



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

THE FACTS

The applicant, Ms Fatima El Morsli, is a Moroccan national, who was born in 1980 in Tagzirt (Morocco) and resides in Marrakesh.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant, can be summarised as follows.

The applicant is of the Muslim faith and wears the veil. Since 2001, she has been married to a French national who lives in France.

She submitted that on 12 March 2002 she had gone to the Consulate-General of France in Marrakesh to request an entry visa to France so that she could join her husband, and that she was had not been authorised to enter the consulate premises because she had refused to remove her veil for the purposes of an identity check. The applicant had then submitted a visa application by registered letter, and her application had been refused.

The applicant's husband then lodged an appeal, on behalf of his wife, with the Appeals Board against the refusal to grant her an entry visa to France.

On 25 June 2003 the Board dismissed his appeal as follows:

“In accordance with the provisions of Article 5 of Decree 2000-1093 of 10 November 2000 relating to the Appeals Board for appeals against decisions refusing entry visas to France, I regret to inform you that the Board has dismissed the appeal you lodged on 1 July 2002 requesting re-examination of the decision by which the Consul-General of France in Marrakesh refused an entry visa to France to [the applicant].

It is up to [the applicant] to comply with the regulations in force in order to request a visa entry to France in accordance with the formal requirements.”

The applicant's husband then lodged a further appeal, still on behalf of his wife, with the *Conseil d'Etat*, invoking in particular the right of his wife to respect for her family life and the right to freedom of religion.

On 7 December 2005 the *Conseil d'Etat* dismissed the appeal, giving the following reasons:

“... ”

The wearing of the veil or headscarf, by which women of the Muslim faith can express their religious convictions, may be restricted, particularly in the interests of public order.

The documents in the file show that [the applicant] went to the French Consulate in Marrakesh on 12 March 2002 in order to request a visa and that as she refused to agree to the identity check, which has been set in place at the entrance to the Consulate for reasons of security and public order and required the temporary removal of her veil, she was not allowed access to the Consulate; that she then submitted a visa application by registered letter; that this written application, which did not, however, enable the person requesting the visa to be identified, cannot be regarded as a visa application in accordance with the formal requirements for issuing visas, which require the personal appearance of the applicant; that in citing this reason for refusing the visa application, the Board, which was not obliged to examine the application as regards right of entry since it was not submitted in accordance with the formal requirements, which can legally impose a temporary restriction on the wearing of the veil as the only means of identifying the applicant, did not err in law or infringe Article 9 of the Convention ... .

Since the [applicant] refused to agree to this temporary restriction to allow her identity to be checked, she must be considered as having, on her own initiative, decided not to submit a visa application in accordance with the formal requirements; that consequently, she is not entitled to rely on the terms of Article 8 of the Convention... .”

## COMPLAINTS

Invoking Article 9 of the Convention, the applicant complained of a violation of her right to freedom of religion by the consular authorities. She considered that this violation was even more unjustified as she had been prepared to remove her veil, but only in the presence of a woman, and that therefore she had not refused to be identified.

Invoking Article 8 of the Convention, she alleged a violation of her right to respect for her family life.

She also considered that she had been subjected to discrimination prohibited by Article 14 of the Convention, in so far as the consular authority had failed to guarantee her enjoyment of the right to manifest her religious beliefs through her choice of clothing.

Invoking Article 2 of the Convention, she complained of a failure by the French authorities to assist a person in danger.

Lastly, invoking Article 2 of Protocol No 1, she complained of a violation of the right to education of her children, who could not come to France with her.

## THE LAW

1. The applicant complained of a violation of her right to freedom of religion attributable to the consular authorities. In her submission, that violation had been even more unjustified as she had been prepared to remove her veil but only in the presence of a woman and had therefore not refused to be identified. She invoked Article 9 of the Convention, which states:

“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.”

The Court reiterates that, according to its case-law, the wearing of the headscarf can be considered to be “motivated or inspired by a religion or belief” (see *Leyla Sahin v. Turkey* [GC], no. 44774/98, 10 November 2005, ECHR 2005-XI, § 78). In this case, the Court considers that the measure at issue, which consisted of removing her veil to undergo an identity check, constitutes a limitation within the meaning of the second paragraph of Article 9 of the Convention. It observes next that the applicant did not argue that the measure was not “prescribed by law”, and considers that it concerned at least one of the legitimate aims listed in the second paragraph of Article 9, that is, guaranteeing public safety or the protection of public order.

It therefore remains to be decided whether this interference was “necessary in a democratic society” to achieve these aims, within the meaning of the second paragraph of Article 9 of the Convention.

In a similar case (see *Phull v. France* (dec.), no. 35753/03, ECHR 2005-I), the applicant, a practising Sikh, complained of a violation of his right to freedom of religion by the airport authorities who had compelled him to remove his turban during a security check. The Court considered, firstly, that security checks in airports were undoubtedly necessary in the interests of public safety within the meaning of Article 9 § 2, and, secondly, that the arrangements for implementing them fell within the respondent State’s margin of appreciation, particularly as the measure was only resorted to occasionally.

In this case, the Court sees no reason for departing from this reasoning concerning security checks at the access to the Consulate’s premises, including the identification of persons wishing to enter, which it considers

are undoubtedly necessary in the interests of public safety. Furthermore, and as in the aforementioned *Phull* case, the Court observes that the obligation to remove her veil for the purposes of a security check was necessarily very limited in terms of time. Also, regarding the proposal by the person concerned to remove her veil only in the presence of a woman, assuming that the consular authorities were asked this question, the fact that they did not assign a female officer to carry out the identification of the applicant does not exceed the State's margin of appreciation in these matters. The Court concludes that the applicant did not therefore suffer a disproportionate violation of the exercise of her right to the freedom of religion.

Consequently, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained of a violation of her right to respect for her family life, in so far as her husband lived in France. Without a visa, she was unable to join him. She invoked Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life... .

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.”

The Court reiterates that under Article 35 § 1 of the Convention, the person concerned must raise before the national authorities, “in compliance with the formal requirements and time-limits laid down in domestic law”, the complaints he intends to make subsequently in Strasbourg (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 36-37, ECHR 1999-I). In this case, in so far as the applicant did not comply with the conditions laid down for making a visa application, she thus did not enable the domestic authorities to assess her grounds under Article 8 of the Convention.

It therefore follows that this ground must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

3. Lastly, the applicant invoked Articles 2 and 14 of the Convention and Article 2 of Protocol No 1. She complained of a failure by the French authorities to assist a person in danger, of having suffered discrimination and of a violation of the right to education for her children, who could not come to France with her.

The Court observes that the applicant did not raise these grounds before the national courts, expressly or in substance.

Consequently, these grounds must in any event be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

*Declares* the application inadmissible.

Santiago Quesada  
Registrar

Josep Casadevall  
President