
Sociology before the European Court of Human Rights? Religious claims and the "living together" issue.

Tania Pagotto*¹

¹Ca' Foscari University of Venice – Ca' Bottacin, Dorsoduro 3911 30123 Venezia, Italie

Résumé

Recently, the European Court of Human Rights reverted to the well-known ban on the Islamic veil in France. In doing so, the Strasbourg's judges in their legal reasoning went through a fresh issue: the "living together".

Indeed, in *S.A.S. v. France* (app. no. 43835/11), the Court took into account some sociological elements, in particular the necessity of interpersonal relations among citizens of the State. Calling into question the concepts of "social covenant", "respect for minimum requirements of life in a society" and "space of socialization" (see §§ 121–122), the Court held that wearing an integral veil run against an essential pillar of the society, i.e. the social interaction.

It is interesting that the Court, stating that the French ban on face covering is consistent with the Convention's provisions, did not appeal to the public order clause, as traditionally understood. Rather, it supports the idea of "non-material" public order and rely more on the need of the protection of the rights of others (perhaps the society as a whole?). In doing so, it seems to considerer people's faces as playing a pivotal sociological role in facilitating citizens to peacefully live together.

Given this scenario, I would like to:

- a) analyse the latest ECHR jurisprudence relating to religious claims, in order to evaluate if the "living together" issue has been developed by the Court gradually and try to understand its nature;
- b) contrast it with the vision of the Convention as a living instrument and explore if any consequences related to the relation of state and religion are foreseeable;
- c) investigate the significance of this issue in the light of the need of religious pluralism in the European States.

*Intervenant