

Written Comments
in the case of
Ouardiri v. Switzerland

October 2010

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application no. 65840/09 – *Ouardiri v. Switzerland*

WRITTEN COMMENTS OF THE OPEN SOCIETY JUSTICE INITIATIVE

1. Pursuant to leave granted on 17 September 2010 by the President of the Chamber, acting under Rule 44 § 2 of the Rules of Court, the Open Society Justice Initiative submits written comments in this case.
2. This case presents important questions as to the extent to which European States can single out individual religions for privilege or disfavor, especially regarding their presence and manifestation in the public domain. The constitutional amendment prohibiting the construction of Islamic minarets in Switzerland, which was adopted by popular referendum on 30 November 2009, has caused profound and contentious discussions in Switzerland as well as elsewhere in Europe concerning the meaning and scope of freedom of religion and belief; and the obligation not to discriminate against adherents of any particular religion on the grounds of their religious beliefs.
3. These written comments present information to assist the Court with its consideration of the case by (A) addressing the meaning of the minaret within Muslim communities in Europe and the irrational anti-Muslim animus which often underlies opposition to minarets, (B) surveying the manner in which other European countries regulate the building of minarets or mosques more generally, and the extent to which the Swiss ban represents a marked departure from the European norm; and (C) reviewing the observations of international bodies on the ban on building minarets.

A. THE SIGNIFICANCE OF THE MINARET IN EUROPE

4. Evidence drawn from the statements of European inter-governmental bodies, independent surveys, and selected European jurisprudence suggests several facts of relevance to the Court's consideration of the Article 9 and 14 issues in this case. First, for many European Muslims, the minaret is an inherent aspect of their right to manifest religious belief. Second, while many opponents of minarets see them as a threat, this opposition is often motivated by an irrational animus against Islam as such and its adherents. Third, while European Muslims may attach religious significance to minarets, in doing so they also strongly identify as members of their respective national community. Finally, many European Muslims report that, whether intended or not, excessive and unjustified restrictions on their right to manifest their religious belief have the effect of alienating members of their community from the broader society.

1. The minaret as a manifestation of religious belief

5. The organization which initiated the Swiss referendum – the Egerkinger Committee – argued that minarets are not a manifestation of freedom of religion.¹ In the view of the Committee, minarets (i) are an expansionist political power symbol of Islam that questions fundamental constitutional rights such as the equality of the sexes, (ii) express a claim on the territory on which they are established, and (iii) are a cornerstone of a society in which Sharia law is being established.² This perspective is at odds with a

¹ <http://minarette.ch/argumente.html>, last visited on 20 October 2010

² In support reference was made to parts of later Turkish Prime Minister Recep Tayyip Erdoğan's 1997 speech in which he stated: "Mosques are our barracks, domes our helmets, minarets our bayonets, believers our soldiers. This holy army guards my religion."

long history of official European recognition that the minaret has a specific, legitimate and widely-held religious meaning for Muslim believers within Europe.

6. Many European Muslims consider the minaret an expression of their right to manifest religious belief. The Court has expressly recognized that planning permission for a religious building falls within the scope of Article 9 of the Convention.³ The Court held in the *Manoussakis* case that “the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”⁴
7. The Council of Europe Parliamentary Assembly noted in its Report *Islam, Islamism and Islamophobia* that “The minaret itself is an architectural symbol of Islam and, similar to church towers, indicates a place where Muslims can practise their faith.”⁵ The minaret is part of, and performs a specific function within, a religious building – the mosque – at least to the same extent that a church tower is part of a church.⁶ In considering this issue the Bavarian Supreme Administrative Court described the meaning of the minaret within Islam thus:

“the minaret supplementing the mosque has such a weighty theological significance for a Muslim community, that this affects the fundamental right of practicing (one’s) religion... For Islam the minaret does not only... hold symbolic value comparable to the church steeple in Christian history, but it is also of high significance for the identity of the individual Muslim community.”⁷

2. The irrational basis for opposition to minarets

8. Surveys conducted across Europe demonstrate that the antagonism shown towards minarets as outlined above is often based on irrational views of Islam, rather than for any legitimate purpose. The Fundamental Rights Agency (FRA) of the European Union has recently highlighted the fact that fear of Islam often underlies increasingly strident calls for restrictions on the manifestation of Islamic religious beliefs. In its 2010 Annual Report, the FRA concluded that:

“Different examples across Europe seem to indicate that, in the context of Muslim communities, the political climate is often dominated by fears which can be played upon by politicians. [...] Heated debates have also been generated in some countries over the building of mosques or minarets. For example, in **Austria**, authorities amended their planning laws in order to prevent buildings that might raise concerns in the population. In **Denmark** there were calls to put the planned construction of a mosque to a referendum, in the context of a highly xenophobic political debate. In **Italy** the political party “Northern League” (*Lega Nord*), member of the governing coalition, made the question of places of worship for Muslims a major issue in its political agenda, in a way that raised concerns by the Commissioner for Human Rights of the Council of Europe about hate speech. Also in **Spain** objections raised by the non-Muslim population against the opening of new mosques or other sorts of Islamic institutions were regularly discussed. In **Hungary** the planned opening of a Muslim cultural centre in Budapest provoked civil protest, supported by some local politicians.”

³ *Vergos v Greece*, ECtHR, Judgment of 24 June 2006, at para. 32.

⁴ *Manoussakis and Others v. Greece*, ECtHR, Judgment of 26 June 1996, at para. 47.

⁵ Parliamentary Assembly of the Council of Europe, “Islam, Islamism and Islamophobia”, Doc. 12266, 25 May 2010, at page 14.

⁶ See “Minaret Initiative” Position statement of the Swiss Federal Commission against Racism (FCR) October 2008.

⁷ *Bayerischer Verwaltungsgerichtshof (BayVGH)*, 29.08.1996, AZ 26 N 95.2983, available at www.juris.de.

9. In a survey of attitudes across Europe, Human Rights Watch reports that “plans to build mosques in Europe’s cities have often provoked significant protest, sometimes involving acts of grotesque vandalism, involving pigs, for instance, which are considered unclean by many Muslims. In March, a pig’s head without eyes was placed on the fence of the mosque in Prague’s Kyje district with a sign that said “Stop Islam.” Spikes topped with pigs’ heads were planted on the site of a planned mosque in Austria on New Year’s Eve 2007. A town councilor for the Northern League in the Italian city of Padua strolled a pig on the grounds of a new mosque in 2008.”⁸

3. Most Muslims in EU Cities Seek Integration

10. “Muslims in Europe: A Report on 11 EU Cities” (the “Cities Report”), a summary of extensive research undertaken by the Open Society Foundations (OSF) on the everyday experiences of ordinary Muslims living in 11 cities across Western Europe,⁹ demonstrates that the fact that many Muslims attach religious significance to minarets in no way reflects an unwillingness to engage with non-Muslims. To the contrary, Muslims identify strongly as members of the respective nation, i.e. fully as its full citizens, which is composed of persons of many different faiths. This information assists with identifying the significance and the role of the minaret in Europe today.
11. The *Cities Report* provides an analysis of findings from data collected through 2,200 questionnaires and 66 focus groups across the 11 cities, dealing with integration policies, social cohesion, feelings of discrimination, education, labour-market participation, access to housing, health care, policing and security, civic and political participation, and finally, the role of media. The *Cities Report* concludes that:

“Muslims want to live in mixed, not segregated, neighbourhoods across the cities studied. Muslim parents are concerned about the impact of segregation on their children and discrimination in accessing housing which limits their choice of residential location. They are concerned that urban renewal programmes in some cities, aimed at creating more mixed neighbourhoods, are displacing the most disadvantaged people. Both Muslims and non-Muslims enjoy living in and are proud of their mixed neighbourhoods. The majority of people feel that their neighbourhood is a place where people are willing to help and trust each other and where people from different backgrounds get on well together.”
12. The study of the experience of Muslim communities found both “positive signs of integration” and evidence that religious discrimination against Muslims has undermined their sense of belonging.¹⁰ Survey results indicate that a “significant majority” of both Muslims and non-Muslims in the 11 cities surveyed agree that “people in the neighbourhood are willing to help each other” and “people from different backgrounds get on well together” (*Cities Report*, at 60). Muslims and non-Muslims also agreed that the “key values” in the country where they live are “respect for the law, equality of opportunity and freedom of expression” (at 69). Muslims and non-Muslims shared a strong sense of belonging to both their local area and their city, and many of the Muslim respondents in the study reported identifying with the country where they live – i.e. they saw themselves as Dutch, French, etc. (at 70, 73). The study revealed that Muslims enjoy high levels of inter-ethnic and inter-religious contacts, including 51 per cent of European-born Muslim women having such contacts frequently at home (at 91). Finally, the study found little difference between Muslims “who displayed visible

⁸ Human Rights Watch, “The Minaret Vote, Europe’s Call to Show Bias”, 2 December 2009.

⁹ The cities are Antwerp, Amsterdam, Berlin, Copenhagen, Hamburg, Leicester, London, Marseille, Paris, Rotterdam and Stockholm. At the time of writing of these comments, final city reports have been published for Berlin, Hamburg and Leicester. Background research reports have been published for Belgium, Denmark, France, Germany, The Netherlands, Sweden and the UK, which are available at http://www.soros.org/initiatives/home/articles_publications/publications/museucities_20080101.

¹⁰ Open Society Foundations, “Muslims in Europe: A Report on 11 EU Cities,” at page 60, 218-19.

religious identity” and those who did not on questions of cohesion and belonging (at 64, 90, 218).

4. Restrictions on minarets leads to increased alienation

13. Many Muslims report that restrictions on manifestations of their religious belief – including restrictions upon the construction of minarets – contribute to their alienation and undermine their sense of cohesion with the society within which they reside.
14. While the *Cities Report* findings dispel any notion that Muslims lead “parallel or segregated lives” or lack a sense of belonging to the city or country where they live, the results do indicate that Muslims’ sense of cohesion and belonging is compromised by actions which fuel the perception that they and/or their religion are under threat (*Cities Report*, at 23). The study identified widespread discrimination against Muslims as a cause of their alienation (at 21, 218). The prejudice against Muslims goes beyond “generic anti-immigrant” prejudice to include a “specific anti-Muslim” dimension (at 37).
15. In a few countries, background studies examining public perceptions of Islam revealed negative images of Islam combined with a strong “us” v. “them” view of Muslims as “other” and alien.¹¹
16. This increasingly prevailing negative view of Islam has translated into a rejection of visible manifestations of Islam such as the building of mosques. Thus, the *Cities Report* found that in The Netherlands, the predominant view of mosques built with traditional architectural characteristics such as domes and minarets has radically changed over the last five years as anti-Muslim discrimination has intensified (Netherlands Report at 39). Previously, such mosques had been seen as an “enrichment to the urban landscape” and “symbols of emancipation and of recognition” giving Muslims in the Netherlands “a profile.” However, in the last five years, the view has gained sway that, as symbols of failed integration, these mosques are “unimaginative”, “ugly” and “cheap imitations” – merely “nostalgia mosques” built by Muslims with no concern for their new societal environment to remind themselves of their “countries of origin” (at 39).
17. Similarly, politicians in Germany have reportedly used rejection of building permits for mosques as a political tool to attract voters (Germany Report at 57). In such cases, even as official objections cite noise pollution or traffic, the underlying concerns are made clear in the general public discourse surrounding the permit denial. One such case involved the Berlin Senator, Stefanie Vogelsang, who openly aired her relief at one mosque permit rejection due to her unsubstantiated suspicion that the Muslim association concerned supported suicide attacks, extremism and Islamism (at 57).
18. The fact that, as the *Cities Report* concludes, many Muslim respondents in the study identified as nationals of the country where they lived, yet were not perceived by the general population in this way, is a further indicator of the important role which

¹¹ A 2001 survey in France found that of those surveyed, 22% equated Islam with fanaticism, 18% thought Islam signified submission and 17% felt Islam rejected Western values (France Background Report at 74). A 2004 study found that two thirds of Swedes thought that Islamic values are “not compatible with the fundamental values of Swedish society” (Sweden Background Report at 35). In Denmark, xenophobic propaganda during the general elections in 2001 was so extreme that the country drew criticism from the UN High Commissioner for Refugees, Amnesty International, and politicians in Sweden and Norway (Denmark Background Report at 37). In the UK, a third of respondents in a 2005 survey felt Muslims posed a “cultural and physical threat to the UK” (UK Background Report at 47). In Germany, recent studies on public perception of Islam showed an association between Islam and “oppression of women” and “terror” and the characterization of Islam as “fanatical” and “radical” (Germany Background Report at 55). Of those surveyed in a 2006 Dutch opinion poll, 54% thought Islam and democracy were incompatible and over 70% thought Islam was unfriendly to women (Netherlands Background Report at 38).

majority communities (and the governments which represent them) play – including in respect of manifestations of religion such as the construction of minarets - in facilitating/hindering Muslims’ integration into mainstream European society (at 220).

19. The *Cities Report* recommends that states should “recognise that religion is not a barrier to integration for Muslims and that EU Member States should respond to the study’s findings that most people are not threatened by visible displays of religion, by focusing instead on the discrimination, prejudice, and stereotyping directed by a few against those who visibly display their religious identity” (at 218).

B. PRACTICE IN OTHER EUROPEAN COUNTRIES

20. A comparative review of national legislation and case-law relating to the building of mosques and minarets reveals that Switzerland stands in isolation. No other Council of Europe Member State has a blanket ban on religious buildings of any kind, let alone a ban that targets one religion, such as that which exists in Switzerland.¹²
21. The construction of religious buildings is usually governed by urban development plans, which regulate which type of buildings can be built in which areas and for which purpose. Such provisions may regulate the dimensions of the buildings, how they fit into the landscape, the hours of operation, and how much exterior sound may be produced. There have been numerous cases where local authorities or the local population have challenged the construction of mosques. Arguments have often included panoramic disfiguration of the town, noise, and conflict with urban planning. As noted above, in a number of cases, discriminatory motives may lie behind the arguments presented.
22. In confronting restrictions on the construction of mosques and minarets, European courts have uniformly struck a balance between the rights of Muslims to manifest and practice their religion and the legitimate concerns of others with respect to aesthetics, architecture, and town planning. However, no other Council of Europe Member State has explicitly singled out a specific religion, and forbidden it from exercising rights which are conferred on other religions, in the absence of a religion-neutral explanation.

Bulgaria¹³

23. According to information provided by the Office of the Chief Mufti in 2008, there are 1457 mosques in Bulgaria.¹⁴ Between 1989 and 2007, 323 new mosques were built in the country. Of these, 267 were built on sites where a mosque had previously existed but had collapsed or been destroyed, and 56 mosques were built on sites where no mosques previously existed. During the same period, 762 mosques were refurbished and 97 new mosques were in the process of being built.¹⁵ According to official census data, there are slightly fewer than one million Muslims in the country.
24. Article 13 of the Constitution guarantees freedom of religion. While the Constitution stipulates that “Eastern Orthodox Christianity shall be considered the traditional religion”, national legislation does not contain any provisions granting Eastern Orthodox Christianity privileged treatment. Article 6 of the Constitution provides that

¹² To be sure, there have been situations – including several considered by this Court - where a certain religion has not been recognized by Contracting States, thus denying to the members of that religion the possibility of enjoying their right to public exercise of their religion. See *inter alia*, *Jehovah's Witnesses of Moscow and Others v. Russia*, ECtHR, Judgment of 10 June 2010; *Metropolitan Church of Bessarabia v. Moldova*, ECtHR, Judgment of 13 December 2001; *Moscow Branch of the Salvation Army v. Russia*, ECtHR, Judgment of 5 October 2006; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, ECtHR, Judgment of 31 July 2008. But that is quite different from the present case.

¹³ The information in this section was provided by Yonko Grozev, practicing lawyer in Sofia and Program Director of Legal Studies, Centre for Liberal Studies, Bulgaria.

¹⁴ See http://news.ibox.bg/news/id_2092438414.

¹⁵ See http://news.ibox.bg/news/id_960104952.

there shall be “no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion,” among other grounds.

25. The Religions Act 2002 regulates religious matters (*Zakon za veroizpovedaniyata*)¹⁶, and draws a distinction between private worship and worship in public. The Act regulates public expressions of faith and requires the registration of religious groups, but stipulates that registered religions may manifest their faith, create places of worship, publish religious literature and organize public religious events.
26. Article 12 of the Act recognizes the right of registered religions to build, own or rent places of worship. The legislation does not use any terms that would indicate places of worship of a particular religion, but uses the general term “house of prayer” (*molitven dom*) or “house of worship” (*bogoslužeben dom*). The only limitation the law explicitly imposes on the construction of such places of worship is derived from the applicable city planning laws (Article 12(1)), which might assign certain zones as for public buildings, recreational facilities or mixed purpose. Places of worship may be built in such zones as long as they satisfy other city planning regulations.

France

27. The French legal system has special regulations for the building of places of worship such as mosques and minarets, set out in general legislative provisions as well as in standards for urban planning, the protection of monuments, and sound emission that are contained within the *Code de l'urbanisme*.¹⁷
28. The 1905 law on the Separation of the Churches and State (*Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État*) also has a significant impact on the establishment, maintenance and financing of places of worship. The law provides that “The Republic neither recognizes, nor salaries, nor subsidizes any religion”. The 1905 law formally ended State funding of religious groups, but provided that all religious buildings were property of the State. The government then put these buildings at the disposal of religious organizations at no expense, provided that they continue to use the buildings for worship.¹⁸ The State’s provision of possession and maintenance covers only those religious buildings which existed prior to the 1905 law, but excludes buildings built later.
29. Administrative courts have considered the validity of construction permits for religious buildings, such as the Lyon mosque¹⁹ and the mosque of Hérouville-Saint-Clair.²⁰ In doing so they have strictly applied the relevant urban planning legislation, rejecting other considerations. For example, the mayor of Lyon refused to grant permission to the Jehovah’s Witnesses to build a prayer venue, despite admitting that the permit was in conformity with the law. The Lyon Administrative Court held that the refusal had no justification in urban planning regulations, but was based on hostility towards this [religious] group which was categorized as a “sect”. The court therefore annulled the mayor’s decision on the grounds that it amounted to *détournement de pouvoir*.²¹
30. In a similar case, in 2009, the Paris Court of Appeal concluded that a proposed mosque did not meet the relevant planning requirements on the basis that the building exceeded the maximum height allowed, after reviewing urban planning requirements including the “visual impact” of the proposed mosque in the urban architectural setting.²² The

¹⁶ *Bulgarian State Gazette*, No 120, 29 December 2002.

¹⁷ *Conseil d'État*, 7.3.1969, Ville de Lille.

¹⁸ See <http://www.assemblee-nationale.fr/histoire/eglise-etat/sommaire.asp>

¹⁹ *Conseil d'État*, 31.10.1986, n° 62.424, Assoc. culturelle lyonnaise islamo-française, *Conseil d'État*, 3 févr. 1992, Girod; Rec. *Conseil d'État*, tables p. 1396.

²⁰ *Cour Administrative d'Appel Nantes*, 24.3.1999, n° 97 NT01087, Ville d'Hérouville-Saint-Clair.

²¹ *Tribunal Administratif de Lyon*, 10.2.1993, Assoc. Altene

²² *Cour Administrative d'Appel de Paris*, N° 06PA03340, 3 July 2009.

applicable jurisprudence is premised on the notion that, in regulating the construction of religious buildings, the state must treat adherents of all faiths equally.

Germany²³

31. In Germany, any planned construction of a religious building must fit into the framework of the existing buildings in the area. This framework is set out either in the local construction plan (*Bebauungsplan*, art. 30) or in specific legislative regulations if there is no plan.²⁴ The Building Usage Regulations (*Baunutzungsverordnung [BauNVO]*) prescribe which kinds of buildings are allowed in each area. City centres will often constitute a “nucleus area” (*Kerngebiet*, art. 7 para.1 *BauNVO*) where religious buildings are generally allowed. The regulations do not exclude “unfamiliar buildings” from “integration into the existing framework” so long as they do not conflict with the purpose of the area (e.g. industry in family residential area).²⁵
32. In addition, art.15 *BauNVO* (*Rücksichtnahmegebot*) states that new buildings must respect existing constructions. Although this ground has frequently been raised to oppose the building of a mosque, the courts have held that a pre-existing church does not have any “priority right” over a new mosque so long as the church can continue to be used.²⁶ The courts have established that mosques and minarets, like other religious buildings, should be seen as part of the exercise and manifestation of one’s religion. Thus, in the earlier mentioned judgment the Bavarian Supreme Administrative Court found that “[a] component of the (collective) exercise of religious freedom is [...] the right of the religious community to construct buildings that, according to their self-awareness, are required for the individual exercising (his/her) religion by the members.”²⁷ According to the Court, “the project of a Muslim community to build a minaret next to an extant mosque, needs to be given a not inconsiderable weight, owing to the high symbolic value of the minaret for Islam and owing to its significance for the identity of the individual (religious) community.”²⁸

The Netherlands

33. The urban planning process is based on the Law on Spatial Planning,²⁹ the core of which is the zoning plan, which balances and coordinates all of the relevant interests in a legal form. The zoning plan contains details of the use of the building (dwelling, retail, cultural, industrial, etc.), building construction (height, depth, width, shape of the

²³ The information in this section was provided by Julia von Normann, Essex University.

²⁴ Art. 34 applies to building inside a settlement, and art. 35 applies outside a settlement.

²⁵ e.g. The German Construction Code: *Baugesetzbuch*, Ernst/Zinkhahn/Bielenberg/Krauzberger, art. 34.

²⁶ See among others:

- *Oberverwaltungsgericht (OVG) Koblenz* (decision of 20 November 2000) – Az 8 A 11739/00, *Neue Zeitschrift für Verwaltungsrecht*, NVwZ 2001, 933-934;
- *Verwaltungsgerichtshof (VGH) München*, NVwZ 1997, 1016, *Bayerische Verwaltungsblätter (BayVBl.)* 1997, 144 (minaret of 25 m);
- *OVG Rheinland-Pfalz*, 20.11.2000 – 8 A 11739/00, *Zeitschrift für evangelisches Kirchenrecht (ZevKR)* 46 (2001), 350 (freedom of religion equally applicable for Islam; *staatliches Neutralitätsgebot* (state neutrality rule)),
- *Verwaltungsgericht (VG) Minden*, 22.4.2010 - 9 K 981/09 (not final), available at <http://www.vg-minden.nrw.de/> and http://www.justiz.nrw.de/nrwe/ovgs/vg_minden;
- *VG Berlin* (Muslim cultural house with mosque in area strictly for living), 18.2.2009, available at <http://www.gerichtsentscheidungen.berlin-brandenburg.de>;
- However, see also *OVG Lüneburg*, 7.12.2009, 1 LA 255/09, finding that there should be no minaret in an area strictly for living because of the use at night (art. 4, *BauNVO*).

²⁷ *BayVGH*, 29.8.1996 (AZ 26 N 95.2983), para 32, see supra fn 7.

²⁸ *Ibid.*

²⁹ *Wet op de Ruimtelijke Ordening*.

roof, location), and environmental performance factors, and may even prescribe the architectural appearance, although not in detail.

34. When a request for permission to construct any new building is made, the municipal administration checks whether the statutory safety and construction criteria are met, whether the building corresponds to the purpose of the area, and how it blends in with the overall architectural aesthetic/design/style view of the area. The municipal authority can also grant a reasoned exemption from the requirement that the building must conform to the purpose of the zone if compelling arguments are presented. If a permit is issued, all “interested parties”³⁰ can lodge objections, which might allege formal deficiencies in the process of granting permission, violation of the relevant statutes, breaches of zoning plan and safety regulations, or the loss of “living comfort” (*leefgenot*) because the envisaged building would result in traffic disturbances, noise or landscape pollution.
35. In the Netherlands there have also been a number of cases in which residents objected to building of mosques and/or minarets.³¹ In a lead case before the Netherlands Council of State, a permit to build a mosque with a minaret in a residential area was challenged.³² The applicants argued that: 1) the mosque and minaret did not fit in the urban planning destination (sports facilities); 2) the operation of the mosque would result in considerable traffic congestion; 3) the mosque would infringe on their private sphere and cause noise pollution; and 4) the mosque and minaret did not meet the aesthetic/architectural criteria for buildings in the relevant area.
36. The Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State dismissed the challenge and allowed the mosque to be built with its minaret. The Council held that even if the area was designated for sports facilities, the proper procedure was applied to grant a waiver. In addition, a detailed plan was provided as to the manner in which the mosque and minaret would blend into the surrounding architectural landscape, and the minaret was not taller than nearby church towers. The Council concluded that the mosque would not cause traffic congestion, would be located at a considerable distance from residential dwellings, and would not use an amplifier for the call to prayer.

C. OBSERVATIONS OF INTERNATIONAL SUPERVISORY BODIES

37. Various international human rights supervisory bodies operating under international treaties have assessed the minaret ban at issue in this case with regard to human rights standards.
38. In a “Statement on the ban of the construction of minarets in Switzerland” of 1 December 2009, the **European Commission against Racism and Intolerance (ECRI)** stated:

“The European Commission against Racism and Intolerance (ECRI) wishes to express its deep concern about the results of the Swiss popular initiative which approved the inclusion, in the Federal Constitution, of a new provision banning the construction of minarets. ... This vote will result in discrimination against Muslims and infringe their freedom of religion. As ECRI has warned in its report, this risks creating further stigmatisation and racist prejudice against persons belonging to the Muslim community.”

³⁰ Usually the nearby residents, but also anyone is arguably affected by the new building.

³¹ LJN: BM6447, Council of State, 200910161/2/R3, 28-05-2010; LJN: BJ3972, Alkmaar Regional Court, 09/962, 26-05-2009; LJN: AZ7843, Zwolle Regional Court, AWB 06/1350, 30-01-2007; LJN: BC0280, Arnhem Regional Court, AWB 07/1696, 13-12-2007. All judgments on www.rechtspraak.nl

³² LJN: BC4236, Council of State, 200704627/1, 13-02-2008, available at www.rechtspraak.nl

39. The **United Nations High Commissioner for Human Rights** reacted to the constitutional amendment by observing that:
- “[b]anning an architectural structure that is associated with one religion only is clearly discriminatory. Some of the politicians who proposed this motion argued that it wasn’t targeting Islam or Muslims. Others claimed that banning minarets would improve integration. These are extraordinary claims when the symbol of one religion is targeted. [Such a ban is] discriminatory, deeply divisive and a thoroughly unfortunate step for Switzerland to take, and risks putting the country on a collision course with its international human rights obligations.”³³
40. Similarly, the **United Nations Special Rapporteur on Freedom of Religion or Belief** stated that: “a ban on minarets amounts to an undue restriction of the freedom to manifest one’s religion and constitutes a clear discrimination against members of the Muslim community in Switzerland.”³⁴
41. In its 2009 concluding observations on Switzerland the **UN Human Rights Committee** concluded in relation to what was then only a referendum initiative:
- “8. The Committee is concerned about the referendum initiative aimed at prohibiting the construction of minarets and about the discriminatory advertising campaign which accompanies it. It notes that the State party does not support this referendum initiative which, if adopted, would bring the State party into non-compliance with its obligations under the Covenant (arts. 2, 18, 20). The State party should strenuously ensure respect of freedom of religion and firmly combat incitement to discrimination, hostility and violence.”³⁵

CONCLUSIONS

42. From the information outlined above it is possible to draw the following conclusions:
- Construction of minarets is an intrinsic part of the manifestation and expression of the religious faith of Muslims.
 - Empirical research shows that the overwhelming majority of Muslims – save for a narrow extremist exception present in every religion – integrate well, want to belong in European societies, and are willing to accept European norms and values. Conversely, discrimination on account of negative perceptions of Muslims prevents integration and good relations with established autochthonous communities.
 - Comparative European legislation and case-law in countries with significant Muslim populations show that where objections to the construction of religious buildings – in particular such as mosques with minarets – exist, parliament and the courts uphold the principle of equal treatment of all religions and their believers. Objections to the construction of mosques and minarets are dealt with using the same religion-neutral criteria as are applied to the construction of all religious buildings irrespective of the religion at issue.
 - The international legal consensus is that a prohibition of construction of religious buildings with recognizable symbols of one specific religion, *in casu* Islam, is contrary to the right to be free from discrimination.

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³³ UN News Service, “UN rights chief says Swiss ban on minarets ‘clearly discriminatory’,” 1 December 2009

³⁴ “Switzerland: UN expert on religious freedom regrets outcome of vote to ban construction of minarets”, 30 November 2009.

³⁵ Concluding observations of the Human Rights Committee, Switzerland, 3 November 2009, UN Doc CCPR/C/CHE/CO/3.