

BRIEFING

France's Veil Ban before the European Court of Human Rights (S.A.S. v. France Judgment)

On Tuesday, July 1, the Grand Chamber of the European Court of Human Rights will issue a judgment on whether France's 2010 ban on wearing full-face veils in public breaches the protections of the European Convention on Human Rights. The following briefing provides background information on the case, S.A.S v. France.

In October 2010, France enacted a law banning the wearing of any clothing which is designed to conceal the face in any public space, with the exception of places of worship, in a bid to regulate the wearing of the burqa and niqab. The law was presented as a bid to “women’s freedom and dignity”, affirm “gender equality”, ensure “public safety” and deter “the practice of the full-face veil.” The law came into effect on April 11, 2011. A similar ban has been passed in Belgium. The ban targets wearing:

- niqab - a veil that covers a woman’s hair and face, leaving only the eyes clearly visible.
- burqa/burkha, or seetar/sitar, a garment that includes a niqab with a second tier screening the eyes with mesh. It covers the woman’s whole body and is usually black in colour.

Any person defying the ban is subject to a fine of €150 and/or required to complete a citizenship course in order to remind the convicted person of “republican values of tolerance and respect for human dignity, and to raise awareness of [her] penal and civil responsibility and duties imposed by life in society.”

Was the law challenged in France?

Yes. Prior to enactment France's *Conseil d'Etat*, which advises on the legality of proposed legislation, carried out an extensive assessment of the ban and issued a 50-page advisory opinion on 25 March 2010. It advised that the law would be unconstitutional unless limited to situations including those involving public security, age verification, polling stations, and appearances at city hall.

Nevertheless, the *Conseil Constitutionnel*, the ultimate authority on constitutional issues, ruled the ban was constitutional stating: "the legislator has considered that, voluntary or not, [women covering their face](#) find themselves in a position of exclusion and inferiority which are manifestly incompatible with constitutional principles of liberty and equality and that by introducing the said limitations, the legislator has complemented and generalized rules which so far have been reserved for specific situations for the purpose of protecting public order."

Who brought this case?

S.A.S. [name anonymized at her request by the court] is a French Muslim woman who would like to wear the veil in public but would be prosecuted if she did so. The case was picked up by the ECHR's Grand Chamber, which consists of a bench of 17 judges, and which takes up cases of particular importance. The court is considering her claim that the ban violates her rights under the European Convention of Human Rights, in particular the right to respect for her private and family life (Article 8), the right to freedom of religion (Article 9), and the prohibition against discrimination (Article 14). S.A.S is represented by [Sanjeev Sharma, of the Birmingham, England based law firm, JM Wilson Solicitors](#).

Has the court ruled on similar cases?

Prior to the French and Belgian bans on public full-face veils, most of the controversy over attempts to ban the wearing of headscarves and veils by Muslim women has focused on schools. Bans on teachers and students wearing religious garments are fairly common and can be found in France, Belgium, the Netherlands, Germany and Switzerland.

In 2001, in its *Dahlab v. Switzerland* ruling, the ECHR allowed a primary school to prohibit the wearing of headscarves by teachers, arguing that the ban was justified because it was "intended to protect the religious beliefs of the pupils and their parents and to apply the principle of denominational neutrality in schools enshrined in domestic law".

In 2005, in *Leyla Şahin v. Turkey* the court rejected a challenge to Turkey's ban on the wearing of Islamic headscarves by university students.

Since then, the court has upheld France's 2004 ban on wearing headscarves and religious garments in schools in a number of cases, arguing in *Dogru v. France* in 2009 that "the state may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety."

However, the court's rulings on religious symbolism and clothing in schools have been criticised by some as contradictory. In 2011 it rejected a challenge to the display of crucifixes in Italian state schools in *Lautsi v. Italy*, arguing that the symbol did not significantly affect denominational neutrality of Italian schools.

The ECHR's view is also at odds with [the 2013 ruling in Singh v. France](#) by the United Nations Human Rights Committee in a complaint brought against France by a Sikh student who had been expelled for wearing a *keski* over his uncut hair. The committee found that the ban violated the student's freedom of religion under Article 18 of the International Convention on Civil and Political Rights.

What about the argument that the full face veil can be used by would be terrorists to evade detection?

The ECHR has in the past spoken out in strong terms against “any generalized linkages between religious groups and violence threatening peace and security” unless there is a “threat sufficient to warrant restrictions”. Where fundamental rights are at stake, public order arguments may easily disguise intolerance.

When public order is relied upon as a justification for an interference with a right under the European rights convention, the court requires that the state must demonstrate “direct, concrete evidence” when considering whether a particular response is proportionate.

The French ban was not based on any such direct, concrete evidence, with the government asserting that the full-face veil could constitute a danger to public security, without referring to any evidence. The *Conseil d'Etat* was critical of using a blanket ban approach to address public order and security needs that had not arisen.

What happens when people need to identify themselves, as in a court of law, or at an airport security check?

All of the women surveyed as part of the *Unveiling the Truth* report indicated that they would be willing to remove their full face veil for the purpose of substantiating their identity. That was also true for S.A.S.

Accommodations can be arranged when required. Thus, a Scottish judge ruled in September 2013 on [when a criminal defendant could wear a full-face veil](#) during trial proceedings.

What is the Open Society Foundations' view?

We oppose the French and Belgian bans, and lawyers from the Open Society Justice Initiative filed [a third party opinion to that effect in this case](#). Open Society's At Home in Europe project also commissioned a report, *Unveiling the Truth*, published in 2011, on the views of 32 Muslim women in France who opt to wear full veil.

The Open Society Justice Initiative submission to the ECHR's Grand Chamber also included a follow-up report, *After the Ban*, in which it assessed the impact of the ban on 35 women who wore the full-face veil prior to the ban.

The integration of Muslim communities across Western Europe is a legitimate concern for policymakers, but in many countries the tone of the discussion and accompanying institutional responses have been counterproductive and contradict the principles of liberty, democracy, and a respect for human rights and equality.

Notwithstanding the expressed neutrality of the law, the controversy over its adoption has further deepened the perceptions of Muslims living in France that state interference is targeted specifically at them.

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