

EUROPEAN COURT OF HUMAN RIGHTS  
S.A.S. v. France, Application no. 43835/11  
*Written submission by the Human Rights Centre of Ghent University*

## EXECUTIVE SUMMARY

*When nation-wide face veil bans were adopted in France and Belgium (as well as local bans elsewhere), this was done on the basis of commonly held assumptions, as there was no empirical research available on this small and elusive minority. In the meantime, empirical research has been conducted. This submission presents the main findings of this research and identifies the issues that are particularly relevant for a human rights assessment of (the application of) face covering bans. We show that the stated purposes of face covering bans – protecting women’s rights, guaranteeing safety in the public space, and furthering social cohesion – are at least partly based on erroneous assumptions. In addition, we show that the bans do not actually serve their stated purposes, and that they are disproportionate and deny procedural justice. All these aspects are extremely relevant for an analysis under article 9 ECHR (religious freedom). In addition, we point out – again in relation with the empirical data- a number of human rights issues that are crucial to this case. These include (indirect) discrimination, intersectional discrimination, stereotyping and stigmatization, vulnerable group discourse, and interferences with articles 8 and 10 ECHR. Finally, we argue that any analysis of the human rights impact of face veil bans cannot be blind to the context of rising Islamophobia in Europe.*

## 1. INTRODUCTION

These written comments are prepared and submitted by the Human Rights Centre of Ghent University (Belgium), pursuant to leave granted by the President of the European Court of Human Rights on May 15 2012, in accordance with rule 44 §3 of the Rules of the Court. The Human Rights Centre is an academic centre. One of the Centre’s leading projects is “Strengthening the European Court of Human Rights: More Accountability through Better Legal Reasoning.” The project is led by Professor Eva Brems and funded by the European Research Council. It is in the context of this project that these written comments are submitted for your consideration.

The Human Rights Centre includes a team of researchers who examined legal restrictions on face coverings in several European countries among which France. The team also conducted a first-of-its-kind empirical research on women wearing the face veil in Belgium. 27 women wearing the face veil or who had worn it in the past were interviewed. The aim of the research was to get more insight in the daily lives of these women, their motivation to wear a face veil and the possible consequences a ban on face coverings could have on their lives and more specifically on their fundamental rights. This resulted in an international expert seminar on the 9<sup>th</sup> of May where the results<sup>1</sup> of this empirical

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<sup>1</sup> The research report is available online: Eva Brems, Yaiza Janssens, Kim Lecoyer, Saïla Ouald Chaïb, and Victoria Vandersteen, *Wearing the Face Veil in Belgium: Views and Experiences of 27 Women Living in Belgium concerning the Islamic Full Face Veil and the Belgian Ban on Face Covering*  
<http://www.hrc.ugent.be/wp-content/uploads/2015/10/face-veil-report-hrc.pdf>

research were presented and discussed next to similar research conducted in other European countries presented by international experts.<sup>2</sup>

## 2. SIGNIFICANCE OF THE ISSUES INVOLVED IN S.A.S. V. FRANCE AND SCOPE OF INTERVENTION

With an increase of initiatives to ban the face-veil across Europe,<sup>3</sup> *S.A.S. v. France* has the potential of being a leading case in the subject matter at the European and the international level. This case is also important for the broader ongoing debate on the presence of religion in the public sphere.

At the time the French ban on face coverings was adopted, empirical research on women wearing the face veil in France – a small and elusive minority - was not yet available. Hence the legislator proceeded on the basis of commonly shared assumptions about these women. The same holds for Belgium. In both countries, legislators assumed that face bans would further women's rights, safety in the public sphere, and social cohesion. Yet no data were available to show whether and how that face veils threatened women's rights, safety or social cohesion. The same lack of data made it difficult for those legislators to assess the human rights impact of a ban. Today however, when examining the human rights at stake in the case of *S.A.S. v. France*, the European Court of Human Rights can benefit from the empirical data that offer an insider perspective of the women concerned. We submit that it is crucial that the Court take the insights from this research into account, so as to be able to adequately assess the impact of face veil bans both on the human rights of the women concerned and on the policy goals that the bans intend to pursue.

## 3. RELEVANT EMPIRICAL FINDINGS

The following analysis is based on three qualitative studies, conducted respectively in France by Open Society Foundation,<sup>4</sup> in the Netherlands by Prof. Annelies Moors<sup>5</sup> and in Belgium by ourselves. It is particularly relevant to note that the findings of those studies concur on all aspects mentioned below. As this is qualitative research, the results are not quantified, but rather illustrated with numerous representative quotes from the interviews. The latter are not included in this brief, but can be found via the links to the full reports in the footnotes below.

### *Reasons for wearing the face veil and autonomy in that respect*

Without exception, all interviewees describe the decision to start wearing the face veil as a well-considered and free decision. They consider it a crucial matter that the wearing of a face veil should be an autonomous personal choice, amongst others because Islam explicitly prohibits pressure in religious matters.

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<sup>2</sup> The programme of the expert seminar is available at

<http://www.ugent.be/re/publiekrecht/nl/vakgroep/mensenrechten/conferenties.htm/faceveil.pdf>.

<sup>3</sup> In addition to the nation-wide bans that are in place in France and Belgium, local bans of varying breadth are in place in Belgium, the Netherlands, Italy and Spain and political discussions that may lead to a nation-wide ban are underway in amongst others the Netherlands and Italy.

<sup>4</sup> <http://www.soros.org/publications/unveiling-truth-why-32-muslim-women-wear-full-face-veil-france>.

<sup>5</sup> <http://www.e-quality.nl/assets/e-quality/dossiers/Moslimas/Onderzoek%20Gezichtssluiers%20draagsters%20en%20debatten.pdf>.

The main driver to start wearing the face veil appears to be a desire to excel in piety. The decision to wear the face veil is described as a personal trajectory of deepening and perfecting one's faith. Some interviewees interpret the wearing of the face veil as a religious obligation. Yet the large majority see it as a voluntary commitment to a higher level of Islamic practice. They want to be as pious a Muslima as possible, by applying not only mandatory religious rules, but also the rules that are 'recommended'. In that sense, wearing the face veil does not stand alone, but is part of a life project that considers Islam as 'a lifestyle'.

Many women did not know anyone personally who wore the face veil before they started wearing it, and none report efforts of persuasion by other women. Similarly, none of the interviewees see their veil as a message to the outside world— It is something they do for themselves and for God. Proselytism is far from their minds.

Some (prospective) husbands actively encourage the wearing of the face veil. Yet a significant number of women had to persuade an initially reluctant partner. Several women negotiated with their future husband the right to start or continue to wear a face veil after marriage. From their close family, most interviewees experienced negative reactions to their decision to wear a face veil.

Overall, in the women's narration of how they started to wear the face veil, their agency appears as a strong and determining factor. The Belgian study included women who had given up wearing the face veil, and showed that this, too, is an autonomous decision, even though most women made it under pressure from street aggression or the effect of the ban (cf. *infra*). In most such cases, it was the woman's husband who first suggested that she stop wearing the face veil.

#### *Communication and Social Integration*

When it comes to interaction with society in general (activities outside the house as well as contacts with neighbours and with anonymous people on the streets and in shops, etc.) many women state that they live a normal life with the face veil. In the course of the interviews, numerous references are made to social activities, mostly related to their roles of mothers and housewives:<sup>6</sup> accompanying the children to and from school, taking the children to the park, shopping and errands, talking to neighbours, going to the market, going to the post office or other administrative offices, going to the hospital... Several women mention the use of public transport, driving a car, day trips and foreign travel. Some women say that they would live a less social life if they could not wear the face veil, because they would not feel at ease in a number of circumstances. To the extent that some of the women avoid activities outside the house, this is mostly due to fear of aggressive reactions and/or of confrontation with the police (cf. *infra*).

Several interviewees express a self-image as very open or sociable persons. Many state that from their perspective, communication is perfectly possible. They recognize however that (anonymous) other people are often reluctant to address them. Yet several women told stories of how a conversation with an initially suspicious stranger turned into a positive exchange.

There is no evidence of these women distancing themselves from mainstream society as such. For example, the Belgian study noted that throughout their discourse, the women identify themselves as Belgian citizens, and Belgian politicians as 'our politicians'.

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<sup>6</sup> It should be noted that some of the interviewees have jobs, even though possibilities are limited for them on the job market. Some women take off the face veil at work. Jobs in which women can work wearing the face veil are in particular to be found in call centres.

### *Safety*

With respect to any safety risk that may be caused by face covering, it is important to note that among the interviewees, there is a general willingness to identify themselves to the police or other authorities by lowering their veil, thus showing their face. Many women are willing to identify to male as well as female officials.

While the objective safety risk caused by women wearing the face veil for others in their environment remains speculative, the safety risks in the other direction have been well documented in the French and Belgian studies. One of the most striking findings of these studies are the numerous reports of aggression women wearing the face veil confront from anonymous people in shops and public places. Most of this is verbal aggression with occasional physical aggression. For many women, these were not isolated incidents, but a fact of daily life, engendering a strong sense of unsafety. Many women report that they experience fewer or less serious aggressions when they are accompanied by their husbands than when they go about by themselves. In Belgium, several women experienced an increase in aggressive reactions since the introduction of face veil bans, with aggressive strangers explicitly referring to the ban. Fear of aggression, caused by accumulated experiences of aggression, causes some women to avoid going out by themselves, while others shift to part-time wearing of the face veil or abandon it altogether. The latter category- who abandoned the face veil because they could no longer bear the aggression – are left frustrated about this.

### *Gender issues*

The profile that emerges from the studies of women who wear the face veil in Europe, is not one of 'submissive' women. These are women who defied strong negative reactions in their immediate environment and who continue to defy such reactions in the public sphere, in order to be able to live the kind of life they have chosen. In that light, it ought not to be surprising that they express an image of themselves and of other women who wear the face veil as 'strong women'.

The Belgian study analyzed the interviewees' gender views. This shows a nuanced picture, with some women endorsing traditional role patterns and others rejecting the same.

Several women interpret the face veil ban as an attack on their freedom 'as women' and situate their struggle for the right to wear it within the broader struggle for women's rights.

### *Consequences of a Ban*

The Belgian study was undertaken in part after the entry into force of the nation-wide ban, and moreover included several interviewees who had been confronted with local bans. It shows a strong impact of police interceptions. Several women report experiencing a police confrontation as traumatizing. They cry and/or feel great embarrassment from being seen to be intercepted by the police.

In order to avoid police confrontations, many women avoid going out as much as possible, others only go out by car. Still other women reluctantly stopped wearing the face veil.

The feelings shown by interviewees about the ban include indignation, frustration, humiliation, and worries about how to live their lives from now on. Talking about the reasons behind the ban, many state that they do not understand the arguments, or that these do not make sense. Most interviewees experience the ban as an attack on their freedom and autonomy. Many interviewees express a feeling that Muslims or Islam are being targeted.

A prominent finding moreover is the interviewees' frustration that this political intervention in their lives took place without any knowledge of their lives and without consulting them or researching their situation.

#### 4. CONCLUSIONS FROM THE EMPIRICAL FINDINGS

##### 1. Bans on face coverings are partly based on erroneous assumptions

Analysis of the parliamentary debates leading up to the face covering bans in France and Belgium<sup>7</sup> shows a number of – sometimes implicit, but mostly explicit – assumptions, that are contradicted by the empirical findings.

- Both the French and Belgian legislator assumed that all or most women who wear the face veil are forced or pressured to do so. Women who choose to wear the face veil were hardly taken into account. While the empirical research does not allow to conclude whether or not (and if so, how many) women in Europe are being forced to wear a face veil, it clearly shows that for a significant number of face veil wearers, the face veil is the result of an autonomous choice.
- Both the French and Belgian legislator justified the ban at least in part by referring to safety arguments. In the light of the general willingness among face veil wearers to identify themselves by showing their face to persons in authority, the safety risk in the general public sphere appears exaggerated, if not unfounded. Instead, there appears to be a real safety risk for the women who wear the face veil, on account of aggressions by the public.
- Both the French and Belgian legislator justified the ban at least in part by referring to a concern of social cohesion ('le vivre ensemble'), assuming that women who wear the face veil are not able to and do not wish to interact with others in society. This appears to be erroneous, as – at least before the ban- women wearing a face veil were in fact interacting in numerous ordinary ways with the society at large.

##### 2. Bans on face coverings do not actually serve their stated purposes

On account of the above-described erroneous assumptions, the face covering bans do not permit to realize their stated goals, and in some cases even realize counterproductive effects.

- Because many women who choose to wear a face veil are strongly attached to it, many continue to wear it despite the ban, yet avoid going out. Hence, instead of increased social interaction, the effect for these women is a serious deterioration of their social life, their interactions with society at large, and their mobility.
- To the extent that aggression against women who wear the face veil has increased as a result of the bans, the bans' impact on objective safety has been a negative one.
- The provision in the French law that criminalizes persons who force another to cover her face, may contribute to 'liberate' women who are forced to wear a face veil against their will. Yet it is

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<sup>7</sup> Cf. Jogchum Vrielink, Saïla Ouald Chaib and Eva Brems, 'The Belgian 'burqa ban' Legal aspects of local and general prohibitions on covering and concealing one's face in Belgium' in *The Burqa Affair Across Europe: Between Private and Public*, Ashgate 2012; Jogchum Vrielink and Eva Brems, 'Uncovering French and Belgian Face Covering Bans', forthcoming in 2013. Texts can be obtained from authors.

not clear how the criminalization – in both the Belgian and French laws- of the women themselves would help these women. What is clear, is that for women who choose to wear the face veil, the ban implies a denial of their autonomy with respect to a matter of crucial importance to them, and hence is anti-emancipatory.

### **3. Bans on face coverings are disproportionate**

Both France and Belgium adopted bans on face covering that apply with very few exceptions in the very broadly defined public space, on the entire territory of the country, at all times. In that respect there is an essential difference between these face covering bans and headscarf bans, the latter applying only in specific situations, that are closely linked to the pursued purpose. The result is that to the –limited- extent that face covering bans may further the goals they intend to further, they are overbroad and hence disproportionate.<sup>8</sup>

- Safety concerns relating to picking up children at school, or to peaceful and regular presence on the streets or in shops are adequately addressed by the imposition of a duty to identify by showing one's face (and ID). Prior to the introduction of face covering bans, national law in both France and Belgium already provided for such a duty – and the police with the power to enforce it. Yet here may be specific contexts in which objective safety requires persons to be recognizable in addition to them being identifiable. To the extent that face covering bans are motivated by safety concerns, they should be limited in time and space to those contexts.
- In today's society there is a lot of social interaction in which people do not see each other's face (e.g. telephone, social media). Hence it cannot be said in general terms that seeing a face is a requirement for effective communication. Moreover, practice shows that women can communicate with their face veil. Nevertheless there may be specific contexts in which social interaction is unreasonably hampered by the covering of a person's face.<sup>9</sup> To the extent that face covering bans are motivated by concerns of communication and social interaction, they should be limited in time and space to those contexts.

### **4. Bans on face coverings deny procedural justice**

The French ban was preceded by extensive hearings and discussions in the 'Gérin commission'. Yet while this commission took care to include numerous perspectives (e.g. philosophical and legal), it grossly neglected the perspective of the women who wore a face veil in France. The commission heard one woman wearing a face veil, upon her own request. In Belgium, debates were hasty, and the proposal of expert hearings was rejected.

In a democratic society that highly values the principles of justice and human rights, it is problematic to make rules that specifically target a particular group of people, without engaging with these people and their views and experiences either directly or indirectly. We invite the Court to continue to emphasize in this case as in many others that special consideration should be given to the real

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<sup>8</sup> See ECHR, Ahmet Arslan v Turkey 22 September 2009, para. 49-52.

<sup>9</sup> E.g. wrt schools, Dutch Equal Treatment Commission, judgments 2003-40, and 2004-110 (www.cgb.nl).

needs and different lifestyles of vulnerable minorities, both in the development of normative frameworks and in reaching decisions in particular cases.<sup>10</sup>

## 5. HUMAN RIGHTS ISSUES INVOLVED

### *Religious Freedom*

Given the religious motivation of face veil wearers, and given the conclusions of the empirical findings as described above, we submit that the main human rights issue involved is a far-reaching blanket restriction of *religious freedom* (article 9 ECHR), which that cannot be considered proportionate to any legitimate aim.

It is particularly important for a supranational human rights court to attempt to do justice with respect to all the human rights issues involved in the case, in particular as reflected in the lived experiences of the applicants. From that perspective we submit that in addition to the article 9 ECHR analysis, it would be highly valuable if the Court's judgment were to address also the following issues:

### *(Indirect) discrimination*

So-called 'burqa ban' legislation concerns criminal law that – as the legislative history makes abundantly clear - is specifically targeted at a minority religious practice, yet formulated in neutral terms. The very fact of using neutral terms to 'cover up' the ban's target seems to indicate awareness of the problematic nature of the enterprise. Should the Court find that the measure in *S.A.S. v France* violates article 9 ECHR, we submit that there would still be added value in also examining the case as a case of deliberate indirect discrimination on grounds of religion, thereby unpacking the neutral disguise. We submit that it would be highly valuable to signal to minority groups throughout the Council of Europe, that the Court will see through any cover-up of deliberate state discrimination of minorities.

### *Intersectional discrimination*

A similar case can be made about deliberate indirect state discrimination of women. The two discrimination grounds are closely linked in practice, as this is one of many cases showing that culture wars in multicultural societies tend to be fought on a battlefield made up of the bodies, dress and behaviour of women. We therefore invite the Court to recognize this case as being about intersectional discrimination; meaning discrimination based on several grounds that interact with each other, and produce specific types of discrimination. As the empirical research shows, women wearing the face veil who are confronted with a ban on face covering, feel harmed both as believers and as women. The difference in treatment they experience cannot be reduced to either religion or gender, but is the result of a mix of both grounds. The (indirect yet rather explicit, cf. *supra*) target of the law is not 'all women manifesting their religion in ways that are perceived as extreme or that limit their freedom' – but rather the Islamic sub-category of that group. Indeed, women who join monastic life, even in monasteries that are closed to the outside world, are not the subject of any legal intervention. Nor is the target of the law 'Muslims showing in public a choice for a radically

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<sup>10</sup> See ECHR Grand Chamber, *Chapman a.o. v United Kingdom*, 18 January 2001, para. 96.

religious lifestyle through the way they look', but only the female subcategory of that group. Indeed, the wearing of Islamic dress and beards by men is not the subject of any criminal law. The discrimination takes place at the crossroads of religion and gender. That is how it is experienced by the persons concerned, and hence that is the preferable way for the Court to treat the matter.

#### *Stereotyping/stigmatization*

Similarly, the respective legislative histories make it quite clear that legislators enacting face veil bans have been endorsing stereotypes about women who wear the face veil as well as about Muslim women in general. It has been shown above that the legislators worked on the basis of a number of erroneous assumptions. It is –thankfully – rare to find contemporary European legislators working on the basis of such completely false premises. Lack of information about the situation they were addressing is part of the explanation. Yet we submit that the strength of negative stereotypes – stigmas- about women wearing conservative Muslim dress is an important part of the explanation as well. This is therefore a case that begs for a strong statement of the Court about the impact of harmful stereotypes on the enjoyment of human rights.<sup>11</sup> This statement might make clear that legislation based on harmful stereotypes and endorsing/perpetuating such stereotypes is suspect, in that it would require exceptionally weighty reasons for it not be found discriminatory.

#### *Vulnerable minority group*

A fascinating development which we applaud in the Court's recent discrimination case-law, is the insertion of the concept of 'vulnerable group'. The Court's view of some groups as 'particularly vulnerable' underscores the idea that members of certain groups are more likely than others to suffer harm or likely to experience it to a greater degree.<sup>12</sup> These harms range from misrecognition, to physical injuries and material deprivation. The first group that was recognized as vulnerable by the Strasbourg Court was the Roma minority who, "as a result of their history" – the Court held – "has become a specific type of disadvantaged and vulnerable minority" in need of special protection.<sup>13</sup> The next group was comprised of persons with mental disabilities. They have been regarded by the Court as a "particularly vulnerable group in society, who has suffered considerable discrimination in the past".<sup>14</sup> Most recently, the Court has expanded the list of vulnerable groups to asylum seekers and people living with HIV.<sup>15</sup>

We submit that women wearing the Islamic face veil in Europe constitute a vulnerable minority group. They are an extremely small group, that constitutes a minority within the Muslim minority in a particular country. They are grotesquely misrepresented by the majority and the broader Muslim minority is not able or willing to protect them. They are moreover subjected to aggressions from the public at large on a regular basis. Even without the adoption and enforcement of criminal legislation that specifically targets them, their situation is one of marginalization approaching persecution. We

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<sup>11</sup> See ECHR Grand Chamber, *Konstantin Markin v Russia*, para. 143.

<sup>12</sup> See Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law', paper on file with the authors.

<sup>13</sup> ECtHR (GC), *D.H. and Others v. the Czech Republic*, 13 November 2007; ECtHR (GC), *Oršuš and Others v. Croatia*, 16 March 2010.

<sup>14</sup> ECtHR, *Alajos Kiss v. Hungary*, 20 May 2010.

<sup>15</sup> ECtHR (GC), *M.S.S. v. Belgium and Greece*, 21 January 2011 (asylum seekers) and ECtHR, *Kiyutin v. Russia*, 10 March 2011 (HIV-status).

therefore invite the Court to apply its ‘vulnerable group’ reasoning in this case, reducing the state’s margin of appreciation accordingly.<sup>16</sup>

#### *Articles 8 and 10 ECHR*

‘Face veil bans’ tend to be formulated as bans on concealing or covering the face in public. Hence they apply to a large number of situations involving men as well as women, that present no link with religion. A reasoning based on religious freedom and/or discrimination on grounds of religion or gender does not address the question whether or not the application of a ban to such situations is justified. Even though this is not the situation presented before the Court, it would be useful - in order to avoid repetitive cases- to maximize the precedent value of the SAS judgment. This could be done by adding explicit reasoning under articles 8<sup>17</sup> and/or 10.

### **6. BRINGING IN CONTEXT: HOSTILITY AND DISCRIMINATION TOWARDS MUSLIMS IN EUROPE**

We submit that the case of SAS v France should be placed within its context: a context in which hostility and discrimination towards Muslims is on the rise in many European countries. This has been extensively documented amongst others by Amnesty International,<sup>18</sup> by former Council of Europe Commissioner for human rights Thommas Hammarberg,<sup>19</sup> by the European monitoring Centre on racism and Xenophobia,<sup>20</sup> and by the Organization of the Islamic Conference.<sup>21</sup>

Islamophobia was the context in which the Parliamentary Assembly of the Council of Europe situated face veil bans in its resolution 1743 (2010) on Islam, Islamism and Islamophobia in Europe. In this resolution the Assembly expressed its concern about “Islamic extremism as well as about extremism against Muslim communities in Europe. Both phenomena reinforce each other” (para. 1). In the recommendation with the same name, the Assembly called on member states *not* to establish a general ban of full veiling<sup>22</sup>.

We submit that the adoption and enforcement of a blanket, nationwide ban on face covering in public, that is accompanied by political rhetoric specifically targeting women wearing an Islamic face veil, without engaging with these women, is even more harmful in this context than it would have been without that context. What is more, it can be argued that the authorities by enforcing a blanket ban on face coverings and by using stigmatizing rhetoric, reinforce the existing negative stereotypes and Islamophobia among the broader public. We invite the Court to consider providing some indications in its judgment as to how states might deal with Muslim minorities in a context of Islamophobia. These might concern amongst others the need for states to avoid (giving the impression of) endorsing Islamophobia or negative stereotypes about Islam, as well as the need to

<sup>16</sup> See ECtHR Kiyutin v. Russia, 10 March 2011, para. 63.

<sup>17</sup> Cf. ECmHR, 22 October 1998, *Kara v. the United Kingdom*.

<sup>18</sup> *Choice and Prejudice; Discrimination against Muslims in Europe*, Amnesty International 2012, <http://www.amnesty.org/en/library/asset/EUR01/001/2012/en/85bd6054-5273-4765-9385-59e58078678e/eur010012012en.pdf>

<sup>19</sup> Thomas Hammarberg, *Human Rights in Europe: no ground for complacency*, Council of Europe 2011, p 36ss. [http://www.coe.int/t/commissioner/Viewpoints/ISBN2011\\_en.pdf](http://www.coe.int/t/commissioner/Viewpoints/ISBN2011_en.pdf)

<sup>20</sup> *Muslims in the European Union: Discrimination and Islamophobia*, EUMC 2006: [http://fra.europa.eu/fraWebsite/attachments/Manifestations\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Manifestations_EN.pdf)

<sup>21</sup> [http://www.oic-un.org/document\\_report/Islamophobia\\_rep\\_May\\_23\\_25\\_2009.pdf](http://www.oic-un.org/document_report/Islamophobia_rep_May_23_25_2009.pdf)

<sup>22</sup> PACE Recommendation 1927 (2010), para. 3.13

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/EREC1927.htm>

include minorities that would be affected by a planned measure in the discussions about that measure.

## 7. CONCLUSION

Face veil bans and their application are highly problematic from the perspective of the ECHR. This would be so in any case, but it is particularly so given the fact that the bans were adopted on the basis of erroneous assumptions and in a context of rising Islamophobia. The European Court of Human Rights has an opportunity to bring procedural justice in addition to substantive justice to the women wearing a face veil in Europe, by basing its judgment on empirical findings regarding these women. As this submission has shown, correcting erroneous assumptions on the basis of reality leads to question the stated purposes of face covering bans, as well as their ability to realize their stated purposes and their proportionality. Moreover, in addition to and/or in the context of an article 9 examination, the current case provides an opportunity for the Court to apply and/or finetune its case law regarding discrimination, stereotyping, and vulnerable groups.

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