



Prohibition on building minarets in Switzerland: applications inadmissible

In its decisions in the cases of [Ouairi v. Switzerland](#) (application no. 65840/09) and [Ligue des Musulmans de Suisse and Others v. Switzerland](#) (no. 66274/09) the European Court of Human Rights has, by a majority, declared the applications inadmissible. The decisions are final.

The applicants complained that the constitutional amendment in Switzerland prohibiting the building of minarets was incompatible with the European Convention on Human Rights. The Court declared their applications inadmissible, on the ground that they could not claim to be the "victims" of a violation of the Convention.

Principal facts

The applicant in the first case, Mr Ouairi, is a Muslim who was spokesman for Geneva Mosque between 1978 and 2007 and is currently a member of the Fondation de l'Entre-connaissance (Inter-Knowing Foundation), based in Geneva. The applicants in the second case are three associations and a foundation established under Swiss law: Ligue des musulmans de Suisse (Swiss Muslim League), an association based in Prilly; Communauté musulmane de Genève (Geneva Muslim Community), a foundation; Association culturelle des musulmans de Neuchâtel (Neuchâtel Muslim Cultural Association); and Association genevoise des Musulmans (Geneva Muslims' Association). The applicant associations and foundations pursue the aim of providing social and spiritual assistance to Muslims living in Switzerland.

On 8 July 2008 a popular initiative "against the building of minarets", supported by the signatures of 113,540 Swiss citizens, was submitted to the Federal Chancellery (Swiss Government). The initiative sought a partial amendment of the Swiss Constitution to prohibit the building of minarets. On 28 July 2008 the Federal Chancellery noted that the initiative was valid. On 12 June 2009 the Federal Assembly (Federal Parliament) passed a decree confirming the validity of the popular initiative and deciding to submit it to the vote of the people and the cantons.

The referendum was held on 29 November 2009. 57.5% of those voting supported the initiative. Since the results were positive in 17 cantons and five half-cantons, the constitutional amendment was approved. The new Article 72, paragraph 3, of the Constitution reads as follows: "The building of minarets is prohibited."

Complaints, procedure and composition of the Court

Relying on Articles 9 and 14, all the applicants submitted that the prohibition on building minarets amounted to a violation of religious freedom and to discrimination on the ground of religion. Relying on Article 13, the applicant Mr Ouairi also complained that he had no effective remedy available to seek a ruling that the constitutional amendment in question was in breach of the Convention.

The applications were lodged with the European Court of Human Rights on 15 and 16 December 2009.

The decision was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
David Thór **Björgvinsson** (Iceland),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Articles 9 and 14 (all the applicants)

The Court pointed out that for an application to be admissible, it had to be lodged by an applicant who could claim to be the “victim” of a violation of the Convention (Article 34 of the Convention). This mainly concerned direct victims of the alleged violation, in other words the persons directly affected by the matters allegedly constituting the interference. However, the Court also accepted, in very exceptional cases, that certain persons capable of being affected by the matters allegedly constituting the interference could qualify as indirect or potential victims.

As far as the applicants in the present cases were concerned, the Court noted at the outset that their main complaint was that the disputed constitutional provision offended their religious beliefs; however, they did not allege that it had had any practical effect on them. In the Court’s view, they were therefore not direct victims of the alleged violation of the Convention. Nor were they indirect victims.

It remained for the Court to determine whether they could claim to be potential victims. The Court noted that the applicants had not argued that they might be envisaging building a mosque with a minaret in the near future. They had therefore not shown that the constitutional provision in question was likely to be applied to them. The mere possibility that that might happen at some point in the more distant future was not sufficient in the Court’s view. Accordingly, since the applications were solely intended to challenge a constitutional provision applicable in a general manner in Switzerland, the Court considered that the applicants had not shown that there were any highly exceptional circumstances capable of conferring on them the status of potential victims.

The Court further held that the Swiss courts would be able to review the compatibility with the Convention of any subsequent refusal to allow the construction of a minaret. It referred in that connection to a recent judgment of the Federal Court.

Accordingly, in both cases the Court declared these complaints inadmissible and dismissed them in accordance with Article 35 §§ 3 and 4 of the Convention.

Article 13 (Mr Ouardiri)

The Court reiterated that Article 13 did not guarantee a remedy allowing a State’s legislation to be challenged on the ground of being contrary to the Convention.

This complaint was therefore manifestly ill-founded. The Court thus declared it inadmissible and dismissed it in accordance with Article 35 §§ 3 and 4 of the Convention.

The decisions are available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.