



## Convicting a witness of contempt of court for refusing to remove his skullcap was not justified

In today's Chamber judgment<sup>1</sup> in the case of [Hamidović v. Bosnia and Herzegovina](#) (application no. 57792/15) the European Court of Human Rights held, by six votes to one, that there had been: **a violation of Article 9 (freedom of religion)** of the European Convention on Human Rights.

In 2012 Mr Hamidović, a witness in a criminal trial, was expelled from the courtroom, convicted of contempt of court and fined for refusing to remove his skullcap.

The Court found that there had been nothing to indicate that Mr Hamidović had been disrespectful during the trial. Punishing him with contempt of court on the sole ground that he had refused to remove his skullcap, a religious symbol, had not therefore been necessary in a democratic society and had breached his fundamental right to manifest his religion.

The Court pointed out in particular that Mr Hamidović's case had to be distinguished from cases concerning the wearing of religious symbols and clothing at the workplace, notably by public officials. Public officials, unlike private citizens such as Mr Hamidović, could be put under a duty of discretion, neutrality and impartiality, including a duty not to wear religious symbols and clothing while exercising official authority.

### Principal facts

The applicant, Husmet Hamidović, is a Bosnian-Herzegovinian citizen who was born in 1976 and lives in Gornja Maoča (Bosnia and Herzegovina).

The case concerned his refusal to remove his skullcap while giving evidence before the criminal court which was examining a case about the attack on the US embassy in Sarajevo in 2011. A member of a local group advocating the Wahhabi/Salafi version of Islam was eventually convicted during the proceedings of terrorism and sentenced to 15 years' imprisonment; two other defendants were acquitted. The accused all belonged to the same religious community, which opposed the concept of a secular State and recognised only God's law and court. The accused thus refused to stand up on entering the courtroom during their trial, and the presiding judge ordered their removal until they changed their minds.

In September 2012 Mr Hamidović, who also belonged to the same Wahhabi/Salafi community, was summoned to appear as a witness during the proceedings. On standing up to address the court, the presiding judge asked him to remove his skullcap. The judge explained that wearing a skullcap was contrary to the dress code for judicial institutions and that no religious symbols or clothing were permitted in court. However, Mr Hamidović eventually refused, claiming that it was his religious duty to wear a skullcap at all times. The judge therefore expelled him from the courtroom, convicted him of contempt of court and sentenced him to a fine.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In October 2012 the first-instance decision was upheld, an appeals chamber of the same court holding that the requirement to remove headgear on the premises of public institutions was one of the basic requirements of life in society and that in a secular State such as Bosnia and Herzegovina any manifestation of religion in a courtroom was forbidden.

The fine was subsequently converted into 30 days' imprisonment because Mr Hamidović had failed to pay. He served the sentence.

In July 2015 the Constitutional Court of Bosnia and Herzegovina fully accepted the reasoning of the domestic courts, finding in particular that fining Mr Hamidović for contempt of court had been lawful and did not breach his right to manifest his religion.

## Complaints, procedure and composition of the Court

Relying on Articles 9 (freedom of religion) and 14 (prohibition of discrimination), Mr Hamidović complained in particular that punishing him for contempt of court had been disproportionate.

The application was lodged with the European Court of Human Rights on 6 November 2015.

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

Ganna **Yudkivska** (Ukraine), *President*,  
Vincent A. **De Gaetano** (Malta),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Egidijus **Kūris** (Lithuania),  
Carlo **Ranzoni** (Liechtenstein),  
Marko **Bošnjak** (Slovenia),  
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

## Decision of the Court

First, the Court emphasised the fundamentally subsidiary role of the Convention mechanism, recalling that the national authorities were in principle better placed to evaluate local needs and conditions, especially where the relationship between State and religions were at stake. Therefore, the State should in general be given considerable room for manoeuvre ("wide margin of appreciation") in deciding whether and to what extent limiting the right to manifest one's religion was necessary.

However, Mr Hamidović's case had to be distinguished from cases concerning the wearing of religious symbols and clothing at the workplace, notably by public officials<sup>2</sup>. Public officials, unlike private citizens such as Mr Hamidović, could be put under a duty of discretion, neutrality and impartiality, including a duty not to wear religious symbols and clothing while exercising official authority.

Furthermore, the Court saw no reason to doubt that Mr Hamidović's refusal had been inspired by anything other than his sincere religious belief that he had to wear his skullcap at all times, without any hidden agenda to make a mockery of the trial, incite others to reject secular and democratic values or cause a disturbance. Indeed, unlike other members of his religious group during the trial, he had appeared before the court when summoned and had stood up when requested, thereby clearly submitting to the laws and courts of the country. There was moreover nothing to indicate that he had been disrespectful.

<sup>2</sup> See paragraph 40 of the judgment for examples of such cases before the European Court.

In those circumstances, the Court found that Mr Hamidović's punishment for contempt of court on the sole ground that he had refused to remove his skullcap had not been necessary in a democratic society. The domestic authorities had therefore exceeded the "wide margin of appreciation" afforded to them, in violation of Mr Hamidović's fundamental right under Article 9 of the Convention to manifest his religion.

The Court further found that there was no need to examine the case also from the standpoint of Article 14 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Bosnia and Herzegovina was to pay the applicant 4,500 euros (EUR) in respect of non-pecuniary damage.

#### Separate opinions

Judges De Gaetano and Bošnjak expressed concurring opinions and Judge Ranzoni expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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