September 2024

Religious symbols and clothing

Display of religious symbols in State-school classrooms

Lautsi and Others v. Italy

18 March 2011 (Grand Chamber)

The applicant's children attended a state school where all the classrooms had a crucifix on the wall, which she considered contrary to the principle of secularism by which she wished to bring up her children. During a meeting of the school's governors, the applicant's husband raised the question of the presence of religious symbols in the classrooms, particularly mentioning crucifixes, and asked whether they ought to be removed. Following a decision of the school's governors to keep religious symbols in classrooms, the applicant brought administrative proceedings and complained in particular, without success, of an infringement of the principle of secularism. She complained before the Court that the display of the crucifix in the State school attended by her children was in breach of Article 9 (freedom of thought, conscience and religion)[1] of the European Convention on Human Rights and of Article 2 (right to education) of Protocol No. 1 to the Convention.

In its Grand Chamber judgment, the European Court of Human Rights held that there had been **no violation of Article 2** (right to education) **of Protocol No. 1** to the European Convention on Human Rights, and that **no separate issue** arose **under Article 9** (freedom of thought, conscience and religion) of the Convention. It found in particular that the question of religious symbols in classrooms was, in principle, a matter falling within the margin of appreciation of the State – particularly as there was no European consensus as regards that question – provided that decisions in that area did not lead to a form of indoctrination. The fact that crucifixes in State-school classrooms in Italy conferred on the country's majority religion predominant visibility in the school environment was not in itself sufficient to denote a process of indoctrination. Moreover, the presence of crucifixes was not associated with compulsory teaching about Christianity; and there was nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions. Lastly, the applicant had retained her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions.

[1] Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights provides that:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Obligation to appear bareheaded on identity photos intended for use on official documents

Mann Singh v. France

13 November 2008 (decision on the admissibility)

The applicant, a practising Sikh, submitted that the requirement for him to appear bareheaded in the identity photograph on his driving licence amounted to interference with his private life and with his freedom of religion and conscience. He complained of the fact that the regulations in question made no provision for separate treatment for members of the Sikh community.

The Court declared the application **inadmissible** (manifestly ill-founded). It noted that identity photographs for use on driving licences which showed the subject bareheaded were needed by the authorities in charge of public safety and law and order, particularly in the context of checks carried out under the road traffic regulations, to enable them to identify the driver and verify that he or she was authorised to drive the vehicle concerned. It stressed that checks of that kind were necessary to ensure public safety within the meaning of Article 9 § 2 of the Convention. The Court considered that the detailed arrangements for implementing such checks fell within the respondent State's margin of appreciation, especially since the requirement for persons to remove their turbans for that purpose or for the initial issuance of the licence was a sporadic one. It therefore held that the impugned interference had been justified in principle and proportionate to the aim pursued.

Security checks (airports, consular premises, a.s.o.)

Phull v. France

11 January 2005 (decision on the admissibility)

Relying on Article 9 of the Convention, the applicant, a practising Sikh, complained in particular of an interference with his right to freedom of religion by airport authorities, who had obliged him to remove his turban as part of a security check imposed on passengers entering the departure lounge. He argued that there had been no need for the security staff to make him remove his turban, especially as he had not refused to go through the walk-through scanner or to be checked with a hand-held detector.

The Court found that security checks in airports were necessary in the interests of public safety within the meaning of Article 9 § 2 of the Convention, and that the arrangements for implementing them in the present case fell within the respondent State's margin of appreciation, particularly as the measure was only resorted to occasionally. It therefore held that the complaint under Article 9 of the Convention was manifestly ill-founded and declared the application **inadmissible**.

El Morsli v. France

4 March 2008 (decision on the admissibility)

The applicant, a Moroccan national married to a French man, was denied an entry visa to France, as she refused to remove her headscarf for an identity check by male personnel at the French consulate general in Marrakech.

The Court declared the application **inadmissible** (manifestly ill-founded), holding in particular that the identity check as part of the security measures of a consulate general served the legitimate aim of public safety and that the applicant's obligation to remove her headscarf was very limited in time.

Wearing of religious symbols or clothing at school and at university

Teachers and professors

Dahlab v. Switzerland

15 February 2001 (decision on the admissibility)

The applicant, a primary-school teacher who had converted to Islam, complained of the school authorities' decision to prohibit her from wearing a headscarf while teaching, eventually upheld by the Federal Court in 1997. She had previously worn a headscarf in school for a few years without causing any obvious disturbance.

The Court declared the application **inadmissible** (manifestly ill-founded), holding that the measure had not been unreasonable, having regard in particular to the fact that the children for whom the applicant was responsible as a representative of the State were aged between four and eight, an age at which children were more easily influenced than older pupils.

Kurtulmuş v. Turkey

24 January 2006 (decision on the admissibility)

This case concerned the prohibition for a university professor to wear the Islamic head-scarf in the exercise of her functions. The applicant submitted that the ban on her wearing a headscarf when teaching had violated her right to manifest her religion freely. She alleged in particular that the disciplinary hearing's decision that she should be deemed to have resigned as a result of wearing the Islamic headscarf constituted a breach of her rights guaranteed by Articles 8 (right to respect for private life), 9 and 10 (freedom of expression) of the Convention.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that, in the particular context of relations between the State and religions, the role of the domestic policy-maker needed to be given special weight. In a democratic society, the State was entitled to restrict the wearing of Islamic headscarves if the practice clashed with the aim of protecting the rights and freedoms of others. In the present case, the applicant had chosen to become a civil servant; the "tolerance" shown by the authorities, on which the applicant relied, did not make the rule at issue any less legally binding. The dress code in question, which applied without distinction to all members of the civil service, was aimed at upholding the principles of secularism and neutrality of the civil service, and in particular of State education. Furthermore, the scope of such measures and the arrangements for their implementation must inevitably be left to some extent to the State concerned. Consequently, given the margin of appreciation enjoyed by the Contracting States in the matter, the interference complained of had been justified in principle and proportionate to the aim pursued.

Pupils and students

Leyla Şahin v. Turkey

10 November 2005 (Grand Chamber)

Coming from a traditional family of practising Muslims, the applicant considered it her religious duty to wear the Islamic headscarf. She complained about a rule announced in 1998, when she was a medical student Istanbul University, prohibiting students there from wearing such a headscarf in class or during exams, which eventually led her to leave the country and pursue her studies in Austria.

The Court held that there had been **no violation of Article 9** of the Convention, finding that there was a legal basis in Turkish law for the interference with the applicant's right to manifest her religion, as the Turkish Constitutional Court had ruled before that wearing a headscarf in universities was contrary to the Constitution. Therefore it should have been clear to the applicant, from the moment she entered the university, that there

were restrictions on wearing the Islamic headscarf and, from the date the university rule was announced, that she was liable to be refused access to lectures and examinations if she continued to wear it. Having regard to States' margin of appreciation in this question, the Court further held that the interference could be considered as "necessary in a democratic society" for the purpose of Article 9 § 2 of the Convention. In particular, the impact of wearing the Islamic headscarf, often presented or perceived as a compulsory religious duty, might have on those who chose not to wear it, had to be taken into consideration.

Köse and 93 Others v. Turkey

24 January 2006 (decision on the admissibility)

This case concerned the prohibition for students of religiously-oriented public secondary schools to wear the Islamic head-scarf within the limits of the school. Relying on Article 9 of the Convention, the applicants complained in particular that the ban on wearing the Islamic headscarf in the schools in question constituted an unjustified infringement of their right to freedom of religion and in particular their right to manifest their religion. Their parents alleged that the ban on wearing the Islamic headscarf in these schools violated their children's right to education, as set out in the first sentence of Article 2 (right to education) of Protocol No. 1[2] to the Convention. They further submitted that the measures had also infringed the parents' rights under the second sentence of Article 2 of Protocol No. 1. They had enrolled their children at the schools in question in the belief that they would receive an education consistent with their religious convictions. However, the measures that had been imposed from February 2002 onwards had deprived them of that right.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that the dress code imposed on pupils was a general measure applicable to all pupils irrespective of their religious beliefs. Consequently, even assuming that there had been interference with the applicants' right to manifest their religion, there was no appearance of a violation of Article 9 of the Convention. As further regards the applicants' complaints under Article 2 of Protocol No. 1 to the Convention, the Court found, on the one hand, that the restriction at issue was based on clear principles and was proportionate to the aims of preventing disorder and protecting the rights and freedoms of others, and of preserving the neutrality of secondary education and, on the other hand, that the dress code imposed in the present case and the related measures were not in breach of the right set forth in the second sentence of Article 2 of Protocol No. 1.

Dogru v. France and Kervanci v. France

4 December 2008

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court held that there had been **no violation of Article 9** of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

[2] Article 2 (right to education) of Protocol No. 1 to the Convention provides that:
"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Aktas v. France, Bayrak v. France, Gamaleddyn v. France, Ghazal v. France, J. Singh v. France and R. Singh v. France

30 June 2009 (decisions on the admissibility)

These applications concerned the expulsion of six pupils from school for wearing conspicuous symbols of religious affiliation. They were enrolled in various state schools for the year 2004-2005. On the first day of school, the girls, who are Muslims, arrived wearing a headscarf or kerchief. The boys were wearing a "keski", an under-turban worn by Sikhs. As they refused to remove the offending headwear, they were denied access to the classroom and, after a period of dialogue with the families, expelled from school for failure to comply with the Education Code. Before the Court, they complained of the ban on headwear imposed by their schools.

The Court declared the applications **inadmissible** (manifestly ill-founded), holding in particular that the interference with the pupils' freedom to manifest their religion was prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others and of public order. It further underlined the State's role as a neutral organiser of the exercise of various religions, faiths and beliefs. As to the punishment of definitive expulsion, it was not disproportionate to the aims pursued as the pupils still had the possibility of continuing their schooling by correspondence courses.

Mikyas and Others v. Belgium

9 April 2024 (decision on the admissibility)

This case concerned three young women who identified as Muslims. They complained that they were unable to wear the Islamic headscarf in their secondary schools (except during religious education classes), following the prohibition on wearing any visible symbols of one's beliefs in the official education system of the Flemish Community.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicants' complaints under Article 9 of the Convention. It stated, in particular, that the concept of neutrality in the Community's education system, understood as prohibiting, in a general manner, the wearing by pupil of visible symbols of one's beliefs, did not in itself run counter to Article 9 of the Convention and the values underlying it. The Court noted in the present case that the contested ban did not concern solely the Islamic veil, but applied without distinction to all visible symbols of belief. It considered that the national authorities had been entitled, having regard to the discretion ("margin of appreciation") enjoyed by them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols. The contested restriction could therefore be said to be proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus was "necessary" "in a democratic society".

Wearing of religious symbols or clothing at work

Eweida and Chaplin v. the United Kingdom

15 January 2013

The two applicants – a *British Airways* employee and a geriatrics nurse respectively – are practising Christians. They complained in particular that their employers placed restrictions on their visibly wearing Christian crosses around their necks while at work, and alleged that domestic law had failed adequately to protect their right to manifest their religion.

The Court held that there had been a **violation of Article 9** (freedom of religion) of the Convention in respect of the first applicant, and **no violation of Article 9**, **taken alone or in conjunction with Article 14** (prohibition of discrimination) of the Convention, in respect of the second applicant.

It did not consider that the lack of explicit protection in UK law to regulate the wearing of religious clothing and symbols in the workplace in itself meant that the right to manifest religion was breached, since the issues could be and were considered by the domestic courts in the context of discrimination claims brought by the applicants.

In the first applicant's case, the Court held that on one side of the scales was the applicant's desire to manifest her religious belief. On the other side of the scales was the employer's wish to project a certain corporate image. While this aim was undoubtedly legitimate, the domestic courts accorded it too much weight.
As regards the second applicant, the importance for her to be allowed to bear witness to her Christian faith by wearing her cross visibly at work weighed heavily in the balance. However, the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently more important than that which applied in respect of the first applicant and the hospital managers were well placed to make decisions about clinical safety.

Ebrahimian v. France

26 November 2015
This case concerned the decision not to renew the contract of employment of a hospital social worker because of her refusal to stop wearing the Muslim veil. The applicant complained that the decision not to renew her contract as a social worker had been in breach of her right to freedom to manifest her religion.
The Court held that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the Convention, finding that the French authorities had not exceeded their margin of appreciation in finding that there was no possibility of reconciling the applicant's religious convictions with the obligation to refrain from manifesting them, and in deciding to give precedence to the requirement of neutrality and impartiality of the State. The Court noted in particular that wearing the veil had been considered by the authorities as an ostentatious manifestation of religion that was incompatible with the requirement of neutrality incumbent on public officials in discharging their functions. The applicant had been ordered to observe the principle of secularism within the meaning of Article 1 of the French Constitution and the requirement of neutrality deriving from that principle. According to the national courts, it had been necessary to uphold the secular character of the State and thus protect the hospital patients from any risk of influence or partiality in the name of their right to their own freedom of conscience. The necessity of protecting the rights and liberties of others – that is, respect for everyone's religion – had formed the basis of the decision in question.

Pending application

Türkv. Germany (no. 61347/16)

Application communicated to the German Government on 12 September 2018
This case concerns labour law proceedings, in which an employing hospital refused the applicant to resume work after a period of leave, because she had announced to be wearing a religiously motivated head scarf.
The Court gave notice of the application to the German Government and put questions to the parties under Article 9 (freedom of religion) and Article 35 (admissibility criteria) of the Convention.

Wearing of religious symbols or clothing in a courtroom

Barik Edidi v. Spain

26 April 2016 (decision on the admissibility)
This case concerned a lawyer (the applicant) who was asked by the president of a court to return to the area reserved for members of the public, on the ground that barristers appearing before the court could cover their heads only with the official cap (biretta). The applicant also alleged that her complaints had not been examined on their merits by the domestic courts.
The Court declared the application **inadmissible**. As regards the applicant's complaint under Article 6 § 1 (right to a fair trial) of the Convention, it dismissed it as ill-founded. The Court considered that, having lodged her *alzada* appeal before the *Audiencia*

Nacional out of time, the applicant had herself, from the outset of the proceedings, created the situation of which she complained. Her conduct had thus prevented the domestic courts from ruling on the merits of the case. The Court further found that the complaint submitted by the applicant under Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion) of the Convention and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention had to be rejected for failure to exhaust domestic remedies, on account of the applicant's failure to comply with the formalities laid down in national law for lodging appeals.

Hamidović v. Bosnia and Herzegovina

5 December 2017

A witness in a criminal trial, the applicant was expelled from the courtroom, convicted of contempt of court and fined for refusing to remove his skullcap. He complained in particular that punishing him for contempt of court had been disproportionate.

The Court held that there had been a **violation of Article 9** (freedom of religion) of the Convention. It found that there had been nothing to indicate that the applicant had been disrespectful during the trial. Punishing him with contempt of court on the sole ground that he had refused to remove his skullcap, a religious symbol, had not therefore been necessary in a democratic society and had breached his fundamental right to manifest his religion. The Court pointed out in particular that the applicant's case had to be distinguished from cases concerning the wearing of religious symbols and clothing at the workplace, notably by public officials. Public officials, unlike private citizens such as the applicant, could be put under a duty of discretion, neutrality and impartiality, including a duty not to wear religious symbols and clothing while exercising official authority.

Lachiri v. Belgium

18 September 2018

This case concerned the applicant's exclusion from a courtroom on account of her refusal to remove her *hijab*. She complained that this had infringed her freedom to express her religion.

The Court held that there had been a **violation of Article 9** (freedom of religion) of the Convention. It found that the exclusion of the applicant – an ordinary citizen, not representing the State – from the courtroom had amounted to a restriction on the exercise of her right to manifest her religion. The restriction had pursued the legitimate aim of protecting public order, with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that the applicant's conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. It therefore held that the need for the restriction in question had not been established and that the infringement of the applicant's right to freedom to manifest her religion was not justified in a democratic society.

Wearing of religious symbols or clothing in the public space

Ahmet Arslan and Others v. Turkey

23 February 2010

The applicants, 127 members of a religious group known as *Aczimendi tarikatÿ,* complained of their conviction in 1997 for a breach of the law on the wearing of headgear and of the rules on wearing religious garments in public, after having toured the streets and appeared at a court hearing wearing the distinctive dress of their group (made up of a turban, baggy trousers a tunic and a stick).

The Court found a **violation of Article 9** of the Convention, holding in particular that there was no evidence that the applicants had represented a threat to the public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. The Court emphasised that in contrast to other cases, the case concerned punishment for the wearing of particular dress in public areas that

were open to all, and not regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.

S.A.S. v. France (no. 43835/11)

26 June 2014 (Grand Chamber)

This case concerned the complaint of a French national, who is a practising Muslim, that she is no longer allowed to wear the full-face veil in public following the entry into force, on 11 April 2011, of a law prohibiting the concealment of one's face in public places. The applicant is a devout Muslim and in her submissions she said that she wore the burqa and niqab in accordance with her religious faith, culture and personal convictions. She also emphasised that neither her husband nor any other member of her family put pressure on her to dress in this manner. The applicant added that she wore the niqab in public and in private, but not systematically. She was thus content not to wear the niqab in certain circumstances but wished to be able to wear it when she chose to do so. Lastly, her aim was not to annoy others but to feel at inner peace with herself.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life), and **no violation of Article 9** (right to respect for freedom of thought, conscience and religion) of the Convention. It emphasised in particular that respect for the conditions of "living together" was a legitimate aim for the measure at issue and that, particularly as the State had a lot of room for manoeuvre ("a wide margin of appreciation") as regards this general policy question on which there were significant differences of opinion, the ban imposed by the Law of 11 October 2010 did not breach the Convention. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention combined with Articles 8 or 9: the ban imposed by the Law of 11 October 2010 admittedly had specific negative effects on the situation of Muslim women who, for religious reasons, wished to wear the full-face veil in public, however, that measure had an objective and reasonable justification.

Belcacemi and Oussar v. Belgium

11 July 2017

This case concerned the ban on the wearing in public of clothing that partly or totally covers the face under the Belgian law of 1 June 2011. Both applicants presented themselves as Muslims who had decided on their own initiative to wear the niqab – a veil covering the face except for the eyes – on account of their religious convictions.

The Court held that there had been **no violation of Articles 8** (right to respect for private and family life) **and 9** (freedom of thought, conscience and religion) of the Convention and **no violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Articles 8 and 9**. The Court found in particular that the restriction sought to guarantee the conditions of "living together" and the protection of the rights and freedoms of others and that it was necessary in a democratic society. Firstly, as in the case of *S.A.S v. France* (see above), the Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the protection of the rights and freedoms of others and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of "living together". In that connection, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Therefore, in adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which, for the State, was essential to ensure the functioning of a democratic society. The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society. Secondly, as regards the proportionality of the restriction, the Court noted that the sanction for non-compliance

with the ban under Belgian law could range from a fine to a prison sentence. Imprisonment was reserved, however, for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, alternative measures were possible and taken in practice at municipal level.

Dakir v. Belgium

11 July 2017

This case concerned a by-law adopted in June 2008 by three Belgian municipalities (Pepinster, Dison and Verviers) concerning a ban on the wearing in public places of clothing that conceals the face, and the subsequent proceedings before the *Conseil d'État*.

The Court held that there had been **no violation of Articles 8** (right to respect for private and family life) **and 9** (right to freedom of thought, conscience and religion) of the Convention and **no violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Articles 8 and 9**. The Court found in particular that the ban imposed by the joint by-law of municipalities in the Vesdre police area could 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. It therefore held that the contested restriction could be regarded as necessary in a democratic society, and that – similarly to the situation which had previously arisen in France (see above, *S.A.S. v. France*) – the question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society. The Court held however that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention in this case. It found in this respect that the decision by the *Conseil d'État* to declare the applicant's application inadmissible on the ground that it was based only on Article 113*bis* of the by-law, without reference to Article 113, had been excessively formalistic, and that the applicant's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. The Court noted that the applicant's arguments on the merits had been set out in a substantiated and structured manner and were of particular significance.

Missaoui and Akhandaf v. Belgium

3 September 2024 (decision on the admissibility)

This case concerned two applicants who complained that they had been prohibited from entering a public swimming pool in Antwerp while wearing burkinis, on the basis of a municipal by-law. In the domestic proceedings, the applicants did not lodge an appeal on points of law because a lawyer at the Court of Cassation had given a negative opinion on the chances of lodging a successful appeal. The applicants complained that the impugned ban amounted to discrimination on grounds of religion.

The Court declared the application **inadmissible** for failure to exhaust domestic remedies within the meaning of Article 35 § 1 (admissibility criteria) of the Convention. It was, in particular, mindful of the importance of the role of the lawyers who were members of the Court of Cassation Bar, in particular their filtering role at that court. The Court pointed out, however, that a negative opinion from a lawyer at the Court of Cassation on the chances of lodging a successful appeal did not automatically mean that such an appeal would be "bound to fail" within the meaning of the Court's case-law. It indicated that, in deciding whether an appeal was "bound to fail", consideration had to be given to the content of the opinion and the subject matter in issue, having regard also to the wider context. In the present case, the Court observed that neither the lawyer at the Belgian Court of Cassation in his negative opinion, nor the applicants before the Court, had relied on any domestic case-law or any other relevant materials demonstrating that an appeal was bound to fail. The Court noted that the Court of Cassation had never ruled on the lawfulness of a judicial decision concerning the wearing of a burkini at a public swimming pool. It also observed that there appeared to be

divergent case-law on the matter in the lower courts in Belgium. In consequence, the Court considered that the single negative opinion from a lawyer at the Court of Cassation was not, in the circumstances of the case, a valid reason for exempting the applicants from lodging an appeal on points of law with the Court of Cassation for the purposes of Article 35 § 1 of the Convention.

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