sanctions (see paragraph 17). The National Advisory Commission on Human Rights also recommended "soft" measures and called for the strengthening of civic education courses at all levels for both men and women (see paragraph 19).

D. Conclusion

25. In view of this reasoning we find that the criminalisation of the wearing of a full-face veil is a measure which is disproportionate to the aim of protecting the idea of "living together" – an aim which cannot readily be reconciled with the Convention's restrictive catalogue of grounds for interference with basic human rights.

26. In our view there has therefore been a violation of Articles 8 and 9 of the Convention.