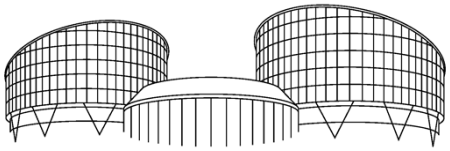

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OSMANOĞLU AND KOCABAŞ v. SWITZERLAND

(Application no. 29086/12)

JUDGMENT

STRASBOURG

10 January 2017

FINAL

10/04/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Osmanoğlu and Kocabaş v. Switzerland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 6 December 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29086/12) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr Aziz Osmanoğlu (the first applicant) and Ms Sehabat Kocabaş ("the second applicant"), on 23 April 2012.

2. The applicants were represented by Ms S. Sutter-Jeker, a lawyer practising in Basle. The Swiss Government ("the Government") were represented by their Agent, Mr Frank Schürmann.

3. The applicants alleged that the obligation to send their minor daughters to mixed swimming lessons was contrary to their religious convictions.

4. On 18 September 2013 the application was communicated to the Government.

5. The Turkish Government did not exercise their right to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The background to the case

6. The applicants were born in 1976 and 1978 respectively and live in Basle.

7. The first applicant, who was born in Turkey, moved to Switzerland at the age of 10. On completing a business-studies course in Basle, he returned temporarily to Turkey to attend classes in Islamic studies; while there, he met the second applicant, who became his wife. She moved to Switzerland in 1999 under the provisions for family reunion. When the present application was lodged she was on a training course to become a playgroup leader (*Spielgruppenleiterin*). The first applicant speaks fluent Swiss German.

8. Three daughters were born to the applicants, on 8 July 1999, 22 June 2001 and 7 July 2006 respectively. The present application concerns only the first two daughters. They were initially enrolled in the Vogelsang primary school in Basle. The eldest daughter subsequently attended an "orientation school" (*Orientierungsschule*, between the primary and secondary levels).

9. Swimming lessons are part of the compulsory school curriculum; under the applicable legislation in the canton of Basle Urban, pupils cannot be exempted until they reach puberty (see paragraph 27 below). This fact was brought to the applicants' attention on 11 August 2008 through a recommendation entitled "Guidelines on dealing with religious matters in schools" (see paragraph 27 below). The applicants, who are devout Muslims, refused to send their daughters to the swimming lessons on the grounds that their beliefs prohibited them from allowing their children to take part in mixed swimming lessons. They stated that although the Koran did not instruct women to cover their bodies until puberty, their beliefs required them to prepare their daughters for the precepts that would be applied to them from that point onwards. As the holders of parental responsibility for their daughters, the applicants alleged that there been a violation of their own rights.

10. By a letter of 13 August 2008, the Public Education Department of the Canton of Basle Urban (*Erziehungsdepartement des Kantons Basel-Stadt*) advised the applicants that under section 91 (9) of the Education Act of the Canton of Basle Urban (see paragraph 24 below), they were liable to a maximum fine of 1,000 Swiss francs (CHF) (around 923 euros (EUR)) each if their daughters did not comply with the obligation to attend school.

11. On 30 March 2010 the head teacher of the school held a meeting with the applicants in order to resolve the situation. The applicants continued to refuse to send their daughters to the swimming lessons. By letters of 30 March and 4 May 2010, the applicants were again invited to send their daughters to the swimming lessons. In spite of these attempts by the school, the applicants' daughters continued to be absent from the swimming lessons.

12. On 4 May and 14 June 2010 the school authorities asked the Head of the Public Education Department to open fixed-penalty proceedings against the applicants. On 17 June 2010 the applicants were invited to comment again as part of those proceedings.

13. By a letter of 28 July 2010, the education authorities ordered the applicants to pay a fine of CHF 350 (about EUR 323) per parent and per child (a total of CHF 1,400 CHF – about EUR 1,292) for acting in breach of their parental duties (see section 91 (8) and (9) of the Education Act of the Canton of Basle Urban, paragraph 24 below).

14. An appeal by the applicants against that decision was dismissed by the Court of Appeal of the Canton of Basle Urban (*Appellationsgericht des Kantons Basel-Stadt*) on 30 May 2011.

B. The Federal Supreme Court's judgment of 7 March 2012

15. Drawing on its leading decision of 24 October 2008 (see Federal Supreme Court judgment 135 I 79; paragraph 29 below), the Federal Supreme Court, by a judgment of 7 March 2012, dismissed an appeal by the applicants, holding that the authorities' refusal to exempt their daughters from mixed swimming lessons in primary school had not breached the applicants' right to freedom of conscience and belief.

16. It accepted that this refusal represented a breach of freedom of religion. Nonetheless, it considered that the swimming lessons formed part of the compulsory school curriculum in the Canton of Basle Urban and that this obligation had a sufficiently solid legal basis. It cited, firstly, section 22 of the Education Act of the Canton of Basle Urban, which stated that gymnastics was one of the compulsory lessons in primary school, and section 139 of the same Act, stating that at least three hours of the pupils' weekly timetable was to be spent in physical education. It also held that, under section 17 of the Act, boys and girls at primary-school level were, in principle, to attend classes together. It further stated that, in accordance with section 68 of the Act, the precise organisation of this subject, especially the various lessons and the number of hours allocated to them, was set out in the curriculum, point 9.2.4 of which provided that swimming formed part of compulsory gymnastics and sports lessons.

17. The Federal Supreme Court then pointed out that pupils could be exempted from lessons or from certain subjects, and any such decision was

to be taken by the school authorities at the request of teachers or of persons responsible for the children's education (section 66 (5) and (6) of the Education Act; see paragraph 24 below). It noted that detailed information on exemptions was set out in point 34 of the School Regulations (*Schulordnung*) of the Canton of Basle Urban, and that the arrangements for dealing with religious issues in schools were included in a Recommendation (*Handreichung*) that had been issued by the Education Department of the Canton of Basle Urban in September 2007. It added that, under point 5.1 of that recommendation, exemption from swimming classes could only be granted to pupils who had reached the age of puberty. It also indicated that from the sixth year of school (that is, generally when pupils had reached the age of twelve), girls and boys attended physical education and swimming lessons separately (point 5.3 of the recommendation).

18. The Federal Supreme Court further held that the applicants' argument that the recommendation had no legal validity was irrelevant in this case, in so far as, in its view, the recommendation was in any event merely a tool to assist in balancing the competing interests involved in reaching a decision on an exemption request. It also considered the fact that swimming was not taught in all the canton's schools and that ice-skating, which also appeared as a lesson in the curriculum, was not taught at all in practice, to be irrelevant in assessing the legal basis.

The Federal Supreme Court accordingly concluded that the measure had a valid legal basis.

19. As to the public interest and the proportionality of the interference, the Federal Supreme Court upheld the lower court's judgment to the effect that it was of paramount importance to ensure that children were integrated, irrespective of their origin, culture or religion. It further considered that the interference was lessened by the fact that the swimming lessons were mixed only until the age of puberty, and that the impact of the measure was attenuated by the accompanying measures (separate changing rooms and showers, and the option of wearing a burkini).

20. The Federal Supreme Court also found irrelevant the applicants' argument that their children were receiving private swimming lessons, holding that what was at stake for the children was not simply learning to swim, but also submitting to the conditions surrounding the teaching itself (*äussere Bedingungen des Unterrichts*). It held that the school's function of social integration, valid in respect of all pupils, required that exemptions for swimming classes be granted only sparingly. The refusal to grant an exemption in the present case thus corresponded to its new practice, according to which educational obligations were, in principle, to be recognised as prevailing over compliance with the religious precepts (*religiöse Gebote*) of one part of the population. For that reason, the comparison with exemptions granted for medical reasons was also irrelevant.

21. Having regard to the foregoing factors, the Federal Supreme Court concluded that the refusal to grant an exemption from the mixed swimming classes had not breached the applicants' right to freedom of religion.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

22. The relevant provisions of the Federal Constitution read as follows:

Article 15 – Freedom of conscience and belief

"1. Freedom of conscience and belief is guaranteed.

2. Every person has the right to choose freely their religion or their philosophical convictions, and to profess them alone or in community with others.

3. Every person has the right to join or to belong to a religious community, and to follow religious teachings.

4. No one may be forced to join or belong to a religious community, to participate in a religious act, or to follow religious teachings."

Article 36 – Restriction of fundamental rights

"1. Restrictions on fundamental rights must have a legal basis. Significant restrictions must have their basis in a federal act. The foregoing does not apply in cases of serious and immediate danger where no other course of action is possible.

2. Restrictions on fundamental rights must be justified in the public interest or for the protection of the fundamental rights of others.

3. Any restrictions on fundamental rights must be proportionate.

4. The essence of fundamental rights is sacrosanct."

Article 62 – State education

"The Cantons are responsible for the system of State education.

The Cantons shall ensure the provision of an adequate basic education that is available to all children. Basic education is compulsory and is managed or supervised by the State. In State schools it is free of charge.

..."

23. Article 303 of the Civil Code of 10 December 1907, pertaining to the religious education of children, is worded as follows:

Article 303 – Religious education

"The father and mother shall decide on the child's religious education.

Any agreement which would restrict their freedom in this respect shall be invalid.

On reaching the age of 16, the child shall have the right to choose his or her own faith."

24. The provisions of the Education Act of the Canton of Basle Urban of 4 April 1929, in the version of 10 August 2009, were worded as follows at the relevant time (translation by the Court):

Section 17

"Primary school shall last for four academic years. As a general rule, boys and girls shall be educated together."

Section 22

"The compulsory lessons in primary school shall be: languages, reading, mathematics, history of cultural heritage, writing, drawing, gymnastics (*Turnen*) ..."

Section 66

"1. All pupils shall attend the compulsory lessons.

2. An exemption from lessons or from certain subjects may only be granted subject to compliance with certain conditions for which specific regulations have been issued.[1]"

Section 91

"...

8. The obligations of persons responsible for children are defined as follows:

(a) [Persons responsible for children] are obliged to ensure that their children attend compulsory and optional lessons on a regular basis and that they receive sufficient rest;

(b) they must not deliberately keep their children away from school;

(c) they shall take part in information meetings for parents and in meetings with teachers, organised by a member of the teaching staff or by the school authorities;

(d) they shall instruct their children to comply with all of the school rules and instructions.

9. Persons who repeatedly fail to comply with the obligations listed in sub-section 8 are liable, at the request of the school authorities, to a fine of up to 1,000 [Swiss] francs. ..."

Section 139[2]

"At least three hours per week shall be devoted to exercise and physical education as part of the curriculum."

25. Regulations 34 et seq. of the Schools Regulations (*Schulordnung*)[3] of the Canton of Basle Urban governed the conditions and procedure

1. In its current wording, this paragraph reads: "… 5. A pupil may be exempted from lessons or from certain subjects; 6. The school authorities shall take their decision at the request of the teachers or the persons responsible for the children."
2. This is the version currently in force.
3. These Regulations have not been in force since 17 August 2014.

applicable to a request for exemption from certain lessons (translation by the Court):

Regulation 34

"The school authorities shall decide whether or not to grant an exemption from certain lessons. With a view to duly informing themselves, they shall be entitled to request supporting documents."

Regulation 35

"Exemptions shall be granted for a specific period, which shall not exceed the duration of the semester already started. A new request shall be required for each application for an extension."

26. Point 9.2.4 of the curriculum of the Canton of Basle Urban drawn up by the Education Board (*Erziehungsrat*) and approved by the cantonal council provides that swimming is part of the compulsory gymnastics and physical education classes; point 9.2.5 provides that ice-skating forms part of this school subject.

27. A recommendation (*Handreichung*) from the Education Department of the Canton of Basle Urban of September 2007, entitled *Merkblatt zum Umgang mit religiösen Fragen an der Schule* (Guidelines on dealing with religious matters in schools), specifies the arrangements for taking account of religious matters in schools. Under point 5.1 of this recommendation, exemptions from swimming lessons can only be granted to pupils who have reached the age of puberty. From the sixth year, teaching of physical education and swimming is in any event conducted separately for girls and boys (point 5.3). In addition, the recommendation states that, in order to take account of Islam's perception of morality, pupils have to have the possibility of covering their bodies if their parents so wish, to be able to get changed separately from the other pupils in the class, to be able to take a shower privately or only with pupils of the same sex and, in so far as possible, to be taught by teachers of the same sex (point 5.3).

This recommendation is regularly updated and is available on the internet.

B. Relevant domestic practice

28. In 1993 the Federal Supreme Court considered, for the first time, the question of an exemption from swimming lessons on religious grounds at primary-school level (119 Ia 178). It held that, in the light of the principle of proportionality, providing children with education that was in line with their parents' religious beliefs prevailed in the relevant case over the compulsory nature of the swimming lessons. The pupil's interests were to prevail in relation to his or her parents' religious interests only where the child's best interests were tangibly and seriously compromised by strict adherence to the

religious rules, for example if the child's health was in danger or if equality of opportunity – including that between men and women – was at stake. According to the Federal Supreme Court, however, such values were not called into question in the case under consideration, since the swimming lessons represented only a small part of the sports education and, accordingly, the school's educational task was not seriously jeopardised by an individual exemption from swimming classes. In other words, the court held that even if the applicant did not learn to swim, her chances of completing her school career or succeeding in her professional life were not seriously threatened.

The Federal Supreme Court also noted that the curriculum in the Canton of Zurich did not oblige municipalities to offer swimming as a compulsory lesson, but merely recommended it. It noted that it could not be ruled out that there were primary schools in that canton in which swimming was not taught. Moreover, the court saw no reason to doubt the veracity of the applicants' allegation that their daughters were receiving private swimming lessons.

The Federal Supreme Court further considered that a large number of exemption requests, management of which would involve an additional workload or organisational problems for schools, were not to be expected.

Lastly, with regard to the lower court's argument that foreign pupils ought to adapt to the conditions and traditions of the host country, the Federal Supreme Court considered that foreign nationals were admittedly required to comply with Swiss laws, but that there was no duty on them, in the sense of a binding rule, to adapt all their customs and ways of life to local practices. In other words, according to the Federal Supreme Court, a legal rule imposing on pupils of foreign origin a disproportionate restriction on their ideas and their religious and cultural convictions could not be derived from the principle of integration.

29. Fifteen years later, on 24 October 2008, the Federal Supreme Court amended its case-law, having regard to the sharp increase in Switzerland's Muslim population. In a leading judgment (ATF 135 I 79), it stated that the interest in ensuring integration and compliance with the values of the local culture ought to be given greater weight. It noted the existence of an important public interest in all pupils being able to take swimming classes, on the grounds of socialisation, child safety and equal opportunities for girls and boys. In consequence, it considered that the refusal to grant an exemption from swimming lessons had been justified and therefore compatible with the obligations arising under the Convention.

30. The Federal Supreme Court has since confirmed this new case-law. One of the relevant cases (Federal Supreme Court judgment of 7 March 2012, 2C_666/2011) concerned the decision which is the subject-matter of the present application before the Court. In another case (judgment of 11 April 2013, 2C_1079/2012), the Federal Supreme Court was required to

examine, for the first time, a request for exemption from compulsory swimming lessons in respect of a pupil, aged 14, who had reached puberty. The Federal Supreme Court dismissed the application. The girl, a Shiite, argued, *inter alia*, that, firstly, the lessons in question were conducted by a male teacher and, secondly, men could see her through the windows of the swimming pool. The Federal Supreme Court held that the girl's private interest had to yield to the public interest in an all-round education for all pupils, whatever their religion. Furthermore, the interference with her freedom of religion struck the Federal Supreme Court as less significant in that case, given that girls and boys attended separate swimming lessons and the girl in question was able to change and take a shower separately from other pupils, and was allowed to wear a burkini.

III. PRACTICE IN OTHER MEMBER STATES OF THE COUNCIL OF EUROPE

31. In a judgment of 29 October 2012, the Constitutional Court *(Staatsgerichtshof*) of Liechtenstein allowed an application by parents who were members of the Palmarian Church (*Palmarianische Kirche*) and complained of a violation of their right to freedom of religion on account of a refusal by the lower courts to exempt their three children (two girls and a boy) from compulsory swimming lessons. The Constitutional Court drew a distinction between the case and, in particular, the leading judgment delivered by the Federal Supreme Court on 24 October 2008 (see paragraph 29 above), in that, since the exemption in question had not been requested by Muslim parents, the public interest in ensuring integration of foreign pupils in Swiss society was absent. The Constitutional Court further held that the threat of excommunication by the Palmarian Church – an argument put forward by the applicants – was serious and had to be taken into consideration. Bearing in mind the specific features of the case and in the light of the children's best interests, it upheld the parents' complaint and remitted the case to the lower court.

32. In a judgment of 11 September 2013, the German Federal Administrative Court (*Bundesverwaltungsgericht*) refused a request to reopen proceedings (*Revisionsgesuch*) submitted by a Muslim pupil who, at the age of 11, had been refused an exemption from mixed swimming lessons in the Frankfurt Gymnasium (secondary school), attended by a high proportion of Muslim pupils. The Federal Administrative Court concluded that the plaintiff had not shown how the dress codes of her religion would be called into question by the wearing of a burkini, which had been authorised by the school authorities. It set aside the plaintiff's objection that the burkini did not hide the outline of her body. It also held that the school was not obliged to exclude from its curriculum practices which were encountered and tolerated in society outside the school, for the sole reason

that they were unacceptable to certain individuals in the light of their personal religious views. With regard to the plaintiff's argument that there was a risk that she would be accidentally touched by boys during the swimming lessons, the Federal Administrative Court considered that this risk could be significantly reduced through careful planning of lessons by the teacher and through precautions taken by the plaintiff herself. It further emphasised that one of the central tasks of schools was their role in facilitating integration, including, in the Federal Administrative Court's view, a duty to encourage children to encounter and accept the religious and cultural mores, opinions and ideas held by others, which did not necessarily correspond to their own beliefs. According to the information available to the Court, this case was pending before the German Constitutional Court at the time of adoption of the present judgment (6 December 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

33. Relying on Article 9 of the Convention, the applicants alleged that the requirement to send their daughters to mixed swimming lessons was contrary to their religious convictions. They submitted that the fine imposed on them by the Public Education Department of the Canton of Basle Urban following the refusal to exempt their daughters from swimming lessons lacked a valid legal basis, pursued no legitimate aim and was disproportionate. In consequence, they considered that they were victims of a violation of their right to freedom of religion within the meaning of Article 9 of the Convention. That provision reads as follows:

> "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."

34. The Government contested the applicants' arguments.

A. Admissibility

35. The right of parents to have upheld their right "to ensure the education and teaching of their children in conformity with their own

religious and philosophical convictions" is guaranteed by the second sentence of Article 2 of Protocol No. 1, which is in principle the *lex specialis* in relation to Article 9 of the Convention (see *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84, ECHR 2007-VIII, and *Lautsi and Others v. Italy* [GC], no. 30214/06, § 59, ECHR 2011). As Switzerland has not ratified Protocol No. 1, the applicants rely on Article 9 of the Convention.

The Court, noting that the Government have not contested the application of Article 9 of the Convention to the present case, considers that the situation complained of by the applicants falls within the scope of that provision.

36. The Court also notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference

37. The applicants considered that the requirement to send their daughters to mixed swimming lessons amounted to an interference with their rights protected by Article 9 of the Convention.

38. The Government did not dispute that the refusal to exempt the applicants' daughters from mixed swimming lessons as part of compulsory primary-school education and the fines imposed on the applicants amounted to an interference with the latter's right to freedom of religion within the meaning of Article 9 of the Convention.

39. In the Government's view, however, it was clear that only the manifestation of religious beliefs was affected in the present case, in so far as the contested decisions concerned solely their obligation to send their daughters to the swimming lessons and, accordingly, the education that the applicants wished to give their daughters with regard to modesty in the light of their strict interpretation of the precepts of Islam. They considered that the applicants' faith and their decision to follow a strict movement within Islam had not been called into question.

40. The Court notes that the applicants complained of an interference with their right to freedom of religion, relying on Article 9 of the Convention, without adducing any evidence. In particular, they criticised the authorities for having refused their request to exempt their daughters from compulsory mixed swimming lessons in primary school and for having imposed a fine in that connection.

41. In order to count as a "manifestation" within the meaning of Article 9, the act inspired, motivated or influenced by a belief must be

intimately linked to the religion or that belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief 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, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question (see *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, § 82, ECHR 2013 (extracts)).

42. The applicants alleged that their beliefs prohibited them from permitting their children to take part in mixed swimming lessons. They added that, although the Koran laid down the precept that the female body was to be covered only from puberty, their faith instructed them to prepare their daughters for the precepts that would be applied to them from puberty onwards. The Court considers that the case concerns a situation in which the applicants' right to manifest their religion is in issue. The applicants exercised parental authority and could decide, under Article 303 al. 1 of the Civil Code (see paragraph 23 above), on the religious education of their children. In consequence, they are entitled to rely on this aspect of Article 9 of the Convention. The Court considers, furthermore, that the applicants indeed suffered an interference with the exercise of their right to freedom of religion as protected by that provision.

2. Whether the interference was justified

(a) The legal basis

i. The parties' submissions

(α) The applicants

43. The applicants conceded that the teaching of gymnastics and sport was compulsory on the basis of Article 68 § 3 of the Constitution, taken together with section 2 (2) of the Federal Act encouraging gymnastics and sports, in all compulsory schools. They added that sports education in Switzerland was not defined by federal legislation and that it was therefore the cantonal law which was to be applied.

44. The applicants further observed that, at the cantonal level, point 9.2.4 of the primary-school curriculum for the Canton of Basle Urban included swimming, and point 9.2.5 included ice-skating. According to the applicants, however, ice-skating was not taught at all in practice. Thus, again according to the applicants, it could not be claimed on the basis of this curriculum that swimming classes formed part of the compulsory teaching of gymnastics and sport. They added that, furthermore, not all schools in the Canton of Basle Urban offered swimming lessons.

45. The applicants also indicated that in August 2008 they had been given the Recommendation entitled "Guidelines on dealing with religious matters in schools", drawn up by the Education Department. They did not consider that Recommendation as a sufficient legal basis, on the grounds that it did not even have the status of a simple regulation in Swiss law. Accordingly, they concluded that no obligation to take part in swimming lessons could be drawn from the domestic law.

(β) The Government

46. As regards the justification for the interference within the meaning of Article 9 § 2 of the Convention, the Government indicated firstly that, under Article 62 § 2 of the Constitution, basic teaching was compulsory (see paragraph 22 above). They further indicated that, pursuant to section 22 of the Education Act of the Canton of Basle Urban of 4 April 1929 (see paragraph 24 above), gymnastics was one of the compulsory lessons; pursuant to section 139 (1) of that Act, the timetable had to include at least three hours of physical education per week; and, under section 17 of the Act, as a general rule boys and girls attended primary-school lessons together. Lastly, they indicated that the curriculum of the Canton of Basle Urban, which had been drawn up by the Education Board (*Erziehungsrat*) and approved by the cantonal council, and was available on the internet, provided in point 9.2.4 that swimming was part of the compulsory teaching of gymnastics and sport.

47. The Government further argued that, under section 66 (1) of the Education Act (see paragraph 24 above), pupils were required to attend the lessons given in all the compulsory subjects, but that an exemption could be granted by the school authorities at the request of teachers or of the persons responsible for children's education (see section 66 (5) and (6)). They specified that the conditions for obtaining an exemption and the applicable procedure were set out in Regulations 34 et seq. of the Schools Regulations for the Canton of Basle Urban (see paragraph 25 above). They also stated that guidelines for dealing with religious issues in schools had been set out in a recommendation from the Education Department of the Canton of Basle Urban of September 2007, which was updated regularly and was available on the internet. Point 5.1 of this Recommendation confirmed that swimming lessons were compulsory and that exemptions from those lessons could only be granted to pupils who had reached puberty, that is, who were aged at least 12. From the sixth year, that is, at the approach of puberty, boys and girls were taught sports and swimming separately (point 5.3 of the Recommendation). The Recommendation further provided that, in order to take account of Islam's perception of morality, pupils had to be given the option of covering their bodies to the extent desired by their parents, to be able to get dressed out of sight of the rest of the class, and to take a shower separately or only with members of their own sex, and that, in so far as

possible, they were to be taught by teachers of the same sex (point 5.3 of the Recommendation).

48. The Government further submitted that, under section 91 (8) (b) of the Education Act, persons responsible for children's education were not entitled to allow them to stay away from school deliberately (see paragraph 24 above). Under section 91 (9), a fine of up to CHF 1,000 could be imposed at the request of the school authorities in the event of repeated breaches of the obligations set out in section 91 § 8.

49. For all these reasons, and reiterating that the texts referred to were published and available on the internet in their entirety, the Government submitted that the interference experienced by the applicants had had a sufficient legal basis for the purposes of Article 9 § 2 of the Convention.

ii. The Court's assessment

50. The expression "prescribed by law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question (see *Leyla Şahin v. Turkey,* no. 44774/98, § 84, ECHR 2005-XI, and *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I).

51. The following are two of the requirements that flow from the expression "prescribed by law'" Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Further, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct (see Sunday Times *v. United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30).

52. The wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. Thus, the interpretation and application of such enactments depend on practice (see *Kokkinakis v. Greece*, no. 14307/88, § 40, 25 May 1993).

53. In the present case, the Court considers that the contested measure had a sufficient legal basis. It notes that the curriculum, available on the internet, provided in point 9.2.4 that swimming formed part of the compulsory gymnastics and sports classes. Moreover, under section 91 (9) of the Education Act, a fine of up to CHF 1,000 could be imposed at the request of the school authorities in the event of repeated breaches by parents of their obligations (see paragraph 24 above). The applicants did not dispute that these provisions were indeed accessible to them.

54. On 13 August 2008 the Public Education Department of the Canton of Basle Urban warned the applicants that they were liable to a maximum fine of CHF 1,000 each if their daughters did not attend the compulsory lessons. Following the applicants' daughters' absence from the compulsory

swimming lessons, on 28 July 2010 the education authorities imposed a fine of CHF 350 per parent and per child concerned (a total of CHF 1,400) in application of the above-mentioned provision, for repeated breach of their obligations. The Court therefore considers that the interference with the exercise of their right to freedom of religion was foreseeable by the applicants.

55. Having regard to the foregoing, the Court concludes that the contested measure was prescribed by law as required by Article 9 § 2 of the Convention.

(b) Legitimate aim

i. The parties' submissions

(α) The applicants

56. The applicants submitted that granting a pupil an exemption from swimming lessons was not likely to restrict his or her education to the point that he or she could no longer be guaranteed equality of opportunity. They considered that swimming was only one element of sports education and that an exemption neither called into question any education content nor threatened the attainment of a school certificate or subsequent professional opportunities. They added that Basle was home to numerous schools which, for logistical reasons, did not offer swimming classes, and that this fact permitted the conclusion that swimming lessons were not of great importance. In support of their argument, they submitted a document entitled "Official question by Atilla Toptas concerning swimming lessons in Basle schools", filed on 14 April 2010, which revealed that, as a result of the lack of available swimming pools, 45 primary school classes had been unable to include regular visits to a swimming pool in the pupils' timetables during the 2009-2010 academic year.

57. Furthermore, the applicants repeated that their two school-age daughters attended, on a private basis, swimming lessons organised for the Muslim community in Basle in the Bäumlihof secondary school, and that they were thus ensuring that their children learned to swim. In consequence, they considered that, with regard to the educational task, the respondent State could not rely on the public-interest argument.

58. As to the aim of the educational activity, namely the socialisation referred to by the authorities, the applicants considered that their daughters' socialisation took place primarily outside the swimming lessons. From their perspective, the mere fact that a pupil did not attend these lessons did not in itself mean that he or she was marginalised.

59. In addition, the applicants had no doubt that the need for integration of foreign populations had increased significantly, and accepted that foreigners were rightly expected to be open to cohabiting with the

population of the host country and accepting Switzerland's legal system and its democratic and constitutional principles, as well as local social and societal realities. Nonetheless, they criticised the Federal Supreme Court for placing integration above the question of belief. They considered that where the host country showed tolerance towards foreigners' religious beliefs, the latter were willing to integrate into local society and to accept its rules, and that, on the contrary, where parents were ultimately forced to send their children – who had seen their Islamic identity denied in State schools – to private schools, this did not support either the children's integration or their equilibrium. In their view, such an approach facilitated the development of unwelcome parallel communities and that, in consequence, a concern for integration could not be relied upon in respect of the public interest.

60. The applicants considered that their situation demonstrated convincingly that integration did not depend solely on participation in swimming classes taught in the school system. They submitted that they had been living as fully integrated residents of Basle for many years, and accepted without difficulty the Swiss legal system, with its democratic and constitutional principles and the local social and societal realities. They pointed out that Mr Osmanoğlu had arrived in Switzerland at the age of 10, had been educated in Basle, had studied business, had then followed a course in Islamic studies in Istanbul and was perfectly fluent in Swiss German. For her part, Ms Kocabaş had attended secondary school in Turkey and had arrived in Switzerland in 1999 for the purpose of family reunion. She had been well integrated since that date and had studied German intensively. In March 2011 she had taken language classes up to B1 level (European Language Portfolio) and had begun a training course as a playgroup leader. Furthermore, all three of their daughters had been born in Switzerland and were being educated there. In the applicants' submission, all the members of the family felt greater ties with Switzerland than with their country of origin, and it was only their religion which differentiated them from the majority of the Swiss population.

61. The applicants further submitted that there was nothing to show that a school could not continue to function in an ordered and effective manner where exemptions from mixed swimming lessons were granted. They considered that the number of "strictly observant" Muslims in Basle who refused to send their children to mixed swimming lessons was very low. They added that between 2000 and 2007, for about 3,000 Muslims living in Basle, there had been no more than three exemptions per year from the compulsory school curriculum. Furthermore, requests for exemptions were often received from – and granted to – Swiss parents who were fundamentalist Christians or Orthodox Jews, and who observed the same rules with regard to modesty.

62. The applicants concluded that, since the objectives of education, socialisation and integration were, in their view, not called into question by

an exemption from mixed swimming lessons, especially where the parents had organised private swimming classes for their daughters, and there was nothing likely to disrupt the smooth functioning of the school in any way or in any form, the interference in question had not been based on any valid legitimate aim.

(β) The Government

63. The Government explained that the Federal Supreme Court had relied on the public interest in the integration of school pupils, irrespective of their origin, culture or religion, and also the interest in their socialisation through participation in the compulsory lessons dispensed in State schools. Those factors were supplemented by the interests mentioned in the Federal Supreme Court's leading judgment of 24 October 2008, referred to by that same court in the judgment which was the subject of the present application, namely guaranteeing equality of opportunity between children and between the sexes in the area of training and education. Firstly, the interests in question were aimed at guaranteeing and facilitating general cohesion and the successful integration of religious minorities within Swiss society. Secondly, they were intended to protect all pupils against any form of social exclusion within the school, and to guarantee them equal opportunities in the area of education and training in relation to pupils belonging to other religions and, with regard to girls, in relation to male pupils.

In the light of the foregoing, the Government concluded that the contested measure pursued the legitimate aims of public safety, the protection of public order, and the protection of the rights and freedoms of others.

ii. The Court's assessment

64. The Court shares the Government's view that the contested measure was aimed at the integration of foreign children from different cultures and religions, as well as the smooth functioning of the education system, compliance with compulsory schooling and equality between the sexes. In particular, the measure was intended to protect foreign pupils from any form of social exclusion. The Court is prepared to accept that these elements can be attached to protection of the rights and freedoms of others or the protection of public order within the meaning of Article 9 § 2 of the Convention (see, *mutatis mutandis*, *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V).

65. It follows that the refusal to exempt the applicants' daughters from the compulsory swimming lessons pursued legitimate aims within the meaning of Article 9 § 2 of the Convention.

(c) Necessity in a democratic society

i. The parties' submissions

(α) The applicants

66. The applicants submitted that the obligation on their daughters to attend the mixed swimming lessons was inappropriate and that participation in those lessons was not required to achieve the objectives relied upon, namely their education and integration, and equally the smooth and effective running of the school. They considered that the educational aim underlying the swimming lessons could be achieved by more moderate measures, such as making the granting of an exemption conditional on a requirement that parents enrolled their children in private swimming lessons. Moreover, they considered that wearing a burkini would not help to solve the problem, in that it would risk stigmatising their daughters.

67. The applicants further indicated that the Vogelsang school attended by their second daughter proposed only mixed swimming lessons. At numerous meetings they had suggested enrolling their daughters in another school in Basle, but that offer had, however, been refused by the authorities. In addition, the authorities – without examining their case – had systematically maintained their position that no further exemptions from mixed swimming lessons would be granted; according to the applicants, this was clearly excessive.

68. In the light of these considerations, the applicants concluded that the contested measure had not been proportionate and that, in consequence, it had not been necessary in a democratic society. In their view, there had thus been a violation of Article 9 of the Convention.

(β) The Government

69. The Government submitted that, in its leading judgment of 2008 (see paragraph 29 above) the Federal Supreme Court had taken into account the growing importance attached by public opinion to the question of integration as compared to the situation which prevailed when it had delivered its first decision on this matter in 1993. They further indicated that the composition of the population had changed: while 152,200 Muslims had been living in Switzerland in 1990, there had been 310,800 in 2000 and their number was estimated at about 400,000 in 2008.

70. The Government also stated that the Federal Supreme Court had observed in the same judgment that schools were confronted with a multicultural reality. The Government considered that such a society required greater efforts than before to ensure that children from different cultures adapted to the Swiss way of life and found their place in the country's social framework. They were convinced that it was solely in this

manner that their future participation in economic, social and cultural life could be guaranteed and, through it, social peace and equal opportunities.

71. According to the Government, foreign nationals could and should be expected to agree to live with the Swiss population and to submit to the legal system in force. Their religious convictions could not exempt the individuals in question from their civic duties. The Government specified that this did not mean abandoning religious freedom, in so far as the requirement in question did not generally affect the core of this fundamental right and concerned straightforward disagreements arising from a conflict between certain standards of behaviour – resulting from cultural and/or religious conceptions – and the rules applicable in Switzerland.

72. The Government then indicated that schools played a special role in the process of social integration. Schools were primarily required to provide basic education, which meant that pupils were obliged to follow the compulsory lessons. In return, the Government submitted, schools were obliged to provide an open environment that represented society and to adhere strictly to the principle of secularism. Having regard to the importance of compulsory education, schools were not entitled to allow for exceptions to the rule in order to take account of special wishes, including those based on religious grounds that were incompatible with the school curriculum. Moreover, the Government considered that sport in school was particularly important for pupils' socialisation and that this objective could only be attained if it was taught in mixed classes.

73. The Government rejected the applicants' argument that only a limited number of families requested an exemption from compulsory swimming lessons on account of their Muslim faith, submitting that the interest in integrating foreign nationals in a country was relevant to all those resident in it, irrespective of the number of individuals who claimed an exception. Furthermore, the Government considered that integration served not only the interests of the community, but also those of the child, in that it offered better prospects for adapting to shared life in society.

74. As to the applicants' assertion that exemptions were granted to the children of fundamentalist Christian or Jewish Orthodox parents, the Government specified that, according to information provided by the Public Education Department, such exemptions did not exist and the same principles were applicable to all pupils. Only exemptions on medical grounds were granted.

75. With regard to the private swimming lessons that were compatible with the precepts of their faith, allegedly attended by the applicants' daughters, the Government considered that this factor could not be decisive, in that the interest of the compulsory swimming lessons did not lie solely in their content, but also in the conditions in which they took place. According to the Government, if the only benefit of the compulsory swimming lessons was that pupils learned to swim, then they would end as soon as all the

pupils had done so. The Government considered, however, that, in addition to the acquisition of this skill, the fact of taking part in this activity together with the other pupils in the class was an important aspect of these classes. The fact of taking private swimming lessons separately from the rest of the class would isolate the pupils concerned and would consequently run counter to one of the principal objectives of compulsory public education.

76. The Government went on to specify that certain accompanying measures had been put in place, and that, in conformity with the case-law developed by the Federal Supreme Court in its leading judgment of 2008 (see paragraph 29 above) and the relevant recommendation by the Public Education Department, the applicants' daughters had the option of taking part in the swimming lessons while covering their bodies with a burkini. They also stated that the applicants had been assured that their daughters would not have to undress or take a shower in the presence of boys. Lastly, they specified that, in this situation, the swimming lessons were conducted, as far as possible, by a female teacher.

77. With regard to the applicants' argument that the proposed arrangements were insufficient in the light of the modesty training provided by "strictly observant" Muslims, which also required that the children were not put in a position where they could see the naked or scantily covered bodies of persons of the opposite sex, the Government explained that partially dressed bodies were frequently to be seen in Switzerland, whether on the beach, in the media or in public areas on very hot days. In the Government's view, it was thus all the more important that children learned from an early age to handle this aspect of communal life, in order to facilitate their development in society (see also the Federal Supreme Court's judgment of 2008).

78. As regards the applicants' argument that wearing a burkini would stigmatise their daughters, the Government criticised the applicants for failing to provide any explanation or evidence in this respect. They considered that wearing a burkini could, on the contrary, help to facilitate the pupils' communal life as part of the class and show them that they all had their place in it, even where they came from a different culture. Furthermore, according to the information available to the Government, experience showed that the participation of burkini-wearing pupils in school swimming lessons did not create problems in practice. Lastly, the Government was of the opinion that being exempted from the classes could be just as stigmatising, if not more so, than wearing clothing that was adapted to religious beliefs.

79. As to the penalties imposed on the applicants, the Government specified that these consisted in fines that were, in the Government's view, relatively low (CHF 350 for each of the applicants and in respect of each of the girls concerned), and that they had been imposed only after the school

authorities had contacted the applicants on several occasions and had attempted to resolve the situation with them.

80. The Government also indicated that particular weight should be attached to the domestic courts' decisions and that a practice comparable to that of the Swiss authorities had been adopted by the German Federal Administrative Court in a judgment of 11 September 2013 (see paragraph 32 above).

81. For all these reasons, the Government concluded that the contested measures had been necessary within the meaning of Article 9 § 2 of the Convention.

ii. The Court's assessment

(α) Applicable principles

82. 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 (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016; *Kokkinakis,* cited above, § 31; and *Dahlab*, decision cited above).

83. 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 *Bayatyan v. Armenia* [GC], no. 23459/03, § 119, ECHR 2011; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII; and *S.A.S. v. France* [GC], no. 43835/11, § 125, ECHR 2014 (extracts)). 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 *Leyla Şahin*, cited above, §§ 105 and 121).

84. 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 *İzzettin Doğan and Others*, cited above, § 109; see also, *mutatis mutandis*, *Young, James and Webster v. United Kingdom*, 13 August 1981, § 63, Series A no. 44; *Valsamis v. Greece*, 18 December

1996, § 27, *Reports of Judgments and Decisions* 1996‑VI; *Folgerø and Others*, cited above, § 84 (f); and *S.A.S. v. France*, cited above, § 128).

85. Moreover, under the terms of Article 9 § 2 of the Convention, any interference with the right to freedom of religion must be necessary in a democratic society. But for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, 26 October 2000).

86. In addition to the primarily negative undertaking by the State to abstain from any interference with the rights guaranteed by the Convention, there "may be positive obligations inherent" in such rights (see *İzzettin Doğan and Others*, cited above, § 96, and *Jakóbski v. Poland*, no. 18429/06, § 47, 7 December 2010). While the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, ECHR 2014 (extracts)). The positive obligations may involve the provision of an effective and accessible means of protecting the rights guaranteed under that provision, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see *Savda v. Turkey*, no. 42730/05, § 98, 12 June 2012). In that case, the Court held that there had been an obligation on the authorities to provide the applicant with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status (ibid. § 99).

87. It is also important to emphasise the subsidiary role of the Convention mechanism. As the Court has held on many occasions, the national authorities are 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. This is true, in particular, where questions concerning the relationship between State and religions are at stake (see, *inter alia*, *İzzettin Doğan and Others*, cited above, § 112, and *S.A.S. v. France*, cited above, § 129).

88. The Court has already had occasion to note that it is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and the meaning or impact of the public expression of a religious belief will differ according to time and context (see *Leyla Şahin*, cited above, § 109). The rules in this sphere will consequently vary from one country to another. The choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it would depend on the specific domestic context (*ibid.)*. In the above-cited

judgment, the Court held that there had been no violation of Article 9 on account of a measure prohibiting a student from wearing the Islamic headscarf on university premises.

89. 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 are justified in principle and proportionate (see, among other authorities, *Manoussakis and Others v. Greece*, 26 September 1996, § 44, *Reports* 1996-IV; *Leyla Şahin*, cited above, § 110; and *S.A.S. v. France*, cited above, § 131). Furthermore, in exercising its supervision, the Court must consider the interference complained of in the light of the case as a whole (see *Metropolitan Church of Bessarabia and Others*, cited above, § 119, and *Dahlab*, decision cited above). In order to determine the scope of the margin of appreciation in the present case the Court must take into account what is at stake, namely the need to maintain true religious pluralism, which is vital to the survival of a democratic society (see *Manoussakis and Others*, cited above, § 44, and *Metropolitan Church of Bessarabia and Others*, cited above, § 119). The Court may also have regard to any consensus and common values emerging from the practices of the States parties to the Convention (see, *mutatis mutandis*, *X, Y and Z v. United Kingdom*, 22 April 1997, § 44, *Reports* 1997-II, and *Dickson v. United Kingdom* [GC], no. 44362/04, § 78, ECHR 2007-V).

90. As Switzerland has not ratified Protocol No. 1 to the Convention, the applicants rely in this case on Article 9 of the Convention to challenge the refusal by the authorities to exempt their daughters from compulsory mixed swimming lessons. It is therefore the principles arising from this latter provision that the Court is called upon to apply. For the sake of completeness (see, *mutatis mutandis, Austin and Others v. United Kingdom* [GC], no. 39692/09, 40713/09 and 41008/09, § 55, ECHR 2012), the Court nevertheless considers it useful to summarise the relevant principles applicable under Article 2 of Protocol No. 1, given that the Convention must be read as a whole and that this latter provision, at least with regard to its second sentence, is in principle the *lex specialis* in relation to Article 9 in the area of education and teaching, with which the present case is concerned (see *Folgerø and Others*, cited above, § 84, and *Lautsi and Others*, cited above, § 59).

91. The first sentence of Article 2 of Protocol No. 1 provides that everyone has the right to education. The right set out in the second sentence of the Article is an adjunct of the right to education set out in the first sentence. Parents are primarily responsible for the education and teaching of their children; it is in the discharge of this duty that parents may require the State to respect their religious and philosophical convictions (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 52, Series A no. 23). The second sentence of Article 2 of Protocol No. 1 aims at

safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of the "democratic society" as conceived by the Convention. It implies that the State must take care that information included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (see *Folgerø and Others*, § 84, and *Lautsi and Others*, cited above, § 62).

92. The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see *Lautsi and Others*, cited above, § 61, and *Campbell and Cosans v. United Kingdom*, 25 February 1982, § 37, Series A no. 48). Nevertheless, the requirements of the notion of "respect" imply that the States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. In the context of Article 2 of Protocol No. 1, that concept implies in particular that this provision cannot be interpreted to mean that parents can require the State to provide a particular form of teaching (see *Lautsi and Others*, cited above, § 61, and *Bulski v. Poland* (dec.), nos. 46254/99 and 31888/02, 30 November 2004).

93. Lastly, the Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, *inter alia*, *Folgerø and Others*, cited above, § 100; *Hasan and Chaush*, cited above, § 62; *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, § 86, ECHR 2009; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

(β) Application of the above principles to the present case

94. The Court has already found that the applicants' right to manifest their religion is at stake and that, in consequence, they may rely on this aspect of Article 9 of the Convention. It has also noted that the applicants have been subjected to an interference with the exercise of their right to freedom of religion as guaranteed by that provision (see paragraph 42 above).

95. The Court is therefore called upon to examine whether the refusal by the competent authorities to grant the applicants' daughters an exemption from mixed swimming lessons was necessary in a democratic society and, more particularly, whether it was proportionate to the aims pursued by those same authorities. In so doing, the Court will bear in mind that the States enjoy a considerable margin of appreciation concerning matters relating to the relationship between the State and religions and the significance to be attached to religion in society, particularly where these matters arise in the sphere of teaching and State education. While the States must ensure that information or knowledge included in the curriculum is conveyed in an

objective, critical and pluralistic manner, and must refrain from pursuing any aim of indoctrination, they are nonetheless free to devise their school curricula according to their needs and traditions. Admittedly, it is parents who are primarily responsible for the education of their children, but they cannot, relying on the Convention, require the State to provide a particular form of teaching or to organise lessons in a particular manner. These principles apply even more so in the present application, in that it has been lodged against Switzerland, which has not ratified Protocol No. 1 to the Convention and is not therefore bound by Article 2 of that treaty, and where the federal structure grants wide powers to the cantons and municipalities as regards the organisation and planning of school curricula.

96. As regards weighing up the competing interests, the Court is persuaded by the arguments put forward by the Government and by the domestic courts in well-reasoned decisions. It agrees with the Government's argument that school plays a special role in the process of social integration, one that is all the more decisive where children of foreign origin are concerned. It accepts that, given the importance of compulsory education for children's development, an exemption from certain lessons is justified only in very exceptional circumstances, in well-defined conditions and having regard to equality of treatment for all religious groups. In this connection, the Court considers that the fact that the relevant authorities allow exemptions from swimming lessons on medical grounds shows that their approach is not an excessively rigid one. Moreover, it finds the applicants' allegation that exemptions are granted to the children of fundamentalist Christian or Orthodox Jewish parents, an allegation that is challenged by the Government, to be insufficiently substantiated.

97. It follows that, even assuming that the applicants' argument to the effect that only a small number of parents request an exemption from compulsory swimming lessons on account of their Muslim faith does indeed reflect reality, the Court considers that the children's interest in an all-round education, facilitating their successful social integration according to local customs and mores, takes precedence over the parents' wish to have their daughters exempted from mixed swimming lessons.

98. For the same reason, the applicants' argument that swimming lessons are not included on the curriculum of all schools in Switzerland, nor even on that of all schools in the Canton of Basle Urban, must also be rejected. Admittedly, the Court considers that sports education, of which swimming is an integral part in the school attended by the applicants' daughters, is of special importance for children's development and health. That being said, a child's interest in attending those lessons lies not merely in learning to swim and taking physical exercise, but above all in participating in that activity with all the other pupils, without exception on the basis of the child's origin or the parents' religious or philosophical convictions.

99. Furthermore, the Court points out that it has always been mindful of the specific features of federalism, so long as they were compatible with the Convention (see, for example, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 64, ECHR 2012 (extracts); and also, *mutatis mutandis*, *Handyside v. the United Kingdom*, 7 December 1976, § 54, Series A no. 24, and *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, § 10, Series A no. 6). Accordingly, with regard to the present case, the applicants cannot rely on the mere fact that the school curriculum, which falls within the powers of the cantons and municipalities, does not uniformly provide for swimming as a compulsory subject throughout Switzerland.

100. With regard to the applicants' argument that their daughters attended private swimming lessons, the Court reiterates the finding set out above, namely that what was important for the children was not only taking physical exercise or learning to swim – legitimate aims in themselves –, but above all the fact of learning together and taking part in that activity collectively. Moreover, the Court considers that exempting children whose parents have sufficient financial resources to offer them private classes would create, in respect of those children whose parents do not have such resources, inequality that is unacceptable in compulsory education.

101. The Court notes that, in the present case, the authorities offered the applicants very flexible arrangements, in that their daughters were allowed, among other concessions, to wear a burkini to the swimming lessons. However, the applicants submitted that wearing a burkini was stigmatising for their daughters. In this connection the Court shares the Government's view that the applicants have adduced no evidence in support of their assertion. It further notes that the applicants' daughters could undress and take showers with no boys present. It accepts that those arrangements were such as to reduce the alleged impact of the children's attendance at mixed swimming classes on their parents' religious convictions.

102. In the case of *Lautsi and Others*, in which the applicants complained about the presence of religious symbols in their children's classroom, the Court attached much importance to the fact that Italy had opened up the school environment to religions other than Christianity (see *Lautsi and Others*, cited above, § 74). Furthermore, there had also been nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions (ibid.).

In the present case, the Court notes that the applicants do not allege that their daughters were restricted in the exercise or manifesting of their religious beliefs other than during the mixed swimming lessons.

103. Another factor to be taken into consideration in examining the proportionality of the contested measure is the seriousness of the penalty imposed on the applicants. The fixed-penalty fines imposed on the

applicants amounted to CHF 350 for each of the applicants and in respect of each of the girls, that is, a total of CHF 1,400. The Court considers that these fines, which the relevant authorities imposed after having duly warned the applicants, were proportionate to the aim pursued, namely, to ensure that the parents indeed sent their children to the compulsory lessons; this was above all in their own interests, specifically that of their children's successful socialisation and integration.

104. Lastly, the Court reiterates that Article 9 may involve the provision of an effective and accessible means of protecting the rights guaranteed therein, including both the creation of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific measures (see *Savda*, cited above, § 98).

With regard to the procedure followed in the present case, the authorities published a recommendation on dealing with religious matters in schools, in which the applicants were able to find the relevant information (see paragraph 27 above). The relevant authority then warned the applicants about the fine they would incur if their children did not attend the compulsory swimming lessons (see paragraph 10 above). Following a meeting with the school authorities and two letters sent by the latter body to the applicants, the relevant authority imposed the fines prescribed under domestic law (see paragraphs 11-13 above), which the applicants were able to challenge first before the Court of Appeal of the Canton of Basle Urban and then before the Federal Supreme Court. At the close of fair and adversarial proceedings those two courts, in duly reasoned decisions, arrived at the conclusion that the public interest in following the full school curriculum should prevail over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters.

It follows that the applicants had the benefit of an accessible procedure enabling them to have examined the merits of their request for an exemption under Article 9 of the Convention.

105. In view of the above considerations, the Court finds that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities did not exceed the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

106. It follows that there has been no violation of Article 9 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible*;*

2. *Holds* that there has been no violation of Article 9 of the Convention.

Done in French, and notified in writing on 10 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President