



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	Conseil d'Etat, 26 August 2016, Nos 402742, 402777
<b>Date:</b>	8 September 2016
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Legality of Municipal bylaws forbidding Islamic swimwear on the beach
<b>Ground of discrimination:</b>	Religion/belief
<b>Source:</b>	National court decision
<b>Field:</b>	Access to goods and services

### **Content**

**Case:** During the summer 2016, 31 seaside municipalities have adopted by-laws forbidding women attending the beach to wear Islamic scarfs and clothing covering their bodies, suits which have been identified as burkinis by the press.

A number of persons were fined in four towns on the Mediterranean coast and the police intervened in order to request that the persons leave the beach in six towns, which lead to important media coverage and indignation throughout the world. The available list of towns that have adopted such by-laws shows particular political pressure in the South of France.<sup>1</sup>

The Human Rights League (*Ligue des droits de l'Homme*) and the Coalition Against Islamophobia in France (*CCIF- Collectif contre l'islamophobie en France*) have initiated a petition to request that the by-law adopted by the town of Villeneuve-Loubet on 5 August 2016 on the basis of the Mayor's competence to secure beaches and protect public order, be quashed before the Administrative Court of Nice. They both allege that these by-laws are manifestly illegal and constitute grave violations of the right to manifest one's religion, to freedom to dress as one likes in the public space, and freedom of movement. In addition, they allege that these by-laws have no legal basis and that such restrictions to fundamental rights are not justified by specific local circumstances requiring that measures be taken in order to protect public order.

Their petition was dismissed by the Nice Administrative Court on 22 August 2016 (n° 1603508 et 1603523) and they appealed before the Conseil d'Etat (Supreme Administrative Court) on 23 and 25 August 2016.

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<sup>1</sup> Manche: Oye Plages and Le Touquet; Corsica: Sisco, Cagnano and Ghisonaccia; Mediterranean: Cannes, Fréjus, Menton, St-Jean Cap Ferrat, Roquebrune St-Martin, Cap d'Ail, Ste-Maxime, Théoule-sur-mer, Cavalaire sur Mer, Cogolin, Vallauris, Mandelieu- La Napoule, Leucate, Ste-Marie-de-la-mer, Cassis, La Ciotat, La Londe-les-Maures, Le Lavandou, Le Rajol, St-Laurent du Var.

**Decision of the Court:** On 26 August 2016, the Conseil d'Etat reaffirmed that mayors have the power to adopt by-laws of municipal police. However, they must implement their prerogatives in compliance with the requirements of fundamental rights guaranteed by law.

The policing measures that the mayor of a seaside town can adopt in order to regulate access to beaches and the practice of bathing, must be adapted, necessary and proportionate in consideration of the sole demands of public order, as they result from the geographic and timely context, and the requirements necessary to ensure proper access to the seaside, the safety of bathing, hygiene and decency on the beach. Mayors have no competence to take other factors in consideration and the restrictions they impose upon rights and freedoms must be justified by averted risks of violations to public order.

In the case at hand, the Conseil d'État stresses that no element has been put in evidence that would establish that risks to public order have resulted from the way some persons had dressed on the beaches of Villeneuve-Loubet. In the absence of such averted risks, the emotion and worry resulting from the terrorist attacks, such as that of 14 July in Nice, are not sufficient to justify legally the measure under scrutiny. In such conditions, the Mayor of Villeneuve-Loubet could not adopt such a by-law forbidding access to the beach and the sea on grounds that are not based on averted risk of violations to public order or of hygiene or decency. Therefore, the by-law adopted is null and void as it constitutes a grave violation of fundamental freedoms of worship, of movement and personal freedom, and is therefore manifestly illegal.

**Key points of analysis:** The Conseil d'Etat reiterates the right to freedom of expression of religious beliefs in the public space and strictly limits the legal capacity of intervention of mayors as regards personal freedoms, freedom of movement and freedom of expression of one's religious beliefs.

This decision has triggered considerable hostile reactions on the part of national political actors of all political orientations and of the Prime Minister in particular. They all assert that religious neutrality is part of French identity and announce their intent to intervene to impose some degree of religious neutrality in the public space by way of legislation. The only political actor in the opposition who has indicated that he would not intervene has been Presidential candidate of the Republican Party (*Parti Républicain*), Alain Juppé, and the only party that salutes this decision is the Green Party (*Ecologie les Verts*).

**Internet link source:**

<http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-ordonnance-du-26-aout-2016-Ligue-des-droits-de-l-homme-et-autres-association-de-defense-des-droits-de-l-homme-collectif-contre-l-islamophobie-en-France>