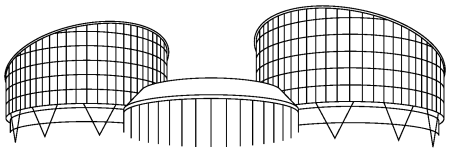

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF S.A.S. v. FRANCE

(Application no. 43835/11)

JUDGMENT

STRASBOURG

1 July 2014

This judgment is final but may be subject to editorial revision.

In the case of S.A.S. v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Guido Raimondi,
Ineta Ziemele,
Mark Villiger,
Boštjan M. Zupančič,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Ledi Bianku,
Ganna Yudkivska,
Angelika Nußberger,
Erik Møse,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Erik Fribergh, *Registrar*,

Having deliberated in private on 27 November 2013 and on 5 June 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 43835/11) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national ("the applicant"), on 11 April 2011. The President of the Fifth Section, and subsequently the President of the Grand Chamber, acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented before the Court by Mr Sanjeev Sharma, a solicitor practising in Birmingham, Mr Ramby de Mello and Mr Tony Muman, barristers practising in Birmingham, and Mr Satvincer Singh Juss, a barrister practising in London.

The French Government ("the Government") were represented by their Agent, initially Ms Edwige. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs, then Mr François Alabrune from May 2014.

3. The applicant complained that the ban on wearing clothing designed to conceal one's face in public places, introduced by Law no. 2010-1192 of 11 October 2010, deprived her of the possibility of wearing the full-face veil in public. She alleged that there had been a violation of Articles 3, 8, 9, 10 and 11 of the Convention, taken separately and together with Article 14 of the Convention.

4. The application was assigned to the Court's Fifth Section (Rule 52 § 1). On 1 February 2012 notice of the application was given to the Government.

5. On 28 May 2013 a Chamber of the Fifth Section, composed of Mark Villiger, President, Angelika Nußberger, Boštjan M. Zupančič, Ganna Yudkivska, André Potocki, Paul Lemmens and Aleš Pejchal, judges, and also of Claudia Westerdiek, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicant and the Government each filed written observations on the admissibility and merits of the case.

8. The non-governmental organisations Amnesty International, Liberty, Open Society Justice Initiative and ARTICLE 19, together with the Human Rights Centre of Ghent University and the Belgian Government, were given leave to submit written comments (Article 36 § 2 of the Convention and Rule 44 § 3). The Belgian Government were also given leave to take part in the hearing.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 27 November 2013 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*

Ms Edwige BELLIARD, Director of Legal Affairs, Ministry of Foreign Affairs, *Agent*,
Ms Nathalie ANCEL, Head, Human Rights Section, Ministry of Foreign Affairs, *Co-Agent*,
Mr Sylvain FOURNEL, Drafting Officer, Human Rights Section, Ministry of Foreign Affairs,
Mr Rodolphe FERAL, Drafting Officer, Human Rights Section, Ministry of Foreign Affairs,
Ms Patricia ROUAULT-CHALIER, Head, General Legal and Litigation Section, Ministry of Justice,
Mr Eric DUMAND, Head of European, International and Institutional Law and Litigation Department, Ministry of the Interior, *Advisers*;

(b) *for the applicant*
Mr Ramby DE MELLO,
Mr Tony MUMAN,
Mr Satvinder SINGH JUSS, *Counsel*,
Mr Eirik BJORGE,
Ms Anastasia VAKULENKO,
Ms Stephanie BERRY, *Advisers*;

(c) *for the Belgian Government*
Ms I. NIEDLISPACHER, *Co-Agent*.

The Court heard addresses by Ms Belliard, by Mr de Mello and Mr Muman and by Ms Niedlispacher, and the replies of Ms Belliard and Mr de Mello to questions from judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant is a French national who was born in 1990 and lives in France.

11. In the applicant's submission, she is a devout Muslim and she wears the burqa and niqab in accordance with her religious faith, culture and personal convictions. According to her explanation, the burqa is a full-body covering including a mesh over the face, and the niqab is a full-face veil leaving an opening only for the eyes. The applicant emphasised that neither her husband nor any other member of her family put pressure on her to dress in this manner.

12. The applicant added that she wore the niqab in public and in private, but not systematically: she might not wear it, for example, when she visited the doctor, when meeting friends in a public place, or when she wanted to socialise in public. She was thus content not to wear the niqab in public places at all times but wished to be able to wear it when she chose to do so, depending in particular on her spiritual feelings. There were certain times (for example, during religious events such as Ramadan) when she believed that she ought to wear it in public in order to express her religious, personal and cultural faith. Her aim was not to annoy others but to feel at inner peace with herself.

13. The applicant did not claim that she should be able to keep the niqab on when undergoing a security check, at the bank or in airports, and she agreed to show her face when requested to do so for necessary identity checks.

14. Since 11 April 2011, the date of entry into force of Law no. 2010-1192 of 11 October 2010 throughout France, it has been prohibited for anyone to conceal their face in public places.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Law of 11 October 2010 "prohibiting the concealment of one's face in public places"

1. Legislative history

(a) Report "on the wearing of the full-face veil on national territory"

15. The conference of Presidents of the National Assembly, on 23 June 2009, established a parliamentary commission comprising members from various parties with the task of drafting a report on "the wearing of the full-face veil on national territory".

16. The report of some 200 pages, deposited on 26 January 2010, described and analysed the existing situation. It showed, in particular, that the wearing of the full-face veil was a recent phenomenon in France (almost no women wore it before 2000) and that about 1,900 women were concerned by the end of 2009 (of whom about 270 were living in French overseas administrative areas); nine out of ten were under 40, two-thirds were French nationals and one in four were converts to Islam. According to the report, the wearing of this clothing existed before the advent of Islam and did not have the nature of a religious precept, but stemmed from a radical affirmation of individuals in search of identity in society and from the action of extremist fundamentalist movements. The report further indicated that the phenomenon was non-existent in countries of central and eastern Europe, specifically mentioning the Czech Republic, Bulgaria, Romania, Hungary, Latvia and Germany. It was not therefore a matter of debate in those countries, unlike the situation in Sweden and Denmark, where the wearing of such veils nevertheless remained marginal. Moreover, the question of a general ban had been discussed in the Netherlands and in Belgium (a Law "to prohibit the wearing of any clothing which totally or principally conceals the face" has since been enacted in Belgium, on 1 June 2011; see paragraphs 40-41 below). The report was also critical of the situation in the United Kingdom, where it pointed to a sectarian trend driven by radical and fundamental Muslim groups, who were taking advantage of a legal system that was very protective of individual fundamental rights and freedoms in order to obtain recognition of rights that were specifically applicable to residents of Muslim faith or origin.

17. The report went on to criticise "a practice at odds with the values of the Republic", as expressed in the maxim "liberty, equality, fraternity". It

emphasised that, going beyond mere incompatibility with secularism, the full-face veil was an infringement of the principle of liberty, because it was a symbol of a form of subservience and, by its very existence, negated both the principle of gender equality and that of the equal dignity of human beings. The report further found that the full-face veil represented a denial of fraternity, constituting the negation of contact with others and a flagrant infringement of the French principle of living together (*le "vivre ensemble"*).

The report, thus finding it necessary to "release women from the subservience of the full-face veil", advocated a three-pronged course of action: to convince, protect women and envisage a ban. It made the following four proposals: first, to adopt a resolution reasserting Republican values and condemning as contrary to such values the wearing of the full-face veil; secondly, to initiate a general survey of the phenomena of amalgamation, discrimination and rejection of others on account of their origins or faith, and of the conditions of fair representation of spiritual diversity; thirdly, to reinforce actions of awareness and education in mutual respect and diversity and the generalising of mediation mechanisms; and fourthly, to enact legislation guaranteeing the protection of women who were victims of duress, which would strengthen the position of public officials confronted with this phenomenon and curb such practices. The report emphasised that among both the parliamentary commission's members and those of the political formations represented in Parliament, there was no unanimous support for the enactment of a law introducing a general and absolute ban on the wearing of the full-face veil in public places.

(b) Opinion of the National Advisory Commission on Human Rights "on the wearing of the full-face veil"

18. In the meantime, on 21 January 2010, the National Advisory Commission on Human Rights (*Commission nationale consultative des droits de l'homme* – CNCDH) had issued an "opinion on the wearing of the full-face veil", stating that it was not in favour of a law introducing a general and absolute ban. It took the view, in particular, that the principle of secularism alone could not serve as a basis for such a general measure, since it was not for the State to determine whether or not a given matter fell within the realm of religion, and that public order could justify a prohibition only if it were limited in space and time. The opinion also emphasised the risk of stigmatising Muslims and pointed out that a general prohibition could be detrimental to women, in particular because those who were made to wear the full-face veil would additionally become deprived of access to public areas.

19. That being said, the CNCDH observed that support for women who were subjected to any kind of violence had to be a political priority; it

advocated, in order to combat any form of obscurantism, encouraging the promotion of a culture of dialogue, openness and moderation, with a view to fostering better knowledge of religions and the principles of the Republic; it called for the strengthening of civic education courses – including education and training in human rights – at all levels, for both men and women; it sought the strict application of the principles of secularism and neutrality in public services, and the application of existing legislation; and it expressed the wish that, in parallel, sociological and statistical studies should be carried out in order to monitor the evolution of the wearing of the full-face veil.

(c) Study by the *Conseil d'État* on "the possible legal grounds for banning the full veil"

20. On 29 January 2010 the Prime Minister asked the *Conseil d'État* to carry out a study on "the legal grounds for a ban on the full veil" which would be "as wide and as effective as possible".

21. The *Conseil d'État* thus completed its "study on the possible legal grounds for banning the full veil", of which the report was adopted by the Plenary General Assembly on 25 March 2010. It interpreted the question put to it as follows: can we envisage a legal ban, for particular reasons and within prescribed limits, on the wearing of the full veil as such, or are we required to address the more general issue of concealment of the face, with the wearing of this garment being just one example?

22. The *Conseil d'État* first observed that existing legislation already addressed this issue in various ways, whether through provisions whose effect was to ban the wearing of the full veil itself by certain persons and in certain circumstances, by imposing occasional restrictions on concealment of the face for public order reasons, or by envisaging criminal sanctions for the instigators of such practices. It noted, however, that the relevant provisions were varied in nature and that comparable democracies were like France in not having national legislation imposing a general ban on such practices in public places. In view of this finding, the *Conseil d'État* questioned the legal and practical viability of prohibiting the wearing of the full veil in public places, having regard to the rights and freedoms guaranteed by the Constitution, the Convention and European Union law. It found it impossible to recommend a ban on the full veil alone, as a garment representing values that were incompatible with those of the Republic, in that such a ban would be legally weak and difficult to apply in practice. It observed in particular that the principle of gender equality was not intended to be applicable to the individual person, i.e. to an individual's exercise of personal freedom. It further took the view that a less specific ban on the deliberate concealment of the face, based mainly on public order considerations and interpreted more or less broadly, could not legally apply

without distinction to the whole of the public space under prevailing constitutional and Convention case-law.

23. However, the *Conseil d'État* believed that, in the present state of the law, it would be possible to enact more coherent legislation, which would be binding and restrictive, comprising two types of provision: first, stipulating that it was forbidden to wear any garment or accessory that had the effect of hiding the face in such a way as to preclude identification, either to safeguard public order where it was under threat, or where identification appeared necessary for access to or movement within certain places, or for the purpose of certain formalities; secondly, strengthening enforcement measures that would particularly be directed against individuals who forced others to hide their faces and thus conceal their identity in public places.

(d) Resolution of the National Assembly "on attachment to respect for Republic values at a time when they are being undermined by the development of radical practices"

24. On 11 May 2010 the National Assembly adopted, by a unanimous vote, a Resolution "on attachment to respect for Republic values at a time when they are being undermined by the development of radical practices".

In this Resolution the National Assembly made the following statements:

> "1. Considers that radical practices undermining dignity and equality between men and women, one of which is the wearing of the full veil, are incompatible with the values of the Republic;
>
> 2. Affirms that the exercise of freedom of expression, opinion or belief cannot be relied on by anyone for the purpose of flouting common rules, without regard for the values, rights and duties which underpin society;
>
> 3. Solemnly reaffirms its attachment to respect for the principles of dignity, liberty, equality and fraternity between human beings;
>
> 4. Expresses the wish that the fight against discrimination and the promotion of equality between men and women should be a priority in public policies concerning equal opportunities, especially in the national education system;
>
> 5. Finds it necessary for all appropriate means to be implemented to ensure the effective protection of women who suffer duress or pressure, in particular those who are forced to wear the full veil."

(e) Bill before Parliament

25. The draft of a law prohibiting the concealment of one's face in public places was deposited in May 2010, the Government having considered that the other options (mediation and parliamentary resolution) were not sufficiently effective and that a ban limited to certain places or circumstances would not have been an appropriate means of safeguarding the principles in question and would have been difficult to implement (Bill

prohibiting the concealment of one's face in public places, impact assessment, May 2010).

The Bill contained an "explanatory memorandum", which reads as follows:

> "France is never as much itself, faithful to its history, its destiny, its image, than when it is united around the values of the Republic: liberty, equality, fraternity. Those values form the foundation-stone of our social covenant; they guarantee the cohesion of the Nation; they underpin the principle of respect for the dignity of individuals and for equality between men and women.
>
> These are the values which have today been called into question by the development of the concealment of the face in public places, in particular by the wearing of the full veil.
>
> This question has given rise, for about a year now, to a wide public debate. The finding, enlightened by testimony and the report of the National Assembly's commission, is unanimous. Even though the phenomenon at present remains marginal, the wearing of the full veil is the sectarian manifestation of a rejection of the values of the Republic. Negating the fact of belonging to society for the persons concerned, the concealment of the face in public places brings with it a symbolic and dehumanising violence, at odds with the social fabric.
>
> The decreeing of *ad hoc* measures has been envisaged, entailing partial bans limited to certain places and, if appropriate, to certain periods or for the benefit of certain services. Such a solution, in addition to the fact that it would encounter extreme difficulties in its implementation, would constitute no more than an inadequate, indirect and circuitous response to the real problem.
>
> The voluntary and systematic concealment of the face is problematic because it is quite simply incompatible with the fundamental requirements of 'living together' in French society.
>
> The defence of public order is not confined to the preservation of tranquillity, public health or safety. It also makes it possible to proscribe conduct which directly runs counter to rules that are essential to the Republican social covenant, on which our society is founded.
>
> The systematic concealment of the face in public places, contrary to the ideal of fraternity, also falls short of the minimum requirement of civility that is necessary for social interaction.
>
> Moreover, this form of public confinement, even in cases where it is voluntary or accepted, clearly contravenes the principle of respect for the dignity of the person. In addition, it is not only about the dignity of the individual who is confined in this manner, but also the dignity of others who share the same public space and who are thus treated as individuals from whom one must be protected by the refusal of any exchange, even if only visual.
>
> Lastly, in the case of the full veil, worn only by women, this breach of the dignity of the person goes hand in hand with the public manifestation of a conspicuous denial of equality between men and women, through which that breach is constituted.
>
> Having been consulted about the legal solutions that would be available to the public authorities in order to curb the development of this phenomenon, the *Conseil d'État* envisaged an approach based on a new conception of public order, considered in its 'non-material' dimension.

Whilst it found such an approach too innovative, it did so after noting that it was reflected in certain judicial decisions, particularly in a decision where the Constitutional Council had found that the conditions of 'normal family life' secured to aliens living in France could validly exclude polygamy, or indeed the case-law of the *Conseil d'État* itself, which allowed certain practices, even if consensual, to be proscribed when they offended against the dignity of the person. This is especially true where the practice in question, like the concealment of the face, cannot be regarded as inseparable from the exercise of a fundamental freedom.

These are the very principles of our social covenant, as solemnly restated by the National Assembly when it adopted unanimously, on 11 May 2010, its resolution on attachment to respect for Republican values, which prohibit the self-confinement of any individual who cuts himself off from others whilst living among them.

The practice of concealing one's face, which could also represent a danger for public safety in certain situations, thus has no place within French territory. The inaction of the public authorities would seem to indicate an unacceptable failure to defend the principles which underpin our Republican covenant.

It is for the sake of those principles that the present Bill seeks to introduce into our legislation, following the necessary period of explanation and education, an essential rule of life in society to the effect that 'no one may, in public places, wear clothing that is designed to conceal the face'."

26. The Bill was supported by the National Assembly's Delegation on the rights of women and equal opportunities (information report registered on 23 June 2010, no. 2646) and the Standing Committee on Legislation (*Commission des lois*) issued a favourable report (registered on 23 June 2010, no. 2648).

27. The Law was passed by the National Assembly on 13 July 2010 with 335 votes in favour, one vote against and three abstentions, and by the Senate on 14 September 2010, with 246 votes in favour and one abstention. After the Constitutional Council's decision of 7 October 2010 finding that the Law was compliant with the Constitution (see paragraph 30 below), it was enacted on 11 October 2010.

2. Relevant provisions of Law no. 2010-1192

28. Sections 1 to 3 (in force since 11 April 2011) of Law no. 2010-1192 of 11 October 2010 "prohibiting the concealment of one's face in public places" read as follows:

Section 1

"No one may, in public places, wear clothing that is designed to conceal the face."

Section 2

"I. - For the purposes of section 1 hereof, 'public places' comprise the public highway and any places open to the public or assigned to a public service.

II. - The prohibition provided for in section 1 hereof shall not apply if the clothing is prescribed or authorised by primary or secondary legislation, if it is justified for health

or occupational reasons, or if it is worn in the context of sports, festivities or artistic or traditional events."

Section 3

"Any breach of the prohibition laid down in section 1 hereof shall be punishable by a fine, at the rate applying to second-class petty offences (*contraventions*) [150 euros maximum].

An obligation to follow a citizenship course, as provided at paragraph 8° of Article 131-16 of the Criminal Code, may be imposed in addition to or instead of the payment of a fine."

The provisions for the obligation to follow a citizenship course can be found in Articles R. 131-35 to R. 131-44 of the Criminal Code. The purpose of the course is to remind the convicted persons of the Republican values of tolerance and respect for the dignity of the human being and to make them aware of their criminal and civil liability, together with the duties that stem from life in society. It also seeks to further the person's social integration (Article R. 131-35).

29. Law no. 2010-1192 (section 4) also inserted the following provision into the Criminal Code:

Article 225-4-10

"Any person who forces one or more other persons to conceal their face, by threat, duress, coercion, abuse of authority or of office, on account of their gender, shall be liable to imprisonment for one year and a fine of 30,000 euros.

Where the offence is committed against a minor, such punishment shall be increased to two years' imprisonment and a fine of 60,000 euros."

B. Decision of the Constitutional Council of 7 October 2010

30. The Constitutional Council (*Conseil constitutionnel*), to which the matter had been referred on 14 September 2010 by the Presidents of the National Assembly and of the Senate, as provided for in the second paragraph of Article 61 of the Constitution, declared Law no. 2010-1192 compliant with the Constitution, subject to one reservation (point 5), in a decision of 7 October 2010 (no. 2010-613 DC), which reads as follows:

"... 3. Article 4 of the Declaration of the Rights of Man and the Citizen of 1789 proclaims: 'Liberty consists in being able to do anything which does not harm others: thus the exercise of the natural rights of every man has no bounds other than those which ensure to other members of society the enjoyment of these same rights. These bounds shall be determined solely by the law'. Article 5 of the same Declaration proclaims: 'The law shall prohibit solely those actions which are harmful to society. Nothing which is not prohibited by law shall be impeded and no one shall be compelled to do that which the law does not prescribe'. Article 10 proclaims: 'No one shall be harassed on account of his opinions and beliefs, even religious, on condition that their manifestation does not disturb public order as determined by law'. Lastly,

paragraph 3 of the Preamble to the Constitution of 1946 provides: 'The law shall guarantee women equal rights to those of men in all spheres'.

4. Sections 1 and 2 of the statute referred for review are intended to respond to practices, which until recently were of an exceptional nature, consisting in concealing the face in public places. The legislature was of the view that such practices might be dangerous for public safety and fail to comply with the minimum requirements of life in society. It also found that those women who concealed their face, voluntarily or otherwise, were placed in a situation of exclusion and inferiority that was patently incompatible with the constitutional principles of liberty and equality. In passing the statutory provisions referred for review, the legislature thus complemented and generalised rules which were previously reserved for *ad hoc* situations for the purpose of protecting public order.

5. In view of the purposes which it sought to achieve and taking into account the nature of the sanction introduced for non-compliance with the rule it has laid down, the legislature has passed statutory provisions which reconcile, in a manner which is not disproportionate, the safeguarding of public order and the guaranteeing of constitutionally protected rights. However, prohibiting the concealment of the face in public places cannot, without excessively contravening Article 10 of the 1789 Declaration, restrict the exercise of religious freedom in places of worship open to the public. With this reservation, sections 1 to 3 of the statute referred for review are not unconstitutional.

6. Section 4 of the statute referred for review, which punishes by a term of one year's imprisonment and a fine of 30,000 euros any person who forces another person to conceal his or her face, and sections 5 to 7 thereof concerning the entry into force of the statute and its implementation, are not unconstitutional. ..."

C. Prime Minister's Circular of 2 March 2011

31. Published in the Official Gazette of 3 March 2011, the Prime Minister's Circular of 2 March 2011 on the implementation of Law no. 2010-1192 of 11 October 2010 prohibiting the concealment of the face in public places contains the following indications:

"... I. Scope of the Law

1. Factors constituting the concealment of the face in public places

The concealment of the face in public places is prohibited from 11 April 2011 throughout the territory of the Republic, both in metropolitan France and in French overseas administrative areas. The offence is constituted when a person wears an item of clothing that is designed to conceal his or her face and when he or she is in a public place; these two conditions are necessary and sufficient.

(a) Concealment of one's face

Extent of the ban

Items of clothing designed to conceal the face are those which make the person impossible to identify. The face does not have to be fully concealed for this to be so.

The following are prohibited in particular, without this list being exhaustive: the wearing of balaclavas (*cagoules*), full-face veils (burqa, niqab, etc.), masks or any other accessory or item of clothing which has the effect, whether separately or in

combination with others, of concealing the face. Since the offence is classified as a petty offence (*contravention*), the existence of intent is irrelevant: it is sufficient for the clothing to be designed to conceal the face.

Statutory derogations

Section 2 of the Law provides for a number of derogations from the ban on concealing one's face.

First, the ban does not apply 'if the clothing is prescribed or authorised by primary or secondary legislation'. This is the case, for example, under Article L. 431-1 of the Road-Traffic Code, which requires the drivers of motorcycles to wear crash-helmets.

Secondly, the ban does not apply if the clothing 'is justified for health or occupational reasons'. The occupational reasons concern, particularly, the subject-matter covered by Article L. 4122-1 of the Employment Code: 'the employer's instructions shall stipulate, in particular where the nature of the risks so justify, the conditions of use of any equipment, any means of protection, and any dangerous substances and concoctions. They shall be appropriate to the nature of the tasks to be performed'.

Lastly, the ban does not apply if the clothing 'is worn in the context of sports, festivities or artistic or traditional events'. For example, religious processions, when they are of a traditional nature, fall within the scope of the derogations from the ban laid down by section 1. There is also a derogation in respect of the face protections that are prescribed in a number of sports.

The provisions of the Law of 11 October 2010 apply without prejudice to any provisions which may otherwise prohibit or govern the wearing of clothing in certain public services and which remain in force.

This is the case for Law no. 2004-228 of 15 March 2004, which regulates, in accordance with the principle of secularism, the wearing of symbols or clothing displaying religious affiliation in State schools, both primary and secondary (Article L. 141-5-1 of the National Education Code and implementing circular of 18 May 2004). Other provisions remaining applicable are those of the charter of hospitalised patients, annexed to the circular of 2 March 2006 on the rights of hospitalised patients, and those of the circular of 2 February 2005 on secularism in health institutions.

(b) Definition of public places

Section 2 of the Law states that 'public places comprise the public highway and any places open to the public or assigned to a public service'.

The notion of the public highway requires no comment. It should be pointed out that, with the exception of those assigned to public transport, the vehicles that use public highways are regarded as private places. A person who conceals his or her face in a private car is thus not committing the offence referred to in the Law. That situation may, however, be covered by the provisions of the Road-Traffic Code stipulating that the driving of a vehicle must not present any risks for public safety.

Places open to the public are those places to which access is unrestricted (beaches, public gardens, public walkways, etc.) and places to which access is possible, even conditionally, in so far as any person who so wishes may meet the requirement (for example, by paying for a ticket to enter a cinema or theatre). Commercial premises (cafés, restaurants, shops), banks, stations, airports and the various means of public transport are thus public places.

Places assigned to a public service are the premises of any public institutions, courts and tribunals and administrative bodies, together with any other bodies responsible for providing public services. They include, in particular, the premises of various public authorities and establishments, local government bodies and their public establishments, town halls, courts, prefectures, hospitals, post offices, educational institutions (primary and secondary schools, universities), family benefit offices, health insurance offices, job centres, museums and libraries.

2. Lack of restriction as regards freedom of religion in places of worship

Where they are open to the public, places of worship fall within the scope of the Law. The Constitutional Council has found, however, that 'prohibiting the concealment of the face in public places cannot, without excessively contravening Article 10 of the 1789 Declaration, restrict the exercise of religious freedom in places of worship open to the public'.

3. Sanction for the offence of concealing one's face

Section 3 of the Law provides that any breach of the prohibition of face concealment in public places is punishable by a fine, at the rate applying to second-class petty offences (150 euros maximum). The imposition of this fine falls within the jurisdiction of the community courts (*juridictions de proximité*).

An obligation to follow a citizenship course may also be imposed by the same courts in addition to or instead of the payment of a fine. Such courses, adapted to the nature of the offence committed, must, in particular, ensure that those concerned are reminded of the Republican values of equality and respect for human dignity.

4. Sanction for the use of duress

The fact of concealing one's face in a public place may be the result of duress against the person concerned, and the third party will then have committed the offence of forcing a person to conceal his or her face.

This offence, provided for in section 4 of the Law (inserting a new Article 225-4-10 into the Criminal Code), is punishable by one year's imprisonment and a fine of 30,000 euros. Where the offence is committed against a minor, such punishment is increased to two years' imprisonment and a fine of 60,000 euros.

The punishing of such conduct is part of the public authorities' policy to combat with vigour any form of discrimination and violence against women, which constitute unacceptable infringements of the principle of gender equality.

II. Requisite conduct in public services

(a) Role of the director

In the context of the powers that he or she holds to ensure the proper functioning of the department, the director will be responsible for ensuring compliance with the provisions of the Law of 11 October 2010 and with the measures taken, in particular the updating of internal rules, for the purposes of its implementation.

It will be the director's duty to present and explain the spirit and logic of the Law to the staff under his or her authority, to ensure that they observe its provisions and are in a position to enforce compliance therewith, in the best possible conditions, by the users of the public service.

It will also be for the director to ensure that the appropriate information envisaged by the Government in the form of posters and leaflets is made available on premises that receive or are open to members of the public.

(b) Restriction of access to premises assigned to public services

From 11 April 2011 staff responsible for a public service, who may already have had to ask individuals to show their faces momentarily to prove their identity, will be entitled to refuse access to the service to anyone whose face is concealed.

In the event that the person whose face is concealed has already entered the premises, it is recommended that staff remind that person of the applicable rules and ask him or her to observe the Law, by uncovering the face or leaving the premises. A person whose face is concealed cannot benefit from the delivery of public services.

However, the Law does not confer on staff, in any circumstances, the power to oblige a person to show his or her face or leave. The exercise of such constraint would constitute an illegal act and could entail criminal proceedings. It is therefore absolutely forbidden.

When faced with a refusal to comply, the staff member or his or her line manager must call the police or gendarmerie, who are exclusively entitled to take note and make a report of the offence and, if appropriate, to verify the identity of the person concerned. Specific instructions are addressed for this purpose by the Interior Minister to the police forces.

Denial of access to a service can be reconsidered only to take account of particular emergencies, in particular those of a medical nature.

III. — Informing the public

The period leading up to the entry into force of the ban on the concealment of the face should be used to ensure that members of the public are suitably informed.

(a) General information

A poster, distributed on paper or electronically by ministries, within their respective networks, will have to be displayed, in a visible manner, on premises open to the public or assigned to a public service.

The poster carries the slogan 'facing up to life in France' ('*la République se vit à visage découvert*') and indicates that the ban on concealing the face in public places will enter into force on 11 April 2011.

This poster may be supplemented, for the benefit of those who wish to have more precise information on the provisions of the Law, by a leaflet distributed in the various services in the same manner and according to the same procedure as the poster.

For travellers wishing to visit France, this leaflet will also be available in English and Arabic at French consulates abroad.

These two documents providing general information will also be accessible via the website www.visage-decouvert.gouv.fr, which will also include a section providing answers to the various questions raised by the implementation of the Law.

(b) Information for persons directly concerned by face concealment

A scheme for the provision of information to the persons concerned has been prepared by the Ministry for Towns and Cities, in coordination with the Ministry for Solidarity and Social Cohesion and the Interior Ministry.

The aim of this information, awareness and individual support scheme is to foster dialogue, in order to persuade the small minority who conceal their face to comply with the ban laid down by Parliament. This dialogue is not a negotiation; the idea is to bring those concerned, by a process of explanation, to renounce, of their own accord, a practice which is at odds with the values of the Republic.

The scheme, about which specific instructions have been issued by the Minister for Towns and Cities, relies in particular on associations and community networks in the field of women's rights, in particular the network of information centres on women's rights (*centres d'information des droits des femmes* – CDIFF), the 300 'prefect's delegates' and 'relay adults' working in local communities. It will also mobilise all those working in social mediation, especially the mediators of the national education system.

The aim is to provide full information on the Law and personal support to those individuals who cover their face. ..."

D. Other circulars

32. On 11 March 2011 the Minister of Justice and Freedoms issued a Circular "concerning the presentation of the provisions on the offence of concealing one's face in public places". It was addressed, for action, to public prosecutors at the appellate and lower courts, and for information, to the presidents of the appellate courts and of the *tribunaux de grande instance*, among others. The Circular presented the offence of concealing one's face in public places. It also contained indications as to the implementation of the new punitive provisions, with regard to the policy for establishing the offence and prosecuting the offender and the organisation of the citizenship courses.

33. On 31 March 2011 the Minister of the Interior, Overseas Administration, Local Government and Immigration addressed to the Commissioners of Police, prefects and High Commissioners (of Overseas Territories) a Circular for the purpose of "giving instructions to officials within [that Ministry], and in particular to police forces, for the application of the Law of 11 October 2010". It contained, in particular, indications about the notion of concealing one's face and about the places in which the ban applied, emphasising that a person present in a place of worship for the observance of religion was not liable to be charged, and "recommend[ing] that police forces avoid any intervention in the immediate vicinity of a place of worship which could be interpreted as an indirect restriction on freedom of worship".

E. Judgment of the Criminal Division of the Court of Cassation of 5 March 2013

34. The Court of Cassation was called upon to examine an appeal on points of law (no. 12-808091) against a judgment of the Community Court

of Paris, dated 12 December 2011, in which a woman had been ordered to follow a two-week citizenship course for wearing the full-face veil with the aim of protesting against the Law of 11 October 2010 in the context of a demonstration for that purpose outside the Elysée Palace. Examining the arguments submitted by the appellants under Article 9 of the Convention, the Criminal Division found as follows on 5 March 2013:

> "...whilst the Community Court was wrong to disregard the religious reasons for the impugned demonstration, the judgment should not be overruled in so far as, although Article 9 of the Convention ... guarantees the exercise of freedom of thought, conscience and religion, paragraph 2 thereof stipulates that this freedom is 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; ... this is the case for the Law prohibiting the full covering of the face in public places, as it seeks to protect public order and safety by requiring everyone who enters a public place to show their face; ..."

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Resolution 1743 (2010) and Recommendation 1927 (2010) of the Parliamentary Assembly of the Council of Europe and Viewpoint of the Commissioner for Human Rights of the Council of Europe

1. *Resolution 1743 (2010) and Recommendation 1927 (2010) of the Parliamentary Assembly of the Council of Europe on Islam, Islamism and Islamophobia in Europe*

35. Adopted on 23 June 2010, Resolution 1743 (2010) states, in particular:

> "14. Recalling its Resolution 1464 (2005) on women and religion in Europe, the Assembly calls on all Muslim communities to abandon any traditional interpretations of Islam which deny gender equality and limit women's rights, both within the family and in public life. This interpretation is not compatible with human dignity and democratic standards; women are equal to men in all respects and must be treated accordingly, with no exceptions. Discrimination against women, whether based on religious traditions or not, goes against Articles 8, 9 and 14 of the Convention, Article 5 of its Protocol No. 7 and its Protocol No. 12. No religious or cultural relativism may be invoked to justify violations of personal integrity. The Parliamentary Assembly therefore urges member states to take all necessary measures to stamp out radical Islamism and Islamophobia, of which women are the prime victims.
>
> 15. In this respect, the veiling of women, especially full veiling through the *burqa* or the *niqab*, is often perceived as a symbol of the subjugation of women to men, restricting the role of women within society, limiting their professional life and impeding their social and economic activities. Neither the full veiling of women, nor even the headscarf, are recognised by all Muslims as a religious obligation of Islam, but they are seen by many as a social and cultural tradition. The Assembly considers that this tradition could be a threat to women's dignity and freedom. No woman should be compelled to wear religious apparel by her community or family. Any act

of oppression, sequestration or violence constitutes a crime that must be punished by law. Women victims of these crimes, whatever their status, must be protected by member states and benefit from support and rehabilitation measures.

16. For this reason, the possibility of prohibiting the wearing of the *burqa* and the *niqab* is being considered by parliaments in several European countries. Article 9 of the Convention includes the right of individuals to choose freely to wear or not to wear religious clothing in private or in public. Legal restrictions to this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen. However, a general prohibition of wearing the *burqa* and the *niqab* would deny women who freely desire to do so their right to cover their face.

17. In addition, a general prohibition might have the adverse effect of generating family and community pressure on Muslim women to stay at home and confine themselves to contacts with other women. Muslim women could be further excluded if they were to leave educational institutions, stay away from public places and abandon work outside their communities, in order not to break with their family tradition. Therefore, the Assembly calls on member states to develop targeted policies intended to raise Muslim women's awareness of their rights, help them to take part in public life and offer them equal opportunities to pursue a professional life and gain social and economic independence. In this respect, the education of young Muslim women as well as of their parents and families is crucial. It is especially necessary to remove all forms of discrimination against girls and to develop education on gender equality, without stereotypes and at all levels of the education system."

36. In its Recommendation 1927 (2010), adopted on the same day, the Parliamentary Assembly of the Council of Europe asked the Committee of Ministers of the Council of Europe, in particular, to:

"3.13. call on member states not to establish a general ban of full veiling or other religious or special clothing, but to protect women from all physical and psychological duress as well as to protect their free choice to wear religious or special clothing and ensure equal opportunities for Muslim women to participate in public life and pursue education and professional activities; legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen."

2. Viewpoint of the Commissioner for Human Rights of the Council of Europe

37. The Commissioner for Human Rights of the Council of Europe, published the following "Viewpoint" (see *Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights*, Council of Europe Publishing, 2011, pp. 39-43):

"Prohibition of the burqa and the niqab will not liberate oppressed women, but might instead lead to their further exclusion and alienation in European societies. A general ban on such attire constitutes an ill-advised invasion of individual privacy

and, depending on its terms, also raises serious questions about whether such legislation is compatible with the European Convention on Human Rights.

Two rights in the Convention are particularly relevant to this debate about clothing. One is the right to respect for one's private life and personal identity (Article 8). The other is the freedom to manifest one's religion or belief 'in worship, teaching, practice and observance' (Article 9).

Both Convention articles specify that these rights can only be subject 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.

Those who have argued for a general ban of the burqa and the niqab have not managed to show that these garments in any way undermine democracy, public safety, order or morals. The fact that a very small number of women wear such clothing has made such proposals even less convincing.

Nor has it been possible to prove that women wearing this attire are victims of more gender repression than others. Those interviewed in the media have presented a diversity of religious, political and personal arguments for their decision to dress as they do. There may of course be cases where women are under undue pressure to dress in a certain way – but it has not been shown that a ban would be welcomed by them.

There is of course no doubt that the status of women is an acute problem – and that this problem may be particularly true in relation to some religious communities. This needs to be discussed, but prohibiting the supposed symptoms – such as clothing – is not the way to do it. Dress, after all, may not reflect specific religious beliefs, but the exercise of broader cultural expression.

It is right and proper to react strongly against any regime ruling that women must wear these garments. This is in clear contravention of the Convention articles cited above, and is unacceptable, but it is not remedied by banning the same clothing in other countries.

The consequences of decisions in this area must be assessed. For instance, the suggestion that women dressed in a burqa or niqab be banned from public institutions like hospitals or government offices may result in these women avoiding such places entirely, and that is clearly wrong.

It is unfortunate that in Europe, public discussion of female dress, and the implications of certain attire for the subjugation of women, has almost exclusively focused on what is perceived as Muslim dress. The impression has been given that one particular religion is being targeted. Moreover, some arguments have been clearly Islamophobic in tenor and this has certainly not built bridges nor encouraged dialogue.

Indeed, one consequence of this xenophobia appears to be that the wearing of full cover dress has increasingly become a means of protesting against intolerance in our societies. An insensitive discussion about banning certain attire seems merely to have provoked a backlash and a polarisation in attitudes.

In general, states should avoid legislating on dress, other than in the narrow circumstances set forth in the Convention. It is, however, legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some instances, this may require complete neutrality as between different political

and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents.

Obviously, full-face coverage may be problematic in some occupations and situations. There are particular situations where there are compelling community interests that make it necessary for individuals to show themselves for the sake of safety or in order to offer the possibility of necessary identification. This is not controversial and, in fact, there are no reports of serious problems in this regard in relation to the few women who normally wear a burqa or a niqab.

A related problem arose in discussion in Sweden. A jobless Muslim man lost his subsidy from a state agency for employment support because he had refused to shake the hand of a female employer when turning up for a job interview. He had claimed that his action was grounded in his religious faith.

A court ruled later, after a submission from the ombudsman against discrimination, that the agency decision was discriminatory and that the man should be compensated. Though this is in line with human rights standards, it was not readily accepted by the general public and a controversial public debate ensued.

It is likely that issues of this kind will surface increasingly in the coming years and it is healthy that they should be openly discussed – as long as Islamophobic tendencies are avoided. However, such debates should be broadened to include the promotion of greater understanding of different religions, cultures and customs. Pluralism and multiculturalism are essential European values, and should remain so.

This in turn may require more discussion of the meaning of respect. In the debates about the allegedly anti-Muslim cartoons published in Denmark in 2005, it was repeatedly stated that there was a contradiction between demonstrating respect for believers whilst also protecting freedom of expression as stipulated in Article 10 of the European Convention.

The Strasbourg Court analysed this dilemma in the famous case of *Otto-Preminger-Institute v. Austria* in which it stated that 'those who choose to exercise the freedom to manifest their religion ... cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith'.

In the same judgment the Court stated that consideration should be given to the risk that the right of religious believers – like anyone else – to have their views respected may be violated by provocative portrayals of objects of religious significance. The Court concluded that 'such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society'.

The political challenge for Europe is to promote diversity and respect for the beliefs of others whilst at the same time protecting freedom of speech and expression. If the wearing of a full-face veil is understood as an expression of a certain opinion, we are in fact talking here about the possible conflict between similar or identical rights – though seen from two entirely different angles.

In Europe, we seek to uphold traditions of tolerance and democracy. Where conflicts of rights between individuals and groups arise, it should not be seen in negative terms, but rather as an opportunity to celebrate that rich diversity and to seek solutions which respect the rights of all involved.

A prohibition of the burqa and the niqab would in my opinion be as unfortunate as it would have been to criminalise the Danish cartoons. Such banning is alien to

European values. Instead, we should promote multicultural dialogue and respect for human rights."

B. The United Nations Human Rights Committee

38. In its General Comment no. 22, concerning Article 18 of the International Covenant on Civil and Political Rights (freedom of thought, conscience and religion), adopted on 20 July 1993, the Human Rights Committee emphasised as follows:

> "... 4. The freedom to manifest religion or belief may be exercised 'either individually or in community with others and in public or private'. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. ... The observance and practice of religion or belief may include not only ceremonial acts but also such customs as ... the wearing of distinctive clothing or headcoverings ...
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> 8. Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18 (3), both as a matter of law and of their application in specific circumstances. ..."

The Human Rights Committee also stated as follows in its General Comment no. 28, concerning Article 3 (equality of rights between men and women), adopted on 29 March 2000:

> "13. [Regulations on clothing to be worn by women in public] may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful

interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim."

The Human Rights Committee has also adopted General Comments on freedom of movement (General Comment no. 27), and on freedom of opinion and freedom of expression (General Comment no. 34).

39. The Human Rights Committee has, moreover examined a number of cases in which individuals complained of measures restricting the wearing of clothing or symbols with a religious connotation. It found, for example, that "in the absence of any justification provided by the State party" there had been a violation of Article 18 § 2 of the Covenant where a student had been expelled from her University on account of her refusal to remove the *hijab* (headscarf) that she wore in accordance with her beliefs (*Raihon Hudoyberganova v. Uzbekistan*, communication no. 931/2000, 18 January 2005). However, it has not yet ruled on the question of a blanket ban on the wearing of the full-face veil in public places.

IV. THE SITUATION IN OTHER EUROPEAN STATES

40. To date, only Belgium has passed a law that is comparable to the French Law of 11 October 2010, and the Belgian Constitutional Court has found it compatible with the right to freedom of thought, conscience and religion (see paragraphs 41-42 below). However, the question of a ban on concealing one's face in public has been or is being discussed in a number of other European States. A blanket ban remains a possibility in some of them. In particular, a Bill has been tabled to that end in Italy: although it has not yet passed into law, it appears that the discussion is still open. In Switzerland the Federal Assembly rejected, in September 2012, an initiative of the Canton of Aargau seeking to ban the wearing in public of clothing covering all or a large part of the face, but in Ticino there was a vote on 23 September 2013 for a ban of that kind (the text still has to be validated, however, by the Federal Assembly). Such an option is also being discussed in the Netherlands, notwithstanding unfavourable opinions by the Council of State (see paragraphs 49-52 below). It should also be noted that the Spanish Supreme Court has ruled on the legality of a ban of that kind (see paragraphs 42-47 below).

A. Belgian Law of 1 June 2011 and judgment of the Belgian Constitutional Court of 6 December 2012

41. A Law "to prohibit the wearing of any clothing entirely or substantially concealing the face" was enacted in Belgium on 1 June 2011. It inserted the following provision into the Criminal Code:

"Art. 563*bis*. Persons who, unless otherwise provided by law, appear in a place that is accessible to the public with their faces completely or partially covered or hidden, such as not to be identifiable, shall be liable to a fine of between fifteen and twenty-five euros and imprisonment of between one and seven days, or only one of those sanctions.

However, paragraph 1 hereof shall not concern persons who are present in a place that is accessible to the public with their faces completely or partially covered or hidden where this is provided for by employment regulations or by an administrative ordinance in connection with festive events."

42. Applications for the annulment of this Law were lodged with the Constitutional Court on the basis, *inter alia*, of Article 9 of the Convention. The Constitutional Court dismissed the applications in a judgment of 6 December 2012, finding in particular as follows:

"... B.17. It can be seen from the explanatory memorandum to the Bill which became the Law at issue ... that the legislature sought to defend a societal model where the individual took precedence over his philosophical, cultural or religious ties, with a view to fostering integration for all and to ensuring that citizens shared a common heritage of fundamental values such as the right to life, the right to freedom of conscience, democracy, gender equality, or the principle of separation between church and State.

... the legislative history shows that three aims were pursued: public safety, gender equality and a certain conception of 'living together' in society.

B.18. Such aims are legitimate and fall within the category of those enumerated in Article 9 of the Convention ..., comprising the maintaining of public safety, the protection of public order and the protection of the rights and freedoms of others.

B.19. It remains for the court to examine whether the conditions of necessity in a democratic society and proportionality in relation to the legitimate aims pursued have been satisfied.

B.20.1. It can be seen from the drafting history of the Law at issue that the prohibition of clothing that conceals the face was largely driven by public safety considerations. In this connection the issue of offences committed by persons whose face is concealed was mentioned ...

B.20.2. Section 34(1) of the Law of 5 August 1992 on police duties empowers police officers to verify the identity of any person if they have reasonable grounds to believe, on account of the person's conduct, any material indications or the circumstances of time and place, that the person is wanted, has attempted to commit an offence or is preparing to commit one, or is likely to cause a breach of public order or has already done so. This identity check could be hindered if the person concerned has his or her face concealed and refuses to cooperate with such a check. In addition, persons who conceal their face would in general not be, or hardly be, recognisable if they commit an offence or a breach of public order.

B.20.3. That being said, it is not because a certain type of conduct has not yet attained a level that would endanger the social order or safety that the legislature is not entitled to intervene. It cannot be blamed for anticipating such risks in a timely manner by penalising a given type of conduct when its generalisation would undoubtedly entail a real danger.

B.20.4. In view of the foregoing, the legislature was entitled to take the view that the ban on concealment of the face in places accessible to the public was necessary for reasons of public safety.

B.21. The legislature further justified its intervention by a certain conception of 'living together' in a society based on fundamental values, which, in its view, derive therefrom.

The individuality of every subject of law (*sujet de droit*) in a democratic society is inconceivable without his or her face, a fundamental element thereof, being visible. Taking into account the essential values that the legislature sought to defend, it was entitled to take the view that the creation of human relationships, being necessary for living together in society, was rendered impossible by the presence in the public sphere, which quintessentially concerned the community, of persons who concealed this fundamental element of their individuality. Whilst pluralism and democracy entail the freedom to display one's beliefs, in particular by the wearing of religious symbols, the State must pay attention to the conditions in which such symbols are worn and to the potential consequences of wearing such symbols. To the extent that the concealment of the face has the consequence of depriving the subject of law, a member of society, of any possibility of individualisation by facial appearance, whereas such individualisation constitutes a fundamental condition related to its very essence, the ban on the wearing of such clothing in a public place, even though it may be the expression of a religious belief, meets a pressing social need in a democratic society.

B.22. As to the dignity of women, here too the legislature was entitled to take the view that the fundamental values of a democratic society precluded the imposing of any obligation on women to conceal their face, under pressure from members of their family or their community, and therefore their deprivation, against their will, of their freedom of self-determination.

B.23. However, ... the wearing of the full-face veil may correspond to the expression of a religious choice. That choice may be guided by various reasons with many symbolic meanings.

Even where the wearing of the full-face veil is the result of a deliberate choice on the part of the woman, the principle of gender equality, which the legislature has rightly regarded as a fundamental value of democratic society, justifies the opposition by the State, in the public sphere, to the manifestation of a religious conviction by conduct that cannot be reconciled with this principle of gender equality. As the court has noted in point B.21, the wearing of a full-face veil deprives women – to whom this requirement is solely applicable – of a fundamental element of their individuality which is indispensable for living in society and for the establishment of social contacts.

B.24. The court must further examine whether recourse to a criminal sanction to guarantee compliance with the prohibition imposed by the Law has no disproportionate effects in relation to the aims pursued.

B.25.1. The impugned provision was inserted into the Criminal Code, under the category of fourth-class petty offences, and it provides for a fine of between fifteen and twenty-five euros, with imprisonment of between one and seven days, or only one of those sanctions.

Pursuant to Articles 564 and 565 of the Criminal Code, where the offender has already been convicted, within the preceding twelve months, for the same petty

offence, the court is authorised to sentence him or her, independently of the fine, to imprisonment for up to twelve days.

Article 566 of the same Code permits a reduction of the fine to below five euros, but in no case less than one euro, where there are mitigating circumstances. ...

B.28. In so far as the individualisation of persons, of which the face is a fundamental element, constitutes an essential condition for the functioning of a democratic society, of which each member is a subject of law, the legislature was entitled to consider that the concealment of the face could endanger the functioning of society as thus conceived and, accordingly, should be punished by criminal sanctions.

B.29.1. Subject to the exception under point B.30, to the extent that the impugned measure is directed at individuals who, freely and voluntarily, hide their faces in places that are accessible to the public, it does not have any disproportionate effects in relation to the aims pursued, since the legislature opted for the most lenient criminal sanction. The fact that the sanction may be harsher in the event of a repeat offence does not warrant a different conclusion. The legislature was entitled to take the view that an offender who is convicted for conduct punishable by criminal sanctions will not repeat such conduct, on pain of a harsher sentence.

B.29.2. Moreover, it should be observed, as regards those persons who conceal their face under duress, that Article 71 of the Criminal Code provides that no offence is constituted where the perpetrator has been compelled to act by a force that he or she could not resist.

B.30. The impugned Law stipulates that a criminal sanction will be imposed on anyone who, unless any statutory provisions provide otherwise, masks or conceals his or her face totally or partially, such that he or she is not identifiable, when present in a place that is accessible to the public. It would be manifestly unreasonable to consider that such places should include places of worship. The wearing of clothing corresponding to the expression of a religious choice, such as the veil that covers the entire face in such places, could not be restricted without encroaching disproportionately on a person's freedom to manifest his or her religious beliefs.

B.31. Subject to that interpretation, [the ground of appeal is unfounded] . ..."

B. Judgment of the Spanish Supreme Court of 6 February 2013

43. On 8 October 2010 the *Ayuntamiento* (municipality) of Lérida – like other municipalities – adopted an amendment to the *ordenanza municipal de civismo y convivencia* (general municipal ordinance on civic rights and responsibilities and living together), authorising *reglamentos* (specific by-laws) to limit or prohibit access to municipal areas or premises used for public services for persons wearing full-face veils, balaclavas, full-face helmets or other forms of clothing or accessories preventing or hindering identification and visual communication. On the same day, it amended to the same effect its specific by-laws relating to the municipal archives, municipal offices and public transport.

44. Relying *inter alia* on Article 16 of the Constitution – concerning freedom of opinion, religion and worship – and referring to Article 9 of the

Convention, an association unsuccessfully lodged an application for annulment with the Catalonia High Court of Justice.

45. Ruling on an appeal on points of law, the Supreme Court quashed the judgment of the Catalonia High Court of Justice and annulled the amendments to the general municipal ordinance and to the specific by-laws concerning the municipal archives and municipal offices.

46. In its judgment of 6 February 2013 (no. 693/2013, appeal no. 4118/2011), it first pointed out that under Spanish constitutional law, fundamental rights could be limited only by a law in the formal sense.

47. It then observed that the Catalonia High Court of Justice had wrongly found that the limitations in question pursued legitimate aims and were necessary in a democratic society, whilst explaining that it did not wish to prejudge any legislative intervention. On the first point, it took the view that, contrary to the findings of the court below, it could not be said that "legitimate aims" were constituted by the protection of "public tranquillity", "public safety" or "public order", since it had not been shown that the wearing of the full-face veil was detrimental to those interests. It made the same observation for the "protection of rights and freedoms of others", since the term "others" did not designate the person who sustained an interference with the exercise of the right to respect for freedom of religion but rather third parties. On the second point, it expressed its disagreement with the finding of the Catalonia High Court of Justice to the effect that, whether or not it was voluntary, it was hard to reconcile the wearing of the full-face veil with the principle of gender equality, which was one of the values of democratic societies. The Supreme Court took the view that the voluntary nature or otherwise of the wearing of the full-face veil was decisive, since it was not possible to restrict a constitutional freedom based on the supposition that the women who wore it did so under duress. It thus concluded that the limitations in question could not be regarded as necessary in a democratic society. Lastly, referring to academic legal writings, it stated that a ban on the wearing of the full-face veil would have the result of isolating the women concerned and would give rise to discrimination against them, and would thus be incompatible with the objective of ensuring the social integration of groups of immigrant origin.

48. The Supreme Court further found, however, that it did not need to abrogate the amendment of the specific by-law concerning public transport. It observed that this amendment merely obliged users who enjoyed reduced-rate tickets to identify themselves from time to time, and that this did not constitute a restriction on fundamental rights.

C. Opinion of the Netherlands Council of State, 28 November 2011

49. The Council of State of the Netherlands gave four opinions – all negative – on four separate Bills before Parliament which concerned, directly or indirectly, a ban on wearing the full-face veil in public. The first, issued on 21 September 2007, concerned a private member's Bill expressly aimed at banning the burqa; the second, issued on 6 May 2008 (unpublished), concerned a private member's Bill for the banning of all clothing covering the face; and the third, issued on 2 December 2009 (unpublished), concerned a Bill to introduce a ban on such clothing in schools. The fourth opinion, adopted on 28 November 2011 and published on 6 February 2012, concerned a Bill seeking to ban, on pain of criminal sanctions, the wearing in public places and places accessible to the public (except those used for religious purposes) of clothing completely covering the face, leaving only the eyes visible or preventing the person's identification.

50. The Government of the Netherlands justified the fourth Bill by the need to guarantee open communication – essential for social interaction –, the safety and "feeling of safety" (*veiligheidsgevoel*) of members of the public, and the promotion of gender equality.

51. In its opinion of 28 November 2011 the Council of State first indicated that it was not convinced by the usefulness and necessity of such a ban. It observed that the Government had not stated how the wearing of clothing covering the face was fundamentally incompatible with the "social order" (*maatschappelijke orde*), nor had they demonstrated the existence of a pressing social need (*dringende maatschappelijke behoefte*) justifying a blanket ban, or indicated why the existing regulations enabling specific prohibitions hitherto deemed appropriate were no longer sufficient, or explained why the wearing of such clothing, which might be based on religious grounds, had to be dealt with under criminal law. As regards the argument about gender equality, the Council of State took the view that it was not for the Government to exclude the choice of wearing the burqa or niqab for religious reasons, as that was a choice to be left to the women concerned. It added that a blanket ban would be pointless if the aim was to prohibit the coercion of others into wearing the burqa or niqab. Lastly, the Council of State found that the subjective feeling of insecurity could not justify a blanket ban on the basis of social order or public order (*de maatschappelijke of de openbare orde*).

52. The Council of State further indicated that, in view of the foregoing, the Bill was not compatible with the right to freedom of religion. In its view, a general ban on wearing clothing that covered the face did not meet a pressing social need and was not therefore necessary in a democratic society.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Whether the applicant is a "victim"

53. The Government called into question the applicant's status as a "victim". In their submission, she has not adduced evidence to show that she is a Muslim and wishes to wear the full-face veil for religious reasons, does not claim even to have been stopped by the police for wearing the full-face veil in a public place, and has not proved that she wore it before the entry into force of the Law in question. They also cast doubt on the seriousness of the consequences of the ban for the applicant, given that she had admitted to refraining from wearing such a veil in public when it would raise practical obstacles, in the context of her professional life or when she wished to socialise, and had said that she wore it only when compelled to do so by her introspective mood, her spiritual feelings or her desire to focus on religious matters. In the Government's view, the application amounted to an *actio popularis*. They added that the notion of "potential victim" undermined the obligation to exhaust domestic remedies and that an extensive application of this notion could have highly destabilising effects for the Convention system: it would run counter to the drafters' intention and would considerably increase the number of potential applicants. In their view, whilst in certain specific cases the Court might take account of very exceptional circumstances to extend the notion of "victim", the exception should not be allowed to undermine the principle that only those whose rights have effectively and concretely been breached may claim such status.

54. The applicant submitted that she fell within the category of "potential victims". She pointed out in particular, in this connection, that in the Court's judgments in *Dudgeon v. the United Kingdom* (22 October 1981, Series A no. 45), *Norris v. Ireland* (26 October 1988, Series A no. 142) and *Modinos v. Cyprus* (22 April 1993, Series A no. 259), the Court had recognised homosexuals as victims on account of the very existence of laws imposing criminal sanctions for consensual homosexual activity, on the ground that the choice they faced was between refraining from prohibited behaviour or risking prosecution, even though such laws were hardly ever enforced. She observed that, in *S.L. v. Austria* (no. 45330/99, ECHR 2003-I), a seventeen-year-old boy complaining of legislation prohibiting homosexual acts between adults and minors had been recognised by the Court as having victim status, despite the fact that only adult partners were liable to prosecution and no such prosecution was actually at issue.

In the applicant's submission, her faith is an essential element of her existence, she is a devout believer and the wearing of the veil is fundamental for her. She found it inappropriate for the Government to require her to prove that she was a Muslim and that she wished to wear the veil for religious reasons. She failed to see what proof she could give and observed that it would have been strange to expect applicants in the above-mentioned cases to prove their homosexuality. She added that there could be no doubt that there was an established school of thought within Islam that required women to cover their faces in public, and that, according to the Court's jurisprudence, it was not for the State to assess the legitimacy of the applicant's ways of manifesting her beliefs. In her submission, even supposing that it could be doubted that she had worn the full-face veil before the entry into force of the Law, she is a victim of that Law in so far as it prevents her, on pain of sanctions, from wearing it in public when she so desires; the Law affects her directly on account of the fact that she is a devout Muslim woman who conceals her face in public.

55. The Court observes that this objection primarily concerns the status of the applicant as a victim under Article 9 of the Convention. It would point out in this connection that, as guaranteed by that provision, the right to freedom of thought, conscience and religion denotes only those views that attain a certain level of cogency, seriousness, cohesion and importance. However, provided this is satisfied, the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, § 81, ECHR 2013, and the references indicated therein).

It is also true that an act which is inspired, motivated or influenced by a religion or beliefs, in order to count as a "manifestation" thereof within the meaning of Article 9, must be intimately linked to the religion or beliefs in question. An example would be an act of worship or devotion which forms part of the practice of a religion or beliefs in a generally recognised form. However, the "manifestation" of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, applicants claiming that an act falls within their freedom to manifest their religion or beliefs are not required to establish that they acted in fulfilment of a duty mandated by the religion in question (ibid., § 82, and the references indicated therein).

56. It cannot therefore be required of the applicant either to prove that she is a practising Muslim or to show that it is her faith which obliges her to wear the full-face veil. Her statements suffice in this connection, since there is no doubt that this is, for certain Muslim women, a form of practical observance of their religion and can be seen as a "practice" within the

meaning of Article 9 § 1 of the Convention. The fact that it is a minority practice (see paragraph 16 above) is without effect on its legal characterisation.

57. Furthermore, the applicant admittedly does not claim to have been convicted – or even stopped or checked by the police – for wearing the full-face veil in a public place. An individual may nevertheless argue that a law breaches his or her rights in the absence of a specific instance of enforcement, and thus claim to be a "victim", within the meaning of Article 34, if he or she is required either to modify his or her conduct or risk being prosecuted, or if he or she is a member of a category of persons who risk being directly affected by the legislation (see, in particular, *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31; *Johnston and Others v. Ireland*, 18 December 1986, § 42, Series A no. 112; *Norris*, cited above, § 31; *Burden v. the United Kingdom* [GC], no. 13378/05, § 34, ECHR 2008; and *Michaud v. France*, no. 12323/11, §§ 51-52, ECHR 2012). This is the case under the Law of 11 October 2010 for women who, like the applicant, live in France and wish to wear the full-face veil for religious reasons. They are thus confronted with a dilemma comparable *mutatis mutandis* to that which the Court identified in the *Dudgeon* and *Norris* judgments (both cited above, § 41 and §§ 30-34, respectively): either they comply with the ban and thus refrain from dressing in accordance with their approach to religion; or they refuse to comply and face prosecution (see also *Michaud*, cited above, § 52).

58. The Government's objection must therefore be dismissed.

B. Exhaustion of domestic remedies

59. The Government argued that, in the absence of any domestic proceedings, the application should be declared inadmissible for failure to exhaust domestic remedies.

60. The applicant observed that applicants were not required to exhaust any domestic remedies which would be ineffective or pointless.

61. In the Court's view, this question is devoid of relevance in the context of the French legal system, in so far as it has found that the applicant is entitled to claim victim status in the absence of any individual measure. As a subsidiary consideration, it would observe that, whilst it is true that the complaints submitted to the Court had not previously been examined by domestic courts in the context of remedies used by the applicant, the Constitutional Council ruled on 7 October 2010 that the Law was compatible with (*inter alia*) freedom of religion (see paragraph 30 above). The Criminal Division of the Court of Cassation has also given a ruling on the matter: in a judgment of 5 March 2013, in the context of proceedings which had nothing to do with the applicant, it rejected a

complaint under Article 9 on the ground that the Law of 11 October 2010 had the aim, in accordance with the second paragraph of that Article, of "protecting public order and safety, by requiring anyone present in a public place to show their face" (see paragraph 34 above). From the latter judgment it can, moreover, be seen that, if the applicant had been convicted pursuant to the Law and had subsequently appealed on points of law on the grounds of a violation of Article 9, her appeal would have been dismissed. The Court must therefore dismiss this objection.

C. Abuse of the right of individual application

62. The Government criticised "an improper exercise of the right of individual application". They described the application as containing "a totally disembodied argument, lodged on the very day the prohibition on concealing the face in public came into force by an applicant who ha[d] not been the subject of domestic proceedings and of whom nothing [was] known, except what she [had] seen fit to say about her religious opinions and about her uncertain way of expressing them in her behaviour". They observed that two other applications which were very similar in form and substance had been lodged by the same United Kingdom lawyers who were representing the applicant. They added that "questions [might] well be asked about the seriousness of the case" and that it "in no way involve[d] a normal use of the right of individual application" but amounted to an *actio popularis*.

63. In the applicant's view, this argument had to be rejected for the same reasons as those that she gave for the dismissal of the objection that she was not entitled to claim victim status.

64. The Government thus seem to have suggested that the applicant is merely being used as a cover. The Court has taken their observations into account on this point. It would observe, however, that its Registry has verified the name and address on the application and has ensured that the lawyers who drafted it have produced the authority form duly signed by the applicant.

65. The Court considers that the Government's argument should otherwise be examined in terms of Article 35 § 3 (a), which allows the Court to declare inadmissible any individual application that it considers to be "an abuse of the right of individual application".

66. The Court reiterates in this connection that the implementation of this provision is an "exceptional procedural measure" and that the concept of "abuse" refers to its ordinary meaning, namely, the harmful exercise of a right by its holder in a manner that is inconsistent with the purpose for which such right is granted (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009). In that connection, the Court has noted that for such "abuse" to be established on the part of the applicant it

requires not only manifest inconsistency with the purpose of the right of application but also some hindrance to the proper functioning of the Court or to the smooth conduct of the proceedings before it (ibid., § 65).

67. The Court has applied that provision in four types of situation (see *Miroļubovs and Others*, cited above, §§ 62-66). First, in the case of applications which were knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X), whether there had been falsification of documents in the file (see, for example, *Jian v. Romania* (dec.), no. 46640/99, 30 March 2004) or failure to inform the Court of an essential item of evidence for its examination of the case (see, for example, *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002, and *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006) or of new major developments in the course of the proceedings (see, for example, *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008). Secondly, in cases where an applicant had used particularly vexatious, contemptuous, threatening or provocative expressions in his correspondence with the Court (see, for example, *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004). Thirdly, in cases where an applicant had deliberately breached the confidentiality of negotiations for a friendly settlement (see, for example, *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007, and *Deceuninck v. France* (dec.), no. 47447/08, 13 December 2011). Fourthly, in cases where applicants had repeatedly sent quibbling and manifestly ill-founded applications resembling an application they had previously lodged that had been declared inadmissible (see *Anibal Vieira & Filhos LDA and Maria Rosa Ferreira da Costa LDA v. Portugal* (dec.), nos. 980/12 and 18385/12, 13 November 2012; see also the Commission decisions *M. v. the United Kingdom*, no. 13284/87, 15 October 1987, and *Philis v. Greece*, no. 28970/95, 17 October 1996). The Court has also stipulated that, even though an application motivated by publicity or propaganda is not, by that very fact alone, an abuse of the right of application, the situation is different where the applicant, driven by political interests, gives an interview to the press or television showing an irresponsible and frivolous attitude towards proceedings that are pending before the Court (see *Miroļubovs and Others*, cited above, § 66).

68. The Court would first observe that the present application does not fall into any of those four categories. Moreover, even supposing that it could be considered that an application which amounts to an *actio popularis* is thereby rendered "manifestly at odds with the purpose of the right of application", the Court would refer back to its previous observations about the applicant's victim status and its conclusion that the present case cannot be described as an *actio popularis* (see paragraphs 57-58 above). Furthermore, there is no evidence capable of leading the Court to consider that, by her conduct, the applicant has sought to hinder the proper functioning of the Court or the smooth conduct of proceedings before it.

Also taking into account the fact that the inadmissibility of an application on the ground that it constitutes an abuse of the right of application must remain an exception, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION, TAKEN SEPARATELY AND TOGETHER WITH ARTICLE 14

69. The applicant complained that, since the wearing in public of clothing designed to conceal the face was prohibited by law on pain of a criminal sanction, if she wore the full-face veil in a public place she would expose herself to a risk not only of sanctions but also of harassment and discrimination, which would constitute degrading treatment. She relied on Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

She further complained of a violation of Article 14 of the Convention taken together with Article 3. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

70. The Court observes that the minimum level of severity required if ill-treatment is to fall within the scope of Article 3 (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25) is not attained in the present case. It concludes that the complaint under this Article is manifestly ill-founded, within the meaning of Article 35 § 3 (a) of the Convention. This also means that, as the facts at issue do not fall within the ambit of Article 3 of the Convention (see, for example, *X and Others v. Austria* [GC], no. 19010/07, § 94, ECHR 2013), Article 14 of the Convention cannot be relied upon in conjunction with that provision.

71. Accordingly, this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION, TAKEN SEPARATELY AND TOGETHER WITH ARTICLE 14

72. The applicant complained that the statutory ban on wearing clothing designed to conceal the face in public deprived her of the possibility of wearing the Islamic full-face veil in public places. She alleged that there had been a violation of her right to freedom of association and discrimination in the exercise of that right. She relied on Article 11 of the Convention, taken separately and together with the above-cited Article 14. Article 11 reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

73. The Court observes that the applicant did not indicate how the ban imposed by the Law of 11 October 2012 would breach her right to freedom of association and would generate discrimination against her in the enjoyment of that right. It concludes that, being unsubstantiated, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention (see, for example, *Özer v. Turkey (no. 2)*, no. 871/08, § 36, 26 January 2010) and is, as such, inadmissible. It must therefore be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 8, 9 AND 10 OF THE CONVENTION, TAKEN SEPARATELY AND TOGETHER WITH ARTICLE 14

74. The applicant complained for the same reasons of a violation of her right to respect for her private life, her right to freedom to manifest her religion or beliefs and her right to freedom of expression, together with discrimination in the exercise of these rights. She relied on Articles 8, 9 and 10 of the Convention, taken separately and together with the above-cited Article 14. Those first three Articles read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 9

"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."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

75. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

76. In the applicant's submission, she was born in Pakistan and her family belongs to a Sunni cultural tradition in which it is customary and respectful for women to wear a full-face veil in public. She claimed to have sustained a serious interference with the exercise of her rights under Article 9, as the Law of 11 October 2010, which sought to prohibit Muslim women from wearing the full-face veil in public places, prevented her from manifesting her faith, from living by it and from observing it in public. She added that, whilst the interference was "prescribed by law", it did not pursue any of the legitimate aims listed in the second paragraph of that provision and was not "necessary in a democratic society".

77. The applicant began by observing that this interference could not be said to have the legitimate aim of "public safety" as it was not a measure intended to address specific safety concerns in places of high risk such as airports, but a blanket ban applying to almost all public places. As to the Government's argument that it sought to ensure respect for the minimum

requirements of life in society, because the reciprocal exposure of faces was fundamental in French society, the applicant objected that it failed to take into account the cultural practices of minorities which did not necessarily share this philosophy or the fact that there were forms of communication other than visual, and that in any event this bore no relation to the idea of imposing criminal sanctions to prevent people from veiling their faces in public. She submitted, moreover, that the Government's assertion that for women to cover their faces was incompatible with the principle of gender equality was simplistic. She argued that, according to a well-established feminist position, the wearing of the veil often denoted women's emancipation, self-assertion and participation in society, and that, as far as she was concerned, it was not a question of pleasing men but of satisfying herself and her conscience. Furthermore, it could not be maintained that because of wearing the veil the women concerned were denied the right to exist as individuals in public, when in the majority of cases it was worn voluntarily and without any proselytising motive. She added that other member States with a strong Muslim population did not prohibit the wearing of the full-face veil in public places. She also found it ironic that an abstract idea of gender equality could run counter to the profoundly personal choice of women who decided to wear veils, and contended that imposing legal sanctions exacerbated the inequality that was supposed to be addressed. Lastly, she took the view that in claiming that the prohibition had the legitimate aim of "respect for human dignity" the Government were justifying the measure by the abstract assumption, based on stereotyping and chauvinistic logic, that women who wore veils were "effaced".

78. Under the heading of "necessity", the applicant argued that a truly free society was one which could accommodate a wide variety of beliefs, tastes, pursuits, customs and codes of conduct, and that it was not for the State to determine the validity of religious beliefs. In her view, the prohibition on wearing the full-face veil in public and the risk of criminal sanctions sent out a sectarian message and discouraged the women concerned from socialising. She pointed out that the Human Rights Committee, in its General Comment no. 28, had found that any regulation of clothing that women could wear in public might breach the principle of equal rights for men and women, and in its decision in *Raihon Hudoyberganova v. Uzbekistan* (cited above), had observed that the freedom to manifest one's religion encompassed the right to wear clothes or attire in public which were in conformity with the individual's faith or religion. She further observed that, whilst the Law of 11 October 2010 had been passed almost unanimously, the above-cited cases of *Dudgeon*, *Norris* and *Modinos* showed that a measure might have wide political support and yet not be "necessary in a democratic society".

Moreover, even supposing that the aims pursued were legitimate, the impugned prohibition could not fulfil that condition where they might be

achieved by less restrictive means. Thus, to address the questions of public safety, it would be sufficient to implement identity checks at high-risk locations, as in the situations examined by the Court in the cases of *Phull v. France* ((dec.), no. 35753/03, ECHR 2005-I) and *El Morsli v. France* ((dec.), no. 15585/06, 4 March 2008). As to the aim of guaranteeing respect for human dignity, it was still necessary to weigh up the competing interests: those of members of the public who disapproved of the wearing of the veil; and those of the women in question who, like the applicant, were forced to choose between acting in a manner contrary to their beliefs, staying at home or breaking the law. The rights of the latter were much more seriously affected than those of the former. In the applicant's view, if it were considered, as the Government argued, that it was necessary to criminalise not only the coercion of another into veiling but also the fact of voluntarily wearing the veil, on the grounds that women might be reluctant to denounce those who coerced them and that constraint might be diffuse in nature, that would mean disregarding the position or motivation of women who chose to cover their faces and therefore excluding any examination of proportionality. Such an attitude was not only paternalistic, but it also reflected an intention to punish the very women who were supposed to be protected from patriarchal pressure. Lastly, the applicant found irrelevant the Government's comment that freedom to dress according to one's wishes remained very broad in France and that the ban did not apply in places of worship open to the public, pointing out that her beliefs precisely required her to cover her face and that it should be possible to manifest one's religion in public, not only in places of worship.

79. In the applicant's submission, the fact that she was prevented by the Law of 11 October 2010 from wearing the full-face veil in public also entailed a violation of her right to respect for her private life under Article 8 of the Convention. Her private life was affected for three reasons. First, because her ability to wear the full-face veil was an important part of her social and cultural identity. Secondly because, as the Court had pointed out in its *Von Hannover v. Germany* judgment (no. 59320/00, §§ 50 and 69, ECHR 2004-VI), there was a zone of interaction of a person with others, even in a public context, which might fall within the scope of private life, and the protection of private life under Article 8 extended beyond the private family circle and also included a social dimension. The third reason was that if she went out of the house wearing the full-face veil she would probably encounter hostility and would expose herself to criminal sanctions. Thus, being obliged to remove it when she went out and only being able to wear it at home "as if she were a prisoner", she was forced to adopt a "Jekyll and Hyde personality".

Furthermore, referring back in essence to her observations on Article 9 of the Convention, the applicant argued that the interference did not pursue any of the legitimate aims enumerated in the second paragraph of Article 8 of

the Convention. She added that, even supposing that one of those aims could be accepted, the impugned interference could not be regarded as necessary in a democratic society, especially as the requirements of the second paragraph of Article 8 were, in this connection, stricter than those of the second paragraph of Article 9.

80. The applicant further argued that the ban on wearing clothing designed to conceal the face in public, which undoubtedly targeted the burqa, generated discrimination in breach of Article 14 on grounds of sex, religion and ethnic origin, to the detriment of Muslim women who, like her, wore the full-face veil. In her view this was indirect discrimination between Muslim women whose beliefs required them to wear the full-face veil and other Muslim women, and also between them and Muslim men. The exception provided for by the Law, according to which the ban did not apply if the clothing was worn in the context of "festivities or artistic or traditional events" was also, in her view, discriminatory, in that it created an advantage for the Christian majority: it allowed Christians to wear in public clothing that concealed their face in the context of Christian festivities or celebrations (Catholic religious processions, carnivals or rituals, such as dressing up as Santa Claus) whereas Muslim women who wished to wear the full-face veil in public remained bound by the ban even during the month of Ramadan.

(b) The Government

81. The Government admitted that, even though it was formulated in general terms, the ban introduced by the Law of 11 October 2010 could be seen as a "limitation", within the meaning of Article 9 § 2 of the Convention, on the freedom to manifest one's religion or beliefs. They argued, however, that the limitation pursued legitimate aims and that it was necessary, in a democratic society, for the fulfilment of those aims.

82. In the Government's submission, the first of those aims was to ensure "public safety". The ban satisfied the need to identify individuals so as to prevent danger for the safety of persons and property and to combat identity fraud. The second of those aims concerned the "protection of the rights and freedoms of others" by ensuring "respect for the minimum set of values of an open and democratic society". The Government mentioned three values in this connection. First, the observance of the minimum requirements of life in society. In the Government's submission, the face plays a significant role in human interaction: more so than any other part of the body, the face expresses the existence of the individual as a unique person, and reflects one's shared humanity with the interlocutor, at the same time as one's otherness. The effect of concealing one's face in public places is to break the social tie and to manifest a refusal of the principle of "living together" (*le "vivre ensemble"*). The Government further argued that the ban sought to protect equality between men and women, as to consider that

women, solely on the ground that they were women, must conceal their faces in public places, amounted to denying them the right to exist as individuals and to reserving the expression of their individuality to the private family space or to an exclusively female space. Lastly, it was a matter of respect for human dignity, since the women who wore such clothing were therefore "effaced" from public space. In the Government's view, whether such "effacement" was desired or suffered, it was necessarily dehumanising and could hardly be regarded as consistent with human dignity.

On the question of gender equality, the Government expressed surprise at the applicant's statements to the effect that the practice of wearing the full-face veil often denoted the woman's emancipation, self-assertion and participation in society, and they did not agree with the highly positive presentation of that practice by the applicant and the intervening non-governmental organisations. They took note of the study reports presented by two of the third-party interveners, showing that women who wore or used to wear the full-face veil did so voluntarily and those that had given up the practice had done so mainly as a result of public hostility. They observed, however, that those studies were based on only a small sample group of women (twenty-seven in one case, thirty-two in the other) recruited using the "snowball method". That method was not very reliable, as it consisted in targeting various people fitting the subject profile and then, through them, reaching a greater number of people who generally shared the same views. They concluded that the reports in question provided only a very partial view of reality and that their scientific relevance had to be viewed with caution.

83. As regards the necessity and proportionality of the limitation, the Government argued that the Law of 11 October 2010 had been passed both in the National Assembly and the Senate by the unanimous vote of those cast (less one vote), following a wide democratic consultation involving civil society. They pointed out that the ban in issue was extremely limited in terms of its subject matter, as only concealment of the face was prohibited, irrespective of the reason, and everyone remained free, subject to that sole restriction, to wear clothing expressing a religious belief in public. They added that the Law was necessary for the defence of the principles underlying its enactment. They indicated in this connection that to restrict sanctions only to those coercing someone else to cover their face would not have been sufficiently effective because the women concerned might have hesitated to report it and coercion could always be diffuse in nature. They further pointed out that the Court afforded States a wide margin of appreciation when it came to striking a balance between competing private and public interests, or where a private interest was in conflict with other rights secured by the Convention (they referred to *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I). They further took the

view that the penalties stipulated were light – a mere fine of 150 euros or a citizenship course. They noted that both the Constitutional Council and the Court of Cassation had recognised the "necessity" of the Law.

84. As to Article 8 of the Convention, the Government indicated that they were not convinced that this provision applied, since the ban on clothing designed to cover the face concerned only public places and it could not be considered that an individual's physical integrity or privacy were at stake. Pointing out that the applicant's arguments related, in any event, more to her freedom to manifest her beliefs or religion and therefore to Article 9, they referred back to the arguments they had set out under that head as to the justification for the interference and its proportionality.

85. Lastly, the Government found the applicant "particularly ill-placed to consider herself a victim of discrimination on account of her sex", as one of the essential objectives of the impugned Law was to combat that type of discrimination as a result of women being effaced from public space through the wearing of the full-face veil. In their view, the assertion that the Law had been based on a stereotype whereby Muslim women were submissive was unfounded and caricatural: firstly, because the Law did not target Muslim women; and secondly, because the social effacement manifested by the wearing of the burqa or niqab was "hardly compatible with the affirmation of a social existence". In their opinion, it was not possible to infer from Article 14 of the Convention a right to place oneself in a position of discrimination. As to the contention that one of the effects of the Law would be to dissuade the women concerned from going to public places and to confine them at home, it was particularly futile in the instant case since the applicant claimed that she wore this clothing only voluntarily and occasionally.

The Government added that the Law did not create any discrimination against Muslim women either. They observed in this connection that the practice of wearing the full-face veil was a recent development, quite uncommon in France, and that it had been criticised on many occasions by high-profile Muslims. The prohibition in fact applied regardless of whether or not the reason for concealing the face was religious, and regardless of the sex of the individual. Lastly, they pointed out that the fact that certain individuals who wished to adopt behaviour which they justified by their beliefs, whether or not religious, were prevented from doing so by a statutory prohibition could not in itself be considered discriminatory where the prohibition had a reasonable basis and was proportionate to the aim pursued. They referred on this point to their previous arguments.

2. Arguments of third-party interveners

(a) The Belgian Government

86. The intervening Government stated that the wearing of the full-face veil was not required by the Koran but corresponded to a minority custom from the Arabian peninsula.

87. They further indicated that a law prohibiting the wearing of any "clothing entirely or substantially concealing the face" had been passed in Belgium on 1 June 2011 and had come into force on 23 July 2011. Two constitutional challenges lodged against it had been dismissed by the Belgian Constitutional Court in a judgment of 6 December 2012, finding – subject to one reservation concerning places of worship – that the wearing of such clothing posed a safety issue, was an obstacle to the right of women to equality and dignity, and, more fundamentally, undermined the very essence of the principle of living together. They took the view that no one was entitled to claim, on the basis of individual or religious freedom, the power to decide when and in what circumstances they would agree to uncover their faces in a public place. It was necessarily a matter for the public authorities to assess public safety requirements. They further noted that the issue of women's right to equality and dignity had been raised by both parties, and acknowledged that the wearing of the full-face veil was not necessarily an expression of subservience to men. They considered, however, that the right to isolation had its limits, that codes of clothing which prevailed in our societies were the product of societal consensus and the result of a balanced compromise between our individual freedom and our codes of interaction within society, and that those who wore clothing concealing their face were signalling to the majority that they did not wish to take an active part in society and were thus dehumanised. In their view, one of the values forming the basis on which a democratic society functioned was the possibility for individuals to take part in an active exchange.

88. The intervening Government pointed out that the Belgian legislature had sought to defend a model of society in which the individual outweighed any philosophical, cultural or religious attachments so as to encourage full integration and enable citizens to share a common heritage of fundamental values such as democracy, gender equality and the separation of Church and State. They referred to the judgment of the Belgian Constitutional Court, which had found that, where the consequence of concealing the face was to prevent a person's facial individualisation, even though such individualisation was a fundamental condition associated with his or her very essence, the prohibition on wearing clothing concealing the face in places accessible to the public, even if it were the expression of a religious belief, met a compelling social need in a democratic society. They added that the Belgian legislature had opted for the lightest criminal sanction (a

fine) and observed – again referring to the Constitutional Court's judgment – that if certain women stayed at home so as not to go out with their faces uncovered, that was the result of their own choice and not of an illegitimate constraint imposed on them by the Law. Lastly, they were of the view that the French and Belgian Laws were not discriminatory, as they did not specifically target the full-face veil and applied to any person who wore items concealing the face in public, whether a man or a woman, and whether for a religious or any other reason.

(b) The non-governmental organisation Amnesty International

89. This third-party intervener observed that the right to wear clothing with a religious connotation was protected by the International Covenant on Civil and Political Rights, in terms of the right to freedom of thought, conscience and religion and the right to freedom of expression. It added that the Covenant provided for limitations similar to those in Articles 9 and 10 of the Convention, and argued that public international law required the provisions of both instruments to be interpreted in a similar manner. It thus called on the Court to take into account the Human Rights Committee's General Comments nos. 22, 27 and 34, together with its jurisprudence (see paragraph 38 above).

90. The intervener added that the right to freedom from discrimination was guaranteed by all the international and regional instruments for the protection of fundamental rights, that a homogeneous interpretation was also required in that connection, and that, in accordance with the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), States had an obligation to take effective measures to put an end to discriminatory practices. It further referred to the Human Rights Committee's General Comments nos. 22 and 28. It also pointed to the risk of intersecting discrimination: women might experience a distinct form of discrimination due to the intersection of sex with other factors such as religion, and such discrimination might express itself, in particular, in the form of stereotyping of subgroups of women. It also observed that restrictions on the wearing of headscarves or veils might impair the right to work, the right to education and the right to equal protection of the law, and might contribute to acts of harassment and violence.

91. In the third party's submission, it is an expression of gender-based and religion-based stereotyping to assume that women who wear certain forms of dress do so only under coercion; ending discrimination would require a far more nuanced approach.

(c) The non-governmental organisation ARTICLE 19

92. This third-party intervener observed that the wearing of religious dress or symbols was covered by the right to freedom of expression and the right to freedom of religion and thought. It also referred to the Human Rights Committee's General Comment no. 28. It further mentioned that Committee's decision in *Hudoyberganova v. Uzbekistan* (cited above), where it had been found that the freedom to manifest one's religion encompassed the right to wear clothes or attire in public which were deemed to be in conformity with the individual's faith or religion, and that to prevent a person from wearing religious clothing might constitute a violation of Article 18 of the International Covenant on Civil and Political Rights. It referred also to the Committee's General Comment no. 34 on freedom of opinion and expression. It added that, in her 2006 report, the United Nations Special Rapporteur on freedom of religion or belief had laid down a set of guidelines for considering the necessity and proportionality of restrictions on wearing religious dress or symbols and recommended that the following questions be answered by the administration or judiciary when making such an assessment: is the restriction in question appropriate having regard to the legitimate interest that it seeks to protect, is it the least restrictive, has it involved a balancing of the competing interests, is it likely to promote religious intolerance and does it avoid stigmatising any particular religious community?

93. The intervener further observed that, as noted by the Special Rapporteur on freedom of religion or belief in his interim 2011 report, the prohibition on sex-based discrimination was often invoked in favour of banning the full-face veil, whereas such prohibitions might lead to intersectional discrimination against Muslim women. In the intervener's view, this could be counterproductive as it might lead to the confinement of the women concerned in the home and to their exclusion from public life and marginalisation, and might expose Muslim women to physical violence and verbal attacks. It further observed that the Parliamentary Assembly of the Council of Europe, in particular, had recently recommended that member States should not opt for general bans on the wearing of the full-face veil in public.

94. According to the intervener, international standards on the right to freedom of expression, to freedom of opinion and religion and to equal treatment and non-discrimination did not support general prohibitions on covering the face in public.

(d) Human Rights Centre of Ghent University

95. The intervener emphasised that the French and Belgian Laws prohibiting concealment of the face in public had been passed on the basis of the assumption that women who wore the full-face veil did so for the most part under coercion, showed that they did not wish to interact with

others in society and represented a threat to public safety. It referred to empirical research that had been carried out in Belgium among twenty-seven women who wore or used to wear the full-face veil (see E. Brems, Y. Janssens, K. Lecoyer, S. Ouald Chaib and V. Vandersteen, *Wearing the Face Veil in Belgium: Views and Experiences of 27 Women Living in Belgium Concerning the Islamic Full Face Veil and the Belgian Ban on Face Covering*), together with research carried out in France by the Open Society Foundations (see paragraph 104 below) and in the Netherlands by Professor A. Moors, which all indicated that this assumption was erroneous.

96. In the intervener's submission, this research showed that the ban did not actually serve its stated purpose: the women concerned avoided going out, leading to their isolation and the deterioration of their social life and autonomy, and cases of aggression against them had increased. It further found the ban disproportionate, because public space was defined very broadly, safety concerns might be addressed by the occasional duty to identify oneself by showing one's face, and in today's society there were many forms of social interaction in which people did not have to see each other's face.

97. In the intervener's view, in addition to constituting a disproportionate interference with freedom of religion, the ban generated indirect and intersectional discrimination on grounds of religion and sex, endorsed stereotypes and disregarded the fact that veiled women made up a vulnerable minority group which required particular attention.

98. Lastly, the intervener asked the Court to examine the present case in the light of the rise in Islamophobia in various European countries. It took the view that the adoption and enforcement of a blanket ban on face covering in public were all the more harmful as this had been accompanied by political rhetoric specifically targeting women wearing an Islamic face veil, thus reinforcing negative stereotypes and Islamophobia.

(e) The non-governmental organisation Liberty

99. This intervener observed that, although the Law of 11 October 2010 was framed in neutral terms, its aim was to prohibit the wearing of the burqa and it applied to all public places, with the result that the women concerned faced the agonising choice between remaining at home or removing their veil. It pointed out that the origins of the Convention were firmly rooted in the atrocities of the Second World War, that it was the horrors perpetrated against the Jews that had provided the impetus for embedding the right to freedom of religion in the list of fundamental rights, and that since then there had been other crimes against humanity where religion had been at least a contributory factor. It added that there was a close relationship between religion and race.

100. The intervener further emphasised that general rules regulating clothing worn by women in public might involve a violation not only of a

number of fundamental rights but also of international and regional instruments such as the Framework Convention for the Protection of National Minorities. As regards the Convention, the intervener was of the view that Articles 8, 9, 10 and 14 applied in the present case. It submitted that the threefold justification in the explanatory memorandum accompanying the Bill had not been convincing. It further argued that the ban and the debate surrounding it contributed to stigmatising Muslims and fuelled racist attitudes towards them.

101. In conclusion, the intervener observed that, whilst many feminists, in particular, regarded the full-face veil as demeaning to women, undermining of their dignity, and the result of patriarchy, others saw it as a symbol of their faith. In its view, these controversies were not resolved by imprisoning at home those women who felt compelled to wear it, on pain of sanctions. This was not liberating for women and in all likelihood would encourage Islamophobia.

(f) The non-governmental organisation Open Society Justice Initiative

102. This third-party intervener pointed out that the ban on the full-face veil had been criticised within the Council of Europe and that only France and Belgium had adopted such a blanket measure. It emphasised that, even though the French and Belgian Laws were neutral in their wording, their legislative history showed that the intent was to target specifically the niqab and the burqa.

103. The intervener further noted that the aim of the French Law was to preserve public safety, gender equality and secularism. It asserted in this connection that reasoning based on public order might easily disguise intolerance when freedom of religion was at stake. Referring in particular to the Court's judgment in *Palau-Martinez v. France* (no. 64927/01, § 43, ECHR 2003-XII), it added that States might rely on this notion to justify interference with the exercise of a Convention right only if they could show that there was concrete evidence of a breach of public order. As regards the protection of gender equality, it noted that such an objective was based on the supposition that women who wore the veil were coerced into doing so and thus disadvantaged, whereas this was not shown by any of the evidence examined in the legislative process.

104. The intervener further referred to the report of a survey conducted in France by the Open Society Foundations involving thirty-two women who wore the full-face veil, entitled *Unveiling the Truth: Why 32 Muslim Women Wear the Full-Face Veil in France* and published in April 2011. It indicated that the women interviewed were not coerced into wearing the veil, that many had decided to wear it despite opposition from their families, that one third did not wear it as a permanent and daily practice, and that the majority maintained active social lives. The report also revealed that the ban had contributed to discontent among these women and had reduced their

autonomy, and that the public discourse accompanying it had encouraged verbal abuse and physical attacks against them by members of the public. The intervener also submitted a follow-up report published in September 2013. It noted that, according to the latter, the majority of the women interviewed continued to wear the full-face veil as an expression of their religious beliefs. It added that the report showed the significant impact of the ban on their personal and family lives. The intervener further noted the report's finding that all women interviewed had described a decline in their personal safety since the ban, with incidents of public harassment and physical assaults resulting from a climate in which the public appeared emboldened to act against women wearing the full-face veil.

105. In conclusion, the intervener argued that there was a European consensus against bans on the wearing of the full-face veil in public. It further stressed the fact that blanket bans were disproportionate where less intrusive measures might be possible, that public order justifications must be supported by concrete evidence, that measures introduced to promote equality must be objectively and reasonably justified and limited in time, and that measures seeking to promote secularism must be strictly necessary.

3. The Court's assessment

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

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

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

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

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

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

110. As the Court has already pointed out (see paragraph 57 above), the Law of 11 October 2010 confronts the applicant with a dilemma comparable to that which it identified in the *Dudgeon* and *Norris* judgments: either she complies with the ban and thus refrains from dressing in accordance with her approach to religion; or she refuses to comply and faces criminal sanctions. She thus finds herself, in the light of both Article 9 and Article 8 of the Convention, in a similar situation to that of the applicants in *Dudgeon* and *Norris*, where the Court found a "continuing interference" with the exercise of the rights guaranteed by the second of those provisions (judgments both cited above, § 41 and § 38, respectively; see also, in particular, *Michaud*, cited above, § 92). There has therefore been, in the present case, an "interference" with or a "limitation" of the exercise of the rights protected by Articles 8 and 9 of the Convention.

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

(ii) Whether the measure is "prescribed by law"

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

(iii) Whether there is a legitimate aim

113. The Court reiterates that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and that their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 132, 14 June 2007, and *Nolan and K. v. Russia*, no. 2512/04, § 73, 12 February 2009). For it to be compatible with the Convention, a limitation

of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision. The same approach applies in respect of Article 8 of the Convention.

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

115. As regards the first of the aims invoked by the Government, the Court first observes that "public safety" is one of the aims enumerated in the second paragraph of Article 9 of the Convention (*sécurité publique* in the French text) and also in the second paragraph of Article 8 (*sûreté publique* in the French text). It further notes the Government's observation in this connection that the impugned ban on wearing, in public places, clothing designed to conceal the face satisfied the need to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. Having regard to the case file, it may admittedly be wondered whether the Law's drafters attached much weight to such concerns. It must nevertheless be observed that the explanatory memorandum which accompanied the Bill indicated – albeit secondarily – that the practice of concealing the face "could also represent a danger for public safety in certain situations" (see paragraph 25 above), and that the Constitutional Council noted that the legislature had been of the view that this practice might be dangerous for public safety (see paragraph 30 above). Similarly, in its study report of 25 March 2010, the *Conseil d'État* indicated that public safety might constitute a basis for prohibiting concealment of the face, but pointed out that this could be the case only in specific circumstances (see paragraphs 22-23 above). Consequently, the Court accepts that, in adopting the impugned ban, the legislature sought to address questions of "public safety" within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.

116. As regards the second of the aims invoked – to ensure "respect for the minimum set of values of an open and democratic society" – the

Government referred to three values: respect for equality between men and women, respect for human dignity and respect for the minimum requirements of life in society. They submitted that this aim could be linked to the "protection of the rights and freedoms of others", within the meaning of the second paragraphs of Articles 8 and 9 of the Convention.

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

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

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

Moreover, in so far as the Government thus sought to show that the wearing of the full-face veil by certain women shocked the majority of the French population because it infringed the principle of gender equality as

generally accepted in France, the Court would refer to its reasoning as to the other two values that they have invoked (see paragraphs 120-122 below).

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

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

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

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

(α) General principles concerning Article 9 of the Convention

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

124. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics,

sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; and *Leyla Şahin*, cited above, § 104).

125. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which the manifestation of one's religion or beliefs may take, namely worship, teaching, practice and observance (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 73, ECHR 2000-VII, and *Leyla Şahin*, cited above, § 105).

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

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

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

to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX; see also *Leyla Şahin*, cited above, § 107).

128. Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 112, ECHR 1999-III). Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society (see, *mutatis mutandis*, *the United Communist Party of Turkey and Others*, cited above, § 45, and *Refah Partisi (the Welfare Party) and Others*, cited above § 99). Where these "rights and freedoms of others" are themselves among those guaranteed by the Convention or the Protocols thereto, it must be accepted that the need to protect them may lead States to restrict other rights or freedoms likewise set forth in the Convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a "democratic society" (see *Chassagnou and Others*, cited above, § 113; see also *Leyla Şahin*, cited above, § 108).

129. It is also important to emphasise the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see, for example, *Maurice v. France* [GC], no. 11810/03, § 117, ECHR 2005-IX). This is the case, in particular, where questions concerning the relationship between State and religions are at stake (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek*, cited above, § 84, and *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports* 1996-V; see also *Leyla Şahin*, cited above, § 109). As regards Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs is "necessary". That being said, in delimiting the extent of the margin of appreciation in a given case, the Court must also have regard to what is at stake therein (see, among other authorities, *Manoussakis and Others*, cited above, § 44, and *Leyla Şahin*, cited above, § 110). It may also, if

appropriate, have regard to any consensus and common values emerging from the practices of the States parties to the Convention (see, for example, *Bayatyan v. Armenia* [GC], no. 23459/03, § 122, ECHR 2011).

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

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

(β) Application of those principles in previous cases

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

133. It has thus ruled on bans on the wearing of religious symbols in State schools, imposed on teaching staff (see, *inter alia*, *Dahlab*, decision cited above, and *Kurtulmuş v. Turkey* (dec.), no. 65500/01, ECHR 2006-II) and on pupils and students (see, *inter alia*, *Leyla Şahin,* cited above; *Köse and Others v. Turkey* (dec.), no. 26625/02, ECHR 2006-II; *Kervanci v. France*, no. 31645/04, 4 December 2008; *Aktas v. France* (dec.), no. 43563/08, 30 June 2009; and *Ranjit Singh v. France* (dec.) no. 27561/08, 30 June 2009), on an obligation to remove clothing with a religious connotation in the context of a security check (*Phull v. France* (dec.), no. 35753/03, ECHR 2005-I, and *El Morsli v. France* (dec.), no. 15585/06, 4 March 2008), and on an obligation to appear bareheaded on identity photos for use on official documents (*Mann Singh v. France* (dec.), no. 24479/07, 11 June 2007). It did not find a violation of Article 9 in any of these cases.

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

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

The Court thus noted that the ban affected not civil servants, who were bound by a certain discretion in the exercise of their duties, but ordinary citizens, with the result that its case-law on civil servants – and teachers in particular – did not apply. It then found that the ban was aimed at clothing worn in any public place, not only in specific public buildings, with the result that its case-law emphasising the particular weight to be given to the role of the domestic policy-maker, with regard to the wearing of religious

symbols in State schools, did not apply either. The Court, moreover, observed that there was no evidence in the file to show that the manner in which the applicants had manifested their beliefs by wearing specific clothing – they had gathered in front of a mosque for the sole purpose of participating in a religious ceremony – constituted or risked constituting a threat to public order or a form of pressure on others. Lastly, in response to the Turkish Government's allegation of possible proselytising on the part of the applicants, the Court found that there was no evidence to show that they had sought to exert inappropriate pressure on passers-by in public streets and squares in order to promote their religious beliefs. The Court thus concluded that there had been a violation of Article 9 of the Convention.

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

(γ) Application of those principles to the present case

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

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

139. As regards the question of necessity in relation to public safety, within the meaning of Articles 8 and 9 (see paragraph 115 above), the Court understands that a State may find it essential to be able to identify individuals in order to prevent danger for the safety of persons and property and to combat identity fraud. It has thus found no violation of Article 9 of the Convention in cases concerning the obligation to remove clothing with a religious connotation in the context of security checks and the obligation to appear bareheaded on identity photos for use on official documents (see paragraph 133 above). However, in view of its impact on the rights of women who wish to wear the full-face veil for religious reasons, a blanket ban on the wearing in public places of clothing designed to conceal the face

can be regarded as proportionate only in a context where there is a general threat to public safety. The Government have not shown that the ban introduced by the Law of 11 October 2010 falls into such a context. As to the women concerned, they are thus obliged to give up completely an element of their identity that they consider important, together with their chosen manner of manifesting their religion or beliefs, whereas the objective alluded to by the Government could be attained by a mere obligation to show their face and to identify themselves where a risk for the safety of persons and property has been established, or where particular circumstances entail a suspicion of identity fraud. It cannot therefore be found that the blanket ban imposed by the Law of 11 October 2010 is necessary, in a democratic society, for public safety, within the meaning of Articles 8 and 9 of the Convention.

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

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

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

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

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

145. First, it is true that only a small number of women are concerned. It can be seen, among other things, from the report "on the wearing of the full-face veil on national territory" prepared by a commission of the National Assembly and deposited on 26 January 2010, that about 1,900 women wore the Islamic full-face veil in France at the end of 2009, of whom about 270

were living in French overseas administrative areas (see paragraph 16 above). This is a small proportion in relation to the French population of about sixty-five million and to the number of Muslims living in France. It may thus seem excessive to respond to such a situation by imposing a blanket ban.

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

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

148. The Court is also aware that the Law of 11 October 2010, together with certain debates surrounding its drafting, may have upset part of the Muslim community, including some members who are not in favour of the full-face veil being worn.

149. In this connection, the Court is very concerned by the indications of some of the third-party interveners to the effect that certain Islamophobic remarks marked the debate which preceded the adoption of the Law of 11 October 2010 (see the observations of the Human Rights Centre of Ghent University and of the non-governmental organisations Liberty and Open Society Justice Initiative, paragraphs 98, 100 and 104 above). It is admittedly not for the Court to rule on whether legislation is desirable in such matters. It would, however, emphasise that a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance (see paragraph 128 above; see also the "Viewpoint" of the Commissioner for Human Rights of the Council of Europe, paragraph 37 above). The Court reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects (see, among other authorities,

Norwood v. the United Kingdom (dec.), no. 23131/03, ECHR 2004-XI, and *Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007).

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

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

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

153. Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of "living together". From that perspective, the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society (see paragraph 128 above). It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society.

154. In such circumstances, the Court has a duty to exercise a degree of restraint in its review of Convention compliance, since such review will lead it to assess a balance that has been struck by means of a democratic process within the society in question. The Court has, moreover, already had occasion to observe that in matters of general policy, on which opinions

within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 129 above).

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

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

157. Consequently, having regard in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, the Court finds that the ban imposed by the Law of 11 October 2010 can be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others".

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

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

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

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

161. The Court reiterates that a general policy or measure that has disproportionately prejudicial effects on a particular group may be

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

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

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

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

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objections;

2. *Declares*, unanimously, the complaints concerning Articles 8, 9 and 10 of the Convention, taken separately and together with Article 14 of the Convention, admissible, and the remainder of the application inadmissible;

3. *Holds*, by fifteen votes to two, that there has been no violation of Article 8 of the Convention;

4. *Holds*, by fifteen votes to two, that there has been no violation of Article 9 of the Convention;

5. *Holds*, unanimously, that there has been no violation of Article 14 of the Convention taken together with Article 8 or with Article 9 of the Convention;

6. *Holds*, unanimously, that no separate issue arises under Article 10 of the Convention, taken separately or together with Article 14 of the Convention.

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

Erik Fribergh
Registrar

Dean Spielmann
President

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

D.S.
E.F.

JOINT PARTLY DISSENTING OPINION OF JUDGES NUSSBERGER AND JÄDERBLOM

A. Sacrificing of individual rights to abstract principles

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

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

B. No legitimate aim under the Convention

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

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

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

6. It is essential to understand what is at the core of the wish to protect people against encounters with others wearing full-face veils. The majority

speak of "practices or attitudes ... which would fundamentally call into question the possibility of open interpersonal relationships" (see paragraph 122). The Government of the Netherlands, justifying a Bill before that country's Parliament, pointed to a threat not only to "social interaction", but also to a subjective "feeling of safety" (see paragraph 50). It seems to us, however, that such fears and feelings of uneasiness are not so much caused by the veil itself, which – unlike perhaps certain other dress-codes – cannot be perceived as aggressive *per se*, but by the philosophy that is presumed to be linked to it. Thus the recurring motives for not tolerating the full-face veil are based on interpretations of its symbolic meaning. The first report on "the wearing of the full-face veil on national territory", by a French parliamentary commission, saw in the veil "a symbol of a form of subservience" (see paragraph 17). The explanatory memorandum to the French Bill referred to its "symbolic and dehumanising violence" (see paragraph 25). The full-face veil was also linked to the "self-confinement of any individual who cuts himself off from others whilst living among them" (ibid.). Women who wear such clothing have been described as "effaced" from public space (see paragraph 82).

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

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

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

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

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

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

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

1. Different approaches to pluralism, tolerance and broadmindedness

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

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

2. Disproportionate interference

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

(a) Margin of appreciation

16. Although we agree with the majority that, in matters of general policy on which opinions within a democratic society may differ widely, the role of the domestic policy-maker should be given special weight (see paragraph 154), we are unable to conclude that in this particular situation the respondent State should be accorded a broad margin of appreciation (see paragraph 155).

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

18. Second, it is not convincing to draw a parallel between the present case and cases concerning the relationship between State and religion (see paragraph 129). As shown by the legislative process, the Law was deliberately worded in a much broader manner, generally targeting "clothing that is designed to conceal the face" and thus going far beyond the religious context (see the Study by the *Conseil d'État* on "the possible legal grounds for banning the full veil", paragraphs 20 et seq., and its influence

on the Bill before Parliament). Unlike the situation in the case of *Leyla Şahin v. Turkey* ([GC], no. 44774/98, § 109, ECHR 2005-XI), which concerned a regulation on the wearing of religious symbols in educational institutions, the French Law itself does not expressly have any religious connotation.

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

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

(b) Consequences for the women concerned

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

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

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

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

(c) Less restrictive measures

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

D. Conclusion

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

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