

the European Union, and to guarantee the full effectiveness of the rights that flow from those principles, by disapplying, if need be, any contrary provision of national law. [Frank Cranmer]

doi:10.1017/S0956618X18001369

Lachiri v Belgium

European Court of Human Rights: Spano P, Lemmens, Karakaş, Vučinić, Gričco, Kjølbros and Mourou-Vikström JJ, 18 September 2018

[2018] ECHR 727

Hijab – court appearance – ECHR

Mrs Lachiri's brother had been assaulted and died of his wounds. His attacker was committed for trial on charges of assault and wounding resulting in unintentional death. She and other members of her family appealed against that decision to the Chamber of Indictments of the Brussels Court of Appeal, arguing that he should be tried for murder. On the day of the hearing, the court usher told her that she could not enter the hearing room unless she removed her hijab, the President of the Chamber of Indictments having so decided under Article 759 of the Judicial Code. Mrs Lachiri refused to comply and did not attend the hearing. Relying on Article 9 ECHR (right to freedom of thought, conscience and religion), she complained that her exclusion infringed her freedom to manifest her religion under that Article.

The Second Section noted that the hijab was a head covering rather than, as in *SAS v France* App no 43835/11 (ECtHR, 1 July 2014), a face veil. As to whether the impugned restriction was proportionate to the aim pursued and whether the reasons adduced by the national authorities were relevant and sufficient, the court noted that the applicant was a civil party, with other family members, in the context of criminal proceedings following the death of her brother. The facts of the case did not suggest that she had behaved at the courtroom entrance in a way that was disrespectful or a threat to the smooth running of the hearing. The need for the restriction at issue had not been established and the infringement of her Convention rights was not justified in a democratic society. Accordingly, there had been a violation of Article 9. [Frank Cranmer]

See above, pp 48–53, for a longer comment on this case.

doi:10.1017/S0956618X18001370