

Case Summary

S.A.S v France

Application Number: 43835/11

1. Reference Details

Jurisdiction: European Court of Human Rights (ECtHR) – Grand Chamber

Date of Decision: 1 July 2014

Case Status: final but may be subject to editorial revision.

Link to full case: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["sas v france"\],"itemid":\["001-145466"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

2. Facts of the Case

Law no. 2010-1192 of 11 October 2010 entered into force in France on 11 April 2011, prohibiting any person from concealing their face in public. The law arose following a lengthy period of consideration and debate. In 2009, a parliamentary commission was established by the President of the National Assembly to consider the wearing of the full-face veil on French territory. The commission reported that the practice was a recent phenomenon which was not required by religion but arose from radicalisation and extremism. Several other bodies published reports prior to the introduction of the law, including the National Advisory Commission on Human Rights which did not support a general prohibition on the full-face veil.

The applicant lives in France and is a French national. The applicant submitted to the Court that she is a devout Muslim and wears the niqab and burqa according to her religious faith, culture and personal convictions. The applicant stated that she was not pressured to wear either the niqab or burqa by any member of her family or by her husband. She wears the niqab in both public and private but does not do so at all times but wished to be able to wear the niqab in public when she chose to do so.

The applicant believed that she ought to wear the niqab at certain times in order to express her religious, personal and cultural faith. She wore the niqab to feel at inner peace with herself and did not intend to annoy others by doing so. She showed her face when requested to do so in order to confirm her identity.

3. Law

National laws:

- Law no. 2010-1192 of 11 October 2010

Regional laws:

- Articles 3 (prohibition of torture and inhuman or degrading treatment or punishment), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association), taken separately and together with Article 14 (prohibition of discrimination) of the European Convention of Human Rights (the Convention)

4. Legal Arguments

Applicant's Arguments

The applicant argued that the harassment and discrimination she would face for wearing the veil would amount to degrading treatment in violation of article 3 and a violation of article 14. The ban would also violate her right to freedom of association under article 11 (together with article 14). The applicant argued that the ban interfered with her rights to freedom of thought, conscience and religion under article 9 and also violated her right to respect for her private life under article 8, which extended to social interaction in public. It was important to her social and cultural identity to wear the full-face veil.

Although the interference was prescribed by law, it did not pursue a legitimate aim. The fact that the interference was a blanket ban rather than targeted at safety concerns in high risk locations meant that it was not in the interest of protecting public safety. The State's position that the ban was necessary to ensure respect for life in French society, which required people to expose their faces, did not take into account cultural differences or that visual communication was not the only form of communication. To argue, as the State did, that the wearing of a face veil was incompatible with gender equality was simplistic. The State's justification that the measure had the aim of ensuring respect for human dignity was based on stereotypical and chauvinistic assumptions. Women often wore the veil voluntarily and without any wish to proselytise. It was ironic that the idea of gender equality could be asserted to contradict the personal choice of a woman to wear a veil. Imposing criminal sanctions exacerbated the supposed gender inequality further.

The law was not necessary in a democratic society. It was not the role of the State to decide which religious beliefs were valid. A society that is truly free allows for different beliefs, codes of conduct, customs and tastes. The aims of the State could be met by less restrictive means than a blanket ban. The interests of women like the applicant, who had to decide between wearing the veil and breaking the law were much more seriously affected than the interests of those who disapproved of women wearing the veil. Further, the ban punished the women it was meant to protect by imposing criminal sanctions on them.

The applicant also argued that the ban indirectly discriminated "between Muslim women whose beliefs required them to wear the full-face veil and other Muslim women, and also between them and Muslim men" (Para 80). An advantage was created for the Christian majority which was also discriminatory; an exception to the ban for "festivities or artistic or traditional events" allowed Christians to wear clothing that concealed their face in public during Christian celebrations. The applicant, on the other hand, could not wear the full-face veil even during Ramadan.

Respondent's Arguments

The government raised a preliminary objection to the complaint, arguing that the applicant was not a "victim" as she had not presented evidence to prove that she was Muslim, that she wore the full-face veil before the law was introduced and for religious reasons or that she had been stopped for wearing the veil in public. They doubted the seriousness of the consequences of the law for her given that she did not wear the veil all of the time. Her rights were not effected in a concrete way and the Court should not extend the notion of "victim" to potential victim in this case.

The government agreed that the ban could be seen as a limitation on the freedom to manifest one's religion or belief under article 9(2) of the Convention. However, this limitation pursued legitimate aims and was necessary in a democratic society to meet those aims. The ban aimed to protect public safety by making it possible to identify persons, which prevented danger to person and property and combatted identity fraud. It also aimed to protect the rights and freedoms of others by ensuring "respect for the minimum set of values of an open and democratic society". The face plays the most significant role in interaction between people, while concealing one's face in public breaks social ties and expresses a refusal of the principle of "living together". In addition, the ban promoted gender equality. Requiring women to cover their face in public solely because

they are women denies them individuality and restricts their expression of individuality to the family or female only spheres. The wearing of the full-face veil affronted human dignity as it resulted in women being “effaced” in public. This “effacement” was necessarily dehumanising whether it was voluntary or not and therefore was not consistent with human dignity. The government did not agree with the applicant and the intervening NGOs presenting the practice of wearing the veil in a positive light, questioning the methodology of the studies presented by two NGOs which showed that women chose to wear the veil voluntarily.

The law was both necessary and proportionate. It was limited to concealment of the face only and not the wearing of other religious clothing. The law was necessary to achieve its aims; to restrict sanctions only to those who coerced women to wear the veil would not prevent those cases where women felt unable to report coercion. The Court has always allowed states a wide margin of appreciation in the balancing of competing public and private interests or where a private interest was in conflict with other Convention rights. The penalties under the law were low, a fine of EUR 150 or a citizenship course.

The government was not convinced that there had been a violation of the applicant’s right to non-interference with her private life. The ban only concerned public places and did not affect the applicant’s physical integrity or privacy. In any event, the arguments given by the government in relation to article 9 justified any interference and the proportionality of any interference. The government argued that the applicant was not a victim of discrimination based on sex as one of the aims of the law was to combat discrimination. The law was not based on a stereotype that Muslim women were submissive because it did not target Muslim women and the effacement from wearing a full-face veil was not compatible with social existence. The law applied regardless of the religious or otherwise purpose of concealing the face and regardless of whether the individual was a man or woman. The law had a legitimate aim and was proportionate to that aim and therefore could not be considered discriminatory because it prevented people from carrying out certain practices that they justified by their religious or other beliefs.

Interventions

The Court allowed six interventions. The Belgian government discussed the implementation of the Belgian law prohibiting any person from concealing his or her face in public. The intervening government referred to a decision of its own Constitutional Court that the Belgian law was not unconstitutional and that what was acceptable clothing was decided by social consensus and those who concealed their face indicated that they did not want to participate in society. Wearing clothing concealing the face undermined the idea of living together. Further, the law was not discriminatory because it did not target the full-face veil and applied equally to all who covered their faces in public. The detrimental effect on women who stayed at home as a result of the law was a result of their own choice not to go out in public and not because of a constraint imposed by the ban.

Four NGOs and one university intervened against the law: Amnesty International, ARTICLE 19, the Human Rights Centre of Ghent University, Liberty and the Open Society Justice Initiative. All five noted that the ban was discriminatory and would have a detrimental effect on the women that it aimed to protect by causing them to remain in their homes. Amnesty International noted that assuming women were coerced into wearing the veil was gender and religion based stereotyping and that a more nuanced approach was needed to end discrimination. The Human Rights Centre of Ghent University and the Open Society Justice Initiative referred to studies noting that this assumption was simply incorrect. According to Liberty, the controversy around whether wearing the veil was demeaning and patriarchal or a symbol of faith was not solved by causing women to stay at home to avoid criminal sanction.

ARTICLE 19 concluded that international standards did not support a blanket prohibition on covering the face in public. It was noted by the Human Rights Centre that discussion around the ban had targeted women wearing the veil, which created Islamophobia and reinforced negative stereotypes. Liberty concluded that the ban itself was likely to encourage Islamophobia. The Open Society Justice Initiative produced a report in September 2013 which noted that women wearing the veil felt their personal safety had declined and had experienced increased harassment and assaults from members of the public following the implementation of the ban. It noted that the consensus of European states was against blanket bans on wearing the veil and that blanket bans were disproportionate where less intrusive means were available.

1. Decision

The Court unanimously rejected the preliminary objections of the respondent. It unanimously found the claims under Articles 3 and 11 (taken together with Article 14) inadmissible and the complaints concerning Articles 8, 9 and 10 taken both separately and together with Article 14 admissible.

The court held by a fifteen to two majority that there was no violation of Articles 8 and 9, unanimously that no separate issues arose under Article 10 and unanimously that there was no violation of Article 14 taken together with Articles 8 and 9.

Preliminary Objections/Admissibility

The Court rejected the government's preliminary objection. The applicant was entitled to claim to be a "victim" of a law in the absence of a specific instance of enforcement of that law against her in the event that she is a member of a category of persons who risk being directly affected by the legislation. This was true of the applicant. The issue of exhaustion of domestic remedies was not relevant in a case such as this where the Court had already found that the applicant was entitled to claim victim status in the absence of any individual measure. Additionally, the Constitutional Council and the Court of Cassation of France had recently ruled on the constitutionality of the blanket ban law, meaning that domestic courts would have dismissed a claim if the applicant had filed one in the domestic courts.

The Court found two aspects of the substantive complaint inadmissible. First, the Court considered that the treatment that the applicant alleged would occur did not meet the minimum level of severity required for it to fall under the scope of Article 3. The applicant's argument on this point was manifestly ill-founded. Accordingly, the argument that article 14 was violated in conjunction with article 3 fell away as the facts did not fall within the ambit of article 3. Second, the Court found that the applicant had not substantiated her complaint of a violation of her freedom of association and therefore the complaint was manifestly ill-founded and inadmissible.

Articles 8 and 9 taken separately from Article 14

The Court noted that personal choices as to an individual's appearance relate to the expression of her personality and so fall within the notion of private life (for Article 8). In so far as the ban is criticised by individuals who complain that it prevents them from wearing clothing that their religion requires them to wear, it raises an issue with regard to the freedom to manifest one's religion or beliefs (as protected by Article 9), even if that practice is a minority practice. The Court considered both together with an emphasis on Article 9.

The Court decided that, in adopting the law, the government had remained within the restrictions on Article 9(1) which are permitted by Article 9(2). Specifically, it noted that the restriction on the applicant's freedom to manifest her beliefs was "proscribed by law". The Court did not accept all of the government's purported aims. Notably it did not accept that the state can invoke an aim of gender equality in order to ban a practice that is defended by women. To find otherwise would be to find that individuals could be protected from the exercise of their own fundamental rights

and freedoms. However, the Court accepted two legitimate aims on the part of the state as falling within the scope of Article 9(2) in principle: (i) the protection of public safety (indicated by the reference to this aim in the explanatory memorandum which accompanied the bill); and (ii) the protection of the rights and freedom of others. The latter was found to be present on the basis that an aim of “the respect for the minimum requirements of life in society” – or everyone “living together” – could, under certain circumstances, be linked with the legitimate aim of the protection of the rights and freedoms of others. The Court accepted that “the barrier raised against others by a veil concealing the face is perceived by the respondent... as breaching the right of others to live in a space of socialisation which makes living together easier”.

The Court went on to consider whether the ban was necessary in a democratic society. It reiterated what it saw as the general principles concerning Article 9. These included the need for pluralism, tolerance and broadmindedness in a democratic society. The Court also noted the subsidiary role of the Convention and the direct democratic legitimacy of the national legislature. The latter meant that the government had a wide margin of appreciation when considering whether limitations on the right to manifest one’s belief were “necessary”.

With respect to the first aim – protecting public safety – the Court held that a blanket ban could only be regarded as proportionate in a context where there was a general threat to public safety. As this had not been shown to be the case, the law could not be said to be necessary in pursuit of that aim.

However, the Court accepted that the state may find it essential – according to the requirements of “living together” in French society – to give particular weight to interaction between individuals and “may consider this to be adversely affected” by people concealing their faces in public. So the ban could be justified on that basis if it could be considered proportionate. Although only a small number of women were concerned and “large numbers of actors, both international and national, in the field of fundamental rights protection have found a blanket ban to be disproportionate”, it was significant that the ban was “not expressly based on the religious connotation” of the clothing but on the concealment of the face. The government was seeking to protect interaction between individuals which it saw as fundamental to pluralism, tolerance and broadmindedness. In those circumstances the Court had a duty of restraint and the state was to be given a wide margin of appreciation. The latter was particularly the case as there was no European consensus on the ban.

No violation of Article 8 or 9.

Article 14

The Court rejected the applicant’s allegation of indirect discrimination. Although it could be said that the law had specific negative effects on the situation of Muslim women, the measure had an objective and reasonable justification as discussed by the court in relation to Articles 8 and 9 above.

No violation of Article 14 taken together with Articles 8 and 9.

Dissent

Judges Nussberger and Jäderblom delivered a joint partially dissenting opinion, finding that the law violated Articles 8 and 9 of the Convention. They agreed with the majority that public safety and gender equality could not be considered to be legitimate aims of the law. However, they further doubted that the concept of “living together” was a legitimate aim. The idea of living together required interpersonal exchange to be possible but this did not lead to the conclusion that human interaction was not possible if the full face could not be seen. The concept of living

together was vague and far-fetched and it was not clear what rights of others were infringed by the law.

It was still more difficult to argue that any rights of others outweighed the interference with the rights of those like the applicant. It was not clear how the full face veil impact more on others than wearing dark glasses and other similar practices. The Judges noted that the Court referred to “‘pluralism’, ‘tolerance’ and ‘broadmindedness’ as hallmarks of a democratic society” (Para 13 of the dissent). However, “the blanket ban could be interpreted as a sign of selective pluralism and restricted tolerance” (Para 14 of the dissent). The Court noted that the state must ensure tolerance. However:

“[b]y 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” (Para 14 of the dissent).

Even if the rights of the applicant under Articles 8 and 9 could be balanced against the abstract idea of living together or against the principles of pluralism, broadmindedness and tolerance, the ban is not proportionate to those aims. The state should not be given a wide margin of appreciation in this situation which affects clothing which is intimately related to an individual’s personality and on which there is clear consensus amongst European member States; 45 out of 47 States have not considered it necessary to legislate in this area. In addition, the ban “...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” (Para 21 of the dissent). Moreover, the government provided no explanation why less intrusive measures such as education and awareness raising would not have sufficed.