



Exclusion from a courtroom of a woman wearing the Islamic headscarf (*hijab*): violation of Article 9 of the Convention

In today's Chamber judgment¹ in the case of [Lachiri v. Belgium](#) (application no. 3413/09) the European Court of Human Rights held, by a majority (six votes to one), that there had been:

a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned Mrs Lachiri's exclusion from a courtroom on account of her refusal to remove her *hijab*.

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

Principal facts

Mrs Lachiri, and other members of her family, applied to join the proceedings as civil parties seeking damages in a crime case in which her brother had been killed. In 2007 the accused was committed to stand trial before the Criminal Court on charges of premeditated assault and wounding resulting in unintentional death. Mrs Lachiri and the other civil parties appealed against that decision, submitting that the offence should be classified as murder and that the accused should be tried by an Assize Court. On the day of the hearing before the Indictments Division, in accordance with a decision of the presiding judge the court usher informed Mrs Lachiri that she could not enter the hearing room unless she removed her headscarf. Mrs Lachiri refused to comply and did not attend the hearing. Subsequently Mrs Lachiri unsuccessfully challenged that decision in an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Mrs Lachiri complained that her exclusion from the hearing room had infringed her freedom to express her religion.

The application was lodged with the European Court of Human Rights on 24 December 2008.

On 22 March 2016 the Government submitted a unilateral declaration, which the Court decided not to accept.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Paul Lemmens (Belgium),
İşıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Valeriu Grițco (the Republic of Moldova),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 9 (freedom of thought, conscience and religion)

Observing that, according to its case-law², wearing the *hijab* (headscarf covering the hair and neck while leaving the face uncovered) could be regarded as an act “motivated or inspired by a religion or religious belief”, the Court considered that excluding Mrs Lachiri from the courtroom on the grounds that she had refused to remove her headscarf had amounted to a “restriction” on the exercise of her right to manifest her religion. The purpose of that restriction, which had been based on Article 759 of the Judicial Code requiring persons entering a courtroom to do so without wearing headgear, had in the present case been to prevent conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court concluded that the legitimate aim pursued had been the “protection of public order”.

With regard to the necessity of the restriction in a democratic society, the Court specified first of all that the Islamic headscarf was headgear and not, as in the case of *S.A.S. v. France*³, a garment which entirely concealed the face with the possible exception of the eyes. It then noted that Mrs Lachiri was a mere citizen: she was not a representative of the State engaged in public service and could not therefore be bound, on account of any official status, by a duty of discretion in the public expression of her religious beliefs. Moreover, the Court indicated that whilst a court could be part of the “public arena”, as opposed to the workplace for example, it was not a public place comparable to a public street or square. A court was indeed a “public” institution in which respect for neutrality towards beliefs could prevail over the free exercise of the right to manifest one’s religion, like public educational establishments. In the present case, however, the aim pursued in excluding the applicant from the courtroom had not been to maintain the neutrality of the public arena. The Court therefore limited its examination to determining whether that measure had been justified by the aim of maintaining order. In that connection it noted that Mrs Lachiri’s conduct when entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. Consequently, the Court held that the need for the restriction in issue had not been established and that the infringement of Mrs Lachiri’s right to freedom to manifest her religion was not justified in a democratic society. **There had therefore been a violation of Article 9 of the Convention.**

Article 41 (just satisfaction)

The Court held (by six votes to one) that Belgium was to pay Mrs Lachiri 1,000 euros (EUR) in respect of non-pecuniary damage.

² *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 78, ECHR 2005-XI, and *Dogru v. France*, no. 27058/05, § 47, 4 December 2008.

³ *S.A.S. v. France* [GC] (no. 43835/11, §§ 124-36, ECHR 2014 (extracts)).

Separate opinions

Judges Vučinić and Gritco expressed a joint concurring opinion. Judge Mourou-Vikström expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.