

Hijab & Democracy: The Ways of, and Against Secular Fundamentalism

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**Protestors at IHRC vigil
outside French Embassy,
London, January 2004**

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FOREWORD

In December 2003, the French government confirmed that from the new school year in September 2004, ostentatious religious symbols were to be banned.

At the time of writing, 13 schoolgirls have been expelled from schools for refusing to remove their hijab – headscarves, a further 62 cases are pending. In Germany the Supreme Court has upheld a decision to ban teachers from wearing hijab in schools. Belgium is looking to copy the French laws and other European countries have started looking at these examples. In the UK, the High Court upheld a ban on the jilbab (long coat) at a Luton school and further cases have come the fore since.

This report is a compilation of briefings written for IHRC that were produced over the last year in response to these events, addressing good practice, where it has hitherto existed, and highlighting the breaches of international law and norms where it has become ever apparent in the last twelve months.

The attack on hijab is not new – indeed in France over the last decade it is estimated that 400 girls were expelled as a result of the licence granted to head teachers to ban hijab at school. Its sudden upsurge and the trend across Europe bodes ill for the rights of Muslim women to practice their faith and enjoy the same rights as their fellow citizens.

As the following chapters show, Muslim women in Europe have become the latest targets of resurgent prejudice that combines misogynistic precepts with racist and Islamophobic rhetoric.

Islamic Human Rights Commission

CHAPTER ONE

Muslim Women, Human Rights and Religious Freedom: Europe Under the Spotlight of National and International Law

Introduction

In December 2003, French President Jacques Chirac declared his support for a law that would ban the hijab (the headscarf worn by Muslim women) and other 'ostentatious' symbols of religious expression from all public schools. As the rest of the world geared up to show disgust at this flagrant violation of basic human rights, certain other European countries, such as Germany and Belgium, echoed calls for legislation along similar lines. In an increasing determination to uphold the values of secularism, considered to be under threat by the 'aggression' of religious belief, the governments of so called civilised, pluralistic societies are abandoning the core of human rights principles enshrined in the treaties that they themselves have ratified.

The idea of human rights is that people make national laws in so far as they are compatible with the fundamental values enshrined in certain treaties – freedoms that are considered so important as to transcend the vagaries of human decision making. A brief look at, inter alia, the European Convention on Human Rights, will reveal that freedom of thought, conscience and religion is one of the most basic of all human rights that must be protected by states. Yet, perhaps it is one of the greatest ironies that as we witness the emergence of international human rights standards to protect the diversity of an increasingly globalised world, we are also witnessing a congruent willingness to accept of the violation of these fundamental standards.

Proposals

Whilst a debate relating to the wearing of the hijab could be expected in countries such as Tunisia and Turkey (i) where the issue has been controversial for some time, it is perhaps surprising that the debate has come to Europe – in countries traditionally considered as the champions of rights and freedoms. In this briefing, the cases of France, Germany and Belgium will be considered. However, it is important to note that similar issues have been raised in countries as diverse as Norway (ii), the UK (iii) and Canada (iv).

a. France

In December 2003, French President Jacques Chirac, following the recommendation of a Commission headed by Bernard Stasi to look into the issue, decided to support a new law to ban 'conspicuous' religious signs from state schools. Earlier in the year, French Prime Minister Jean-Pierre Raffarin had already shown his support for the view that state educational institutions were no place for the 'ostentatious expression of religious affiliation,' declaring that, 'schools cannot be a place to express religious commitment or launch political or religious propaganda'.

On 10 February 2004, a bill containing proposals for legislation to this effect, passed its first reading in Parliament with 494 parliamentarians voting in its favour. The bill would prohibit the wearing of the Muslim headscarf, Jewish kippa, Sikh turban and large crucifix in state schools. During its passage, Parliamentary Speaker, Jean-Louis Debré, a member of the ruling UMP party, stated, '[w]hat is at issue here is the clear affirmation that public school is a place for learning and not for militant activity or proselytism'. There were only 36 votes opposed to the legislation largely on the grounds that it was discriminatory against Muslims. The bill is now set to be

debated in the Senate in March 2004 and will then return to the lower house of Parliament for final approval – a mere formality since both the UMP and the opposition Socialists are in favour of it. It is set to be implemented from September 2004 – the next academic year and will be in place for one year, following which it will be reviewed.

The reasoning behind the legislation is based on the notion that France's principles of long-established secularism are under threat without such a law. Secularism, it is claimed, is crucial to the social harmony and national cohesion of France and its citizens. According to statistics, up to 70% of public opinion in France supports this ban and indeed, this is the culmination of a long history of incidents in France concerning the hijab beginning over a decade ago(v).

b. Germany

This controversial issue has not remained specific to France. In September 2003, the highest Court in Germany ruled that a regional state was wrong to ban a teacher from wearing a headscarf in school. The state had argued that a teacher with a headscarf violated 'the strict neutrality of public schools in religious issues'. The Court ruled that states must find 'arrangements acceptable for everyone' in striking a balance between religious freedom and neutrality in schools. However, the Court went on to declare that states could take such action to prevent undue influence on children but the matter was too contentious to be decided on an ad hoc case by case basis - thus seemingly leading the way for legislation on this issue.

In October 2003, 7 of the 16 regional states in Germany showed support for the view that the hijab should be banned from public schools. Subsequently, on 9 December 2003, the government of Bavaria unveiled a draft law prohibiting the wearing of the hijab in public schools. The Bavarian Minister for Education, Monika Hohlmeier, declared that in doing so, Bavaria was 'defending pupils against a potential fundamentalist influence and...respecting the wishes of the majority of the parents'. In order to take effect, the draft measure must be ratified by the regional parliament, regarded as a formality because of the support of Christian Democratic Union majority.

In Germany, unlike in France, the debate is focused on the essential Christian nature of the country. Thus the law is specific to the hijab and will not ban Christian and Jewish religious symbols. In justification of this, the Regional Culture Minister, Annette Schavan declared that the state constitution placed Christian and Western values and culture at the heart of the education system. She further justified the ban by claiming that the headscarf is 'seen as a symbol of cultural division and part of a history of oppression of women.'

President Joahannes Rau stated his opposition to the discriminatory nature of the laws, stating, '[s]tate schools must respect each and everyone, whether Christian or pagan, agnostic, Muslim or Jew...If the headscarf is an expression of religious faith, a dress with a missionary character, then that should apply equally to a monk's habit or a crucifix.' Edmund Stoiber, Bavarian state prime minister and head of the Christian Social Union, Germany's main opposition in parliament, responded by stating that the President had no right to 'cast doubt on our national identity, distinguished by the Christian religion', further describing Islamic headscarves in schools as 'a political symbol incompatible with our democracy'. Other German states planning similar legislation are Baden-Wuerttemberg, Brandenburg, Lower Saxony, Berlin, Hesse, and Saarland (the latter three are proposing to extend the prohibition to all public institutions).

c. Belgium

Similarly, in December 2003, two Belgian Senators presented a draft law to the Belgian Senate to prohibit the wearing of the hijab and other overt religious symbols in state schools. The ban is once again being enforced in the name of secularism, Interior minister Patrick Dewael noting, '[t]he government should remain neutral...in all circumstances and be represented as such...that

means no distinctive religious symbols or veils for police officers, judges, clerks or teachers at public schools'. Furthermore, Senator Anne-Marie Lizin offended Belgium's nearly 350,000 Muslims (mainly from North Africa and Turkey) by saying that the ban was needed to oppose Islamic sexism, as 'the veil amounts to the oppression of the individual in the name of religion'.

Even though the legislation is yet to take effect, there have already been incidents of enforcement of a hijab ban. In September 2003, a French speaking school near Brussels banned its students from wearing the hijab. Five public hospitals in Brussels and certain medical schools have also already banned the wearing of hijab by their staff or students.

Violations of Law

The question arises as to whether such a ban would be in violation of national law as well as the numerous international human rights treaties to which France, Germany and Belgium are signatories. The countries' national constitutions and domestic laws contain provisions relating to the freedom of religion and freedom from discrimination. At a regional level, the ban may violate the European Convention of Human Rights (ECHR), which provides substantive protection for an individual's rights and provides enforcement mechanisms where states fail to act in the protection of fundamental freedoms.

National Law

In France, under the 1905 Act separating the Church and the State, Section 1 declares, '[t]he Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order.' Furthermore, the 1958 French Constitution provides, 'France is an indivisible, secular, democratic and social Republic; it shall ensure the equality before the law of all citizens, without distinction as to origin, race or religion. It shall respect all beliefs.' (A.2). Further, the Constitution goes on to guarantee the autonomy of individuals before the law, claiming that '[A]ll citizens shall be equal before the law, regardless of their origin, race or religion. They shall have the same duties' (A.77). The German Constitution contains similar provisions. A.3(3) states, 'Nobody shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinion'. A.4 explicitly provides freedoms relating to religion - A.4(1) states that freedom of creed, of conscience, and freedom to profess a religious or non-religious faith are inviolable. Further, 'the undisturbed practice of religion is guaranteed' under A.4(2). The Constitution also provides that, 'equal enjoyment of civil and political rights, eligibility for public office, and rights acquired in the public service are independent of religious denomination. No one may suffer any disadvantage by reason of his adherence or non-adherence to a denomination or to a philosophical persuasion' (A.33).

Similarly, under A.11 of the Belgian Constitution, '[e]njoyment of the rights and liberties to which Belgians are entitled must be safeguarded without discrimination. To this end, laws and decrees shall guarantee especially the rights and liberties of ideological and philosophical minorities'.

International Law

a. Freedom of thought, conscience and religion

The Universal Declaration of Human Rights 1948 spoke of the 'advent of a world in which human beings shall enjoy freedom of speech and belief'. Freedom of thought, conscience and religion is considered a fundamental human right. Indeed, as noted by the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief 1981 ('1981 Declaration') 'religion or belief, for anyone who professes either, is one of the fundamental elements of his life' (vi). Under the A.9(1) of the ECHR,

Everyone has the right to freedom of thought, conscience and religion; this right includes...freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance (vii).

The European Court of Human Rights has consistently stated that this right is at the core of a democratic society, claiming that '[i]t is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been won over the centuries, depends on it' (viii).

The second part of A.9(1) protects the freedom to 'manifest' ones religion or belief 'in public or in private, alone or with others'. The manifestation may include 'worship, teaching, practice or observance'. In *Vereniging v Netherlands*, (ix) the European Commission of Human Rights stated 'A.9 primarily protects the sphere of personal beliefs and religious creeds....[i]n addition it protects acts which are intimately linked to these attitudes such as acts of worship or devotion which are aspects of the practice of the religion or belief in a recognised form'. Indeed, in *Mannousakis v Greece* (x), the Court held that the right of manifestation of belief excludes the discretion of states to determine 'whether religious beliefs or the means used to express them are legitimate'.

Under A.9(2) ECHR, '[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of rights and freedoms of others'. Indeed, the right enshrined in A.9 is so fundamental that the limitations in A.9(2) are even narrower than those relating to the freedom of expression, association and assembly contained in the ECHR. The European Court has consistently stated that there must be a narrow construction of these limitations together with a broad interpretation of the freedoms guaranteed. Any restrictions on freedoms must be 'construed strictly' and can be justified only by 'convincing and compelling reasons' (xi).

It is fundamental to remember that, to a Muslim woman, the wearing of the hijab is not merely a personal display of faith – it is an obligation imposed by her religion. Proponents of the ban claim that the hijab cannot be tolerated in a secular state educational system because the mere fact of wearing it amounts to proselytism. Yet for those who wear it, it is simply a matter of personal obedience to God. It is also imperative to remember that even if evidence is adduced to show that the hijab amounts to proselytism – this is not a legitimate reason under international human rights law to ban it from being worn. In fact, such a manifestation of one's religion would be protected under ECHR provisions relating to freedom of expression. A.10 ECHR provides that this right includes, 'freedom to hold opinions and to receive and impart information and ideas without interference'. This right is often considered the cornerstone of personal freedom and is vigorously upheld. Indeed, the Court has stated that it 'constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man' and applies to the freedom to express an opinion, even when it might 'offend, shock or disturb' (xii). In reality, this is the same freedom of expression advocated by European countries which criticise states such as Saudi Arabia or Afghanistan for their human rights standards. Human rights law is not specific to culture or country – it exists precisely to contradict every form of state oppression - whether it be in the name of religion or secularism.

A further argument being made to support the ban is that children's autonomy is being overridden by parents and communities who are coercing them into wearing the hijab. However, once again, there is little evidence to support this and even if this is the case – it is impossible to justify replacing parental control over a child's actions with state control over the dress of individuals of an entire section of the community. Indeed, the idea of human rights is based on the notion that for each individual there is an area of personal liberty immune from state invasion. In recognition of this principle, A.2 of the First Protocol to the ECHR (1952) (to which

France, Germany and Belgium are signatories) states, '[n]o person shall be denied the right to education...the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'. This is one example of the intention of international legislation to endorse the right of parents to protect children against the use of educational institutions by the state for ideological indoctrination of its own ideas. It seems that while the apparently proselytising nature of the hijab is being criticised by state authorities, the same authorities are also engaging in their own form of proselytism by banning religious symbols – that of furthering their own secular agenda. This has particularly serious consequences if we remember that it is precisely in the human mind that attitudes and prejudices take form. By imposing the fictional absence of religion in schools that exist within a multi-faith society, it is arguable that the Government is simply promoting the development of uniform intolerant attitudes within young minds.

b. Freedom from discrimination

Under the ECHR, the limitations on freedom under A.9(2) are subject to A.14 which provides that Convention rights 'shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' (xiii) The European Court has stated that discrimination on the basis of certain grounds, such as race and sex, is particularly serious and has stated that 'very weighty reasons' would have to be advanced before such treatment could be regarded as compatible with the Convention (xiv). A ban on the hijab, turban and kippa is unfairly discriminatory towards particular ethnic groups – namely Jews, Sikhs and generally Muslims from a particular racial group. Furthermore, in Germany, the ban is only applicable to the hijab and specifically excludes Jewish and other religious symbols – a clear instance of religious discrimination. Although Germany has purported to justify this on the grounds of the Christian nature of the country, it is unlikely that the European Court will consider Germany's margin of appreciation in interpreting the ECHR wide enough to allow such flagrant discrimination.

Furthermore, a ban on the hijab would clearly affect women for whom this religious dress is considered mandatory under Islam. The Convention on the Elimination of all Forms of Discrimination Against Women 1979, to which France, Germany and Belgium are signatories, provides that the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women...on a basis of equality of men and women, of human rights and fundamental freedoms...' (A.1). A.2 places an obligation on states to 'condemn discrimination against women in all its forms' and 'to pursue by all appropriate means and without delay a policy of eliminating discrimination against women...'

c. The right to education and work

The right to education is recognised in many major human rights instruments, including the Convention on the Rights of the Child 1989 (A.28) and CEDAW, which provides for equal rights for men and women the field of education (A.10) and employment (A.11) (xv). UNICEF has recently reported that millions of children worldwide are still denied the basic right to education – with gender disparity ensuring that the majority of those children (65 million) are girls (xvi), many of them being in the Arab states or sub-Saharan Africa. Perhaps it is then ironic that the ban on headscarves in public schools will deny girls access to schooling in countries of the so-called 'developed' world. No child should have to choose between practicing the tenets of their faith and acquiring a basic education – yet for Muslim girls in certain European countries – this may be the stark choice that they face.

Furthermore, for the proponents of the ban to argue that the hijab inhibits the successful integration of Muslim girls into French society is paradoxical. Integration is, after all, a two way process. France cannot expect Muslim girls to become its integrated citizens while marginalising

them by effectively denying them education. A ban would lead to increased educational exclusion, lack of employment opportunities and thus social deprivation - ironically adding to the myth of the 'oppressed' Muslim woman in a veil. The end result would be the creation of an 'apartheid' system in the heart of Europe – discrimination against a group of citizens who are denied education (or forced into substandard educational systems) and effectively the right to work thus forcing them into a spiral of economic and social isolation.

Remedies

Under CEDAW, states must implement measures to abolish all discriminatory laws and ensure the effective protection of women against discrimination. CEDAW does not give an individual the right to complain against discriminatory treatment – it merely requires states to submit a report to its Committee at least every 4 years indicating the measures they have adopted to give effect to the provisions of the CEDAW. The Committee discusses these reports and action to be taken with the country concerned. The idea is that a report will force states to undertake a self evaluating exercise and result in an improvement in the law. The reality is that reports can often lack detail and the Committee has no force of its own to ensure that a report is submitted on time or to enforce its rulings (xvii). This reporting mechanism has been used in the past by CEDAW to criticise the gender disparity in the social and economic treatment of women in, for example, Arab states. It remains to be seen whether such critical treatment will be voiced by UN bodies on the current prejudicial treatment of girls facing a hijab ban in European countries.

In contrast to CEDAW, the ECHR has well developed enforcement machinery enabling an individual who believes his rights have been violated to bring a case before its Court in Strasbourg. Whilst an increasing number of cases are being taken to the Court, the process is not ideal – it can be costly and time consuming because all remedies before national courts must be exhausted first. Thus, even if a girl seeking to challenge the hijab ban in France knows that she will not succeed in French Courts, she must take her case up to the highest Court in France (a process which may take years) before she is able to make an application to the European Court in Strasbourg. Furthermore, the Court receives a large number of applications and it can take several years for a case to be decided. Added to this, many cases which are lodged before the Court are declared 'inadmissible' on various criterion and therefore do not even get to the Court for a full hearing. Finally, a problem that may be of significance in this area is that a ban of religious symbols in schools concerns children. Under the ECHR, children are unable to make a claim to the Court directly – an application must be made by an adult on their behalf.

It is important to remember that it is states that have primary responsibility for enforcement of human rights standards, which must be protected first and foremost, at the national level. By its citizens, law is seen as the principle carrier of the values shared by the community and national laws must not become neglectful when it comes to the protection of individual rights. It is only where national laws fail that international law has its most crucial role to play – to step in and safeguard fundamental freedoms that would otherwise be overridden.

Conclusion

In a multi-faith society, commitment to tolerance implies respect and public recognition of all. It seems that in the debate on the Muslim hijab, this small piece of cloth has become a symbol on which to project an intensification of peoples' fears, anxieties and generalisations. France and other European countries need not be concerned that their ideals are under attack - indeed they should aspire to become nations that celebrate diversity. In a world facing increasing ideological conflicts, it seems that a person's right to religion is likely to become the next major testing ground for the success or failure of human rights law as the divine and the secular world collide or learn to co-exist.

Endnotes

i In 1999, in one of the most shocking aspects of its implementation, a democratically elected MP from Istanbul, Merve Kavakci, was publicly forced out of her elected position in the Turkish Parliament for refusing to remove her hijab.

ii In Norway, the Progress Party's deputy leader Siv Jensen raised a debate along the same lines as in France. However, he did not propose the prohibition of religious symbols such as the crucifix, turban or calotte because according to him, the hijab was not considered a religious symbol but a political one.

iii On 29 January 2004, Liberal Democrat MP Dr. Evan Harris declared that he would support a ban similar to the one proposed by the French Government's symbols in state schools.

iv In September 2003, a Muslim teenager was expelled from a private school in Quebec for wearing her hijab. In 1995, the Quebecan Human Rights Commission had declared that banning headscarves from school contravened the Quebecan Charter of Human Rights and Freedoms.

v In 1989, 3 Moroccan girls were denied admission to the Caprielle Hafaz Institute in Paris for wearing the hijab. Since then there have been over 400 'veil problems' according to statistics released by the French Le Nouvelle Observateur. In November 2003, a 12 year old was expelled from school in Northern France as she refused to respect the school rules by insisting on wearing clothes 'of ostentatious religious sign on purpose to harass her colleagues, which runs counter to the secular nature of the school.'

vi Preamble, para. 4.

vii This is also guaranteed by the 1981 Declaration. Further, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities 1992 provides that 'States shall protect the existence and the...religious...identity of minorities within their respective territories' (A.1). Further, it provides that minorities have the 'right to enjoy their own culture, to profess and practise their own religion...freely and without any interference or any form of discrimination' (A.2).

viii Kokkinakis v Greece, 25 May 1993, p.31.

ix (1995) App. No. 16616/90

x 23 EHRR 387 (1996)

xi United Communist Party of Turkey v Turkey, 30 January 1998

xii Handyside v UK (1976), para. 49

xiii The 1981 Declaration recognises the gravity of discrimination, noting that '[d]iscrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and...a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights' (A.3).

xiv Inze v Austria, App. No. 8695/79

xv Belgium in its Country Report to the Committee on the Elimination of all Forms of Discrimination Against Women noted that it will promote initiatives 'that will promote the emancipation and integration of women of foreign origin, within a spirit of inter-cultural dialogue', Combined third and fourth periodic reports, 2002, p.6

xvi State of the World's Children 2004, Ch.3.

xvii On a more positive note, a 'Communications Procedure' has recently been established which gives individuals and groups of women the right to address complaints directly to the Committee. Furthermore, an Inquiry procedure now enables the Committee to conduct inquiries into grave or systematic abuse of women's human rights in countries - Optional Protocol to CEDAW passed by the UN General Assembly in 1999, signed by Belgium and ratified by France and Germany.

CHAPTER TWO

Good Practice on the Headscarf in Europe

An examination of how various European countries have tried to integrate headscarf-wearing women into the education and work sector by taking steps to accommodate their religious practices.

Introduction

Earlier this month, the French parliament decided to impose a ban on the Islamically prescribed headscarf and all religious symbols in state schools. Once this law is passed, Muslim girls will be denied many fundamental rights including the freedom to practice one's religion, the right to education and to work.

The French government's main contention is that the headscarves threaten the secularity upon which French society has been built. However, many other countries, which would consider themselves secular, have not thought it necessary to prohibit the headscarf in order to preserve the secularity of the state. In fact, many of these secular countries have introduced "best practice" policy measures regarding religious discrimination which encourage Muslim women in headscarves to integrate more in society.

United Kingdom

It is not forbidden to wear the headscarf, kippa or turban in schools. The Department of Education and Skills have said that rules on dress codes and symbols are not its responsibility but that of the governors of each school. However, this stand can cause confusion. The wearing of the kippa and turban is protected by the Race Relations Act 1976 under which Jews and Sikhs are considered racial groups. This does not apply to Muslims and there have been sporadic cases, such as in Luton and Peterborough, in which schools have attempted to ban headscarves or persuade Muslim girls not to wear them, usually from a belief that they disrupt the school environment. The Commission for Racial Equality (CRE) this month determined that a headscarf ban imposed by a school in Luton constituted 'indirect racism.' The school in question subsequently announced that it would be overturning its headscarf ban as of this summer.

British Deputy Foreign Secretary Mike O'Brien recently declared that, unlike France, Britain would not ban the headscarf and other religious symbols in state schools. At a meeting he had with Muslim groups, O'Brien said that France handled this issue differently due to its culture and history. "Integrity does not need assimilation. The British identity can hold together different nations and cultures and the differences are a part of Britain's power," O'Brien said. However, in the absence of appropriate legislation, a policy on best practice measures is necessary to alleviate this problem.

The Metropolitan Police Force (MPF) also allows police officers to wear uniforms according to their beliefs. In the London MPF, with 28,000 employees, there are approximately 500 civil servants also working there. Muslim women were given the right to wear their headscarves at the MPF in June last year. Muslim policewomen are now allowed to wear headscarf and the ankle length gown.

In 2000, new Home Office guidelines were issued allowing Muslim women to cover their heads with the hijab, or headscarf, on their passport photographs. The new guidelines state that: "Provided that photographs show the full face... photographs should not be rejected where a

religious head-covering is worn.” The guidelines followed the case of a Muslim woman having an application to renew her passport rejected at the British High Commission in Singapore because she was wearing hijab. The refusal led Fareena Alam to campaign for her right under Britain’s 1976 racial equality act, which allows Muslim women to be exempt from removing their head scarf as it would be judged as indirect racial discrimination. For more information see, ‘Issuing of passports to British Muslimahs wearing hijab’ 11th April 2000 at: <http://www.ihrc.org.ukshow.php?id=144>

Ireland

Like the UK, rules regarding dress codes are not the responsibility of the Department of Education but that of the governing authorities of each school. Nevertheless, both the Irish Constitution and the Equal Status Act 2000 prohibit discrimination on various grounds including religious belief in the provision of goods, services and facilities. The Employment Equality Act also prohibits discrimination in employment on grounds of religious belief.

A single equality body, the Equality Authority was established under the Equal Status Act to work towards the elimination of conduct prohibited under equality legislation. It works to promote equality of opportunity in relation to matters covered under the legislation and to provide information to the public on the workings of the legislation. There have been several incidents of Muslim schoolgirls being denied access to schools due to their wearing of the headscarf. However, these cases have been speedily resolved by the Equality Authority which advised the relevant schools of the illegality of their rules.

A recent development has been the creation of a Racial and Intercultural Office within the Garda police force. Its functions include monitoring, co-ordinating and advising on all aspects of policy in areas of racial, cultural and ethnic diversity. It recently announced that it intended to incorporate the headscarf as part of the uniform to encourage Muslim women to join the force. In contrast to accommodation of headscarves by the UK police, the Irish plans for accommodation were an initiative of the police itself. There was neither pressure nor demand from any minority group or organisation to do so, nor by individual Muslims. The Garda Racial and Intercultural Office recently won an award of €30,000 as an innovation prize from the EU.

The Garda Racial and Intercultural Office has also been instrumental in efficiently tackling at least 2 incidents where Irish Muslim women were refused passports due to their wearing of the hijab. It swiftly resolved the issue in favour of the women after contacting the Department of Justice.

Italy

There have not been many reported headscarf problems in Italian schools so far. Three years ago, Muslim women organized a protest meeting in Turin when it was stipulated that foreign women had to give photos without headscarves in order to get a residence permit. To avert tension in the country, the Italian Foreign Ministry issued a circular allowing Muslim women to wear their headscarves in ID photos just like Catholic nuns.

One of the reasons that there are fewer headscarf problems in Italy may be due to the existence of a tolerant secularism concept. The secretary-general of the Union of Islamic Communities and Organizations in Italy (UCOII), Hamza Roberto Piccardo, who is of Italian origin and a Muslim as well, said the Italian Constitution secures the freedom of worship for all its citizens, hence Muslims can fulfil their religious obligations without any difficulty. (i)

Norway

In January 2004, a Norwegian furniture store A-mBler, which fired a Muslim woman because she refused to take off her traditional headscarf, overturned its decision, and reinstated the woman. The store stated that the headscarf breached the store's clothes code, which, among other things, prohibits the use of hats and other headgear. The Gender Equality Ombud held that A-mBler could not prohibit employees to wear headgear unless it was a danger for life and health.

Sweden

In Sweden, with a Muslim population of 350,000, the largest among northern Europe countries, few headscarf problems have occurred. In Gutenberg last year, two girls wearing 'burqa' could not go to their schools as a result of the school administration's objection. The problem was however solved because the girls agreed to take off their burqas during the examination periods.

Denmark

In Denmark, headscarf is free in public domain, partially banned in private sector. Students are allowed to attend junior high schools and universities with their headscarves. Teachers in Denmark also have the right to wear the headscarf in schools. There is no problem experienced in the public sector.

During the summer of 1999, in a high-profile case, the two largest Danish chains of supermarkets, FDB and Dansk Supermarked, stated that they did not wish to employ Muslim women wearing headscarves to work at check-out desks or other visible places in stores. They claimed that headscarves were unhygienic and not compatible with their principles concerning uniforms. According to the Minister of Labour, this contravened the law on discrimination.

The present Minister of Labour, Ove Hygum, has stated in a letter sent on 5 August to the retailers and trade unions concerned that the law on discrimination in employment is violated "if an employer forbids an employee to wear religiously motivated headgear, when the employer's regulations on uniforms do not contain rules on headgear".

In the year 2000, Islam Amin Bahtiyar, who was denied the chance to be a sales trainee at a store due to her headscarf, resorted to the law. Pointing out that Bahtiyar wore the headscarf as a consequence of her belief, the Odense City Court decided that the store discriminated against her and imposed a fine of 10,000 kronas as compensation.

After this decision, many businesses started preparing special uniforms for their employees wearing the headscarf. McDonalds, Toms Chocolate Factory and Coop Denmark Companies are among these firms. Special uniforms for nurses with headscarves have also been designed. The Defence Ministry has also started to prepare designs suitable for the headscarf, turban and kippa.

Minister for Migration and Integration, Bertel Haarder said the following on the issue: "I am not the minister responsible for the headscarf. What interests me more is the people's integration in the country rather than their clothes." Underlining that the headscarf is a personal right and freedom, Haarder said: "If we ban the headscarf in schools, then we have to ban Christmas celebrations and Jewish symbols. We do not have such a prohibitive mentality. While trying to drag the Muslim women from their houses and put them in the business sector, the headscarf ban will mean double-standards and the Muslim women will be isolated from the society. We will not support such a decision."

Belgium

The Interior Ministry, according to the notification it sent to schools, leaves the option on the headscarf ban to the schools. While some schools enforce the headscarf ban, some do not. In cases taken to Belgian courts, the verdicts so far have mostly been in favour of wearing the headscarf. In 1989, the Education Ministry of the French-speaking Belgium Society issued a notification in a case concerning 50 headscarf-wearing girls and declared that it was 'difficult' to ban headscarves in schools. However, the ministry banned the chador (veil covering the whole face).

It is alarming in this context that Belgian Senators Socialist Anne-Marie Lizin, and Liberal Alain Destexhe have proposed a bill mirroring France's attempt to ban religious symbols in schools. Many commentators see the move as an attempt to regain popularity from far-right parties in the run-up to Belgium's general elections.

Austria

Again, fewer problems have been experienced on the headscarf issue in Austria, where Islam is accepted in legal and social terms, with the Law on Islam adopted in 1912. This is because religion and the state are not separated in Austria, both Islam and Christianity are among the religions recognized officially.

A female teacher wearing a headscarf can teach in schools. Meanwhile, an official establishment, which could be described as a kind of 'religious affairs directorate,' intervenes whenever required to solve possible problems.

Germany

Although there have been cases involving Muslim students wearing headscarves, the debate in Germany has primarily centred on Muslim teachers wearing headscarves. In September 2003, the highest Court in Germany ruled that a regional state was wrong to ban a teacher from wearing a headscarf in school. The state had argued that a teacher with a headscarf violated 'the strict neutrality of public schools in religious issues'. The Court ruled that states must find 'arrangements acceptable for everyone' in striking a balance between religious freedom and neutrality in schools. However, the Court went on to declare that states could take such action to prevent undue influence on children but the matter was too contentious to be decided on an ad hoc case by case basis -thus seemingly leading the way for legislation on this issue.

In October 2003, 7 of the 16 regional states in Germany showed support for the view that the hijab should be banned from public schools, with 3 proposing to extend the ban to all public institutions. Subsequently, on 9 December 2003, the government of Bavaria unveiled a draft law prohibiting the wearing of the hijab in public schools. The Bavarian Minister for Education, Monika Hohlmeier, declared that in doing so, Bavaria was 'defending pupils against a potential fundamentalist influence and respecting the wishes of the majority of the parents'.(ii)

In Germany, the debate is focused on the essential Christian nature of the country. Thus the law is specific to the hijab and will not ban Christian and Jewish religious symbols. In justification of this, the Regional Culture Minister, Annette Schavan declared that the state constitution placed Christian and Western values and culture at the heart of the education system. She further justified the ban by claiming that the headscarf is 'seen as a symbol of cultural division and part of a history of oppression of women.' The argument goes that the headscarf operates to isolate Muslim girls from the other students. This begs the question as to what measures will be taken to integrate students of different ethnic backgrounds with ordinary white German students.

Spain

Spain, known for its strong Catholic identity, has not encountered many problems involving the headscarf. In a case which arose in February 2003, a private Catholic high school refused to allow a Muslim student, Fatma Idrisi, to come to the school with a headscarf, so her parents took their daughter from that private school and sent her to a state school. The head of the Organization for the Protection of Immigrants and Migrants, Mustafa al-Mirabet, pointed out that they have not encountered any problem other than this one and that most Muslim families send their children with their headscarves to schools.

Netherlands

The Dutch constitution protects both the freedom of religion and the right to equality. The Equal Treatment Act 1984 prohibits the imposition of direct/indirect discrimination in employment on grounds of religious or other belief. It also covers the provision of goods, services and facilities with particular reference to housing, education, health, welfare, sport and culture.

No law exists in the Netherlands prohibiting the headscarf, either in schools or in workplaces. In general, the authority rests on the school administration to implement the legal regulations in the educational system. Therefore, each school decides whether or not to accept a student wearing the headscarf. At present in the Netherlands, students wearing headscarves can attend classes, from elementary schools to universities, without any problem. Cases that have arisen before the Equal Rights Committee have generally been resolved in favour of the students.

However, in Amsterdam and some other cities, attending classes with a veiled face is banned by the decision of the regional education directorates.

Coskun Coruz, a deputy of the Dutch parliament, does not think that the headscarf ban will be imposed in the Netherlands. He said the following: "I believe that if the headscarf issue is regarded as fulfilling a religious obligation rather than as a symbol, there will be no problem. Thus, it should be well explained to others that this is not a symbol but a requirement of faith."

In previous cases concerning factories, medical professions, supermarkets, and the like, wearing headscarves on the job provoked arguments of 'safety', 'efficiency', 'accessibility' or 'hygiene'. However, the National Committee on Equal Treatment has ruled that a prohibition on wearing a headscarf in work situations is illegal since it is at odds with the right to religious freedom (in the Dutch context a headscarf is defined as a 'direct' manifestation of religious belief). Only safety-reasons or reasons of functionality could be a legitimate ground not to allow for religious headgear.

The issue of teachers wearing headscarves in state schools arose some years ago. The disagreement between the teacher and the school direction was settled by a ruling of the National Committee of Equal Treatment in 1998 which stated that a headscarf is not necessarily the symbol of religious orthodoxy and intolerance vis a vis non-Muslim beliefs or non-religious worldviews. As far as Muslim belief was not actively manifested or promoted, a headscarf as such was not a threat to the 'open' and 'tolerant' attitude that is required by the Dutch law on public education. The direction of the school should have interviewed the trainee about the meaning of wearing a headscarf first before concluding that it was an emblem of orthodoxy and intolerance.

In January 2000, the Dutch police force proposed to introduce the headscarf as part of the official police uniform. The police would provide for special headgear in the colour of 'police-blue' so that it would fit the rest of the police uniform. Like Ireland, this was a police initiative to encourage Muslim women to join the force. However, after much public debate, no action was actually taken.

Conclusion

Governments must show a willingness to change existing rules and laws – in this case current dress codes - in order to adapt to cultural practices that are considered crucial for the identity of minorities. By its active and accommodating attitude the government shows that it wants to go beyond 'passive' toleration based on the principle of non-interference ('laissez-faire') that leads to 'a mere modus vivendi' between minority and majority groups.

Through such accommodating policies the governments will make it clear that they do not expect minorities to give up their ethnic, cultural or religious identity as a precondition of equal citizenship, and that demands of equal citizenship can be combined with particular ethnic, cultural or religious commitments.

Fahad Ansari, 9th March 2004

(i) Since the time of original publication, the situation in Italy has begun to change with the case of Sabrina Verroni, and Italian convert to Islam whose nikab (face veil) caused the local mayor to invoke a fascist era law against wearing masks against her. She was ticketed by a police officer and fined by order of the Mayor. The case has been extremely divisive, and has seen e.g. one Northern League senator Cesarino Monti, propose an even tougher one: a fine of up to 5,000 euros and up to six months in jail for people who cover their faces in public. He expressly excluded from this proposal Italians who often cover their faces with masks for sporting events and festivals. Despite being challenged by some Muslim women to remove her face veil, Ms. Verroni has found support from fashion designer Giorgio Armani who said in a statement released in September:

"It's a question of respect for the convictions and culture of others," Mr. Armani, the fashion designer, said in a statement released late last month. "We need to live with these ideas."

(ii) Since the time of original publication, the state of Bavaria has also banned hijab for school teachers (November 2004). The states of Hesse, Lower Saxony, Baden-Wuerttemberg and Saarland already ban hijab for teachers and in Hesse the ban extends to civil servants. In October 2004, the Federal Administrative Court ruled that the state of Baden-Wuerttemberg had unlawfully banned hijab as it targeted one faith only. As a result of its ruling, nuns teaching in school in the state now have to divest themselves of their habits before entering a classroom.

CHAPTER THREE

French Ban on Religious Signs in School violates Freedom of Religion, and Rights to Education and Work

Note

This chapter is provided as a background only, being written originally before the French law was enacted and many other decision were made across Europe as listed in Chapters 2 and 3.

Background

Approximately 5 million out of France's 58 million people are Muslims, many of them descendants of immigrants from former French colonies in North Africa. Furthermore, an estimated 50,000 French citizens (ii)embrace Islam each year . Muslims in France face a number of daily problems. One recurring difficulty them is the ban on the Islamically prescribed headscarf from public institutions. The main reason given for this prejudice is that the headscarf conflicts with France's secularism.

The problem stems back to 18th September, 1989 when 3 Moroccan girls were denied admission to Caprielle Hafaz Institute in Paris by the school's director, due to their wearing of the hijab(i). Since that day and up until the 21st May 2003, there has been over 400 "veil problems" according to statistics released by the French Le Nouvelle Observateur.

Two of the most recent incidents occurred in September 2003. On the 25th September, 2 sisters, Lila (16) and Alma Levy (18) were expelled from Henri Wallon lycee in the Parisian northern suburb of Aubervilliers, for refusing to remove their headscarves. Four days later, 12 year old "Hilal" was temporarily prevented from attending classes at Charles-Walch de Thainn in the north of France, for refusing to remove her hijab. On the 10th October, the school irreversibly denied her access to the school. Finally, on the 28th November, the school's disciplinary council decided to expel her. The council stated that "Hilal" refused to respect the school rules by insisting on wearing clothes "of ostentatious religious sign on purpose to harass her colleagues, which runs counter to the secular nature of the school."

On the 1st July 2003, President Chirac appointed the presidential media attaché, Bernar Stasi, as head of a commission assigned with applying secular principles in France and preparing recommendations on the possibility of passing a law that bans the veil in French schools. On the 21st September, French Prime Minister Jean-Pierre Raffarin stated that there was no room for religious symbols in French educational institutions. Expressing his opposition to any "ostentatious expression of religious affiliation", he claimed that "schools cannot be a place to express religious commitment or launch political or religious propaganda". On the 28th November, Prime Minister Raffarin secured a majority approval of his ruling party to pass a bill banning religious signs in school. On 6th December, President Chirac antagonised the Muslim world by declaring that the hijab was "a sort of aggression that is difficult for us [the French] to accept". On 11th December, the Stasi Commission recommended issuing a new law to ban "conspicuous" religious signs from schools, including hijab. Now the world awaits President Chirac's decision on the 17th. [Since originally being written this ban has now come into force].

Opponents of the bill's primary concern is that such a bill will violate the right to freedom of religion, guaranteed by the European Convention of Human Rights, the UN Charter and other

international treaties. The IHRC further fears that such a bill would compel many Muslim girls to have to make the extremely difficult choice between their education and their religion. This may well lead to many girls deciding to leave school rather than abandon an essential element of their faith. This will also lead to a violation of the right to education and the right to work, both guaranteed under many international human rights treaties which France has ratified.

Germany

The IHRC is also deeply disturbed that this prejudice is rapidly increasing in Europe at a governmental level. On 10th October 2003 in Germany, at a meeting of the 16 regional ministers for culture, education and religious affairs in Darmstadt, 7 states backed proposed legislation banning the hijab from public schools while 8 opposed it. The city-state of Bremen had not agreed on a formal position at that time. Subsequently, officials at the meeting issued a statement that each region would now have to decide on the matter "according to their traditions".

On December 9th 2003, the government of Bavaria unveiled a draft law banning the hijab in public schools. The law will not ban Christian and Jewish religious symbols. The Bavarian Minister for Education, Monika Hohlmeier stated that "we are defending pupils against a potential fundamentalist influence and are respecting the wishes of the majority of the parents". The proposed measure must now be ratified by the regional parliament, which is regarded as a formality because of the Christian Democratic Union (CDU) majority. Regional Culture Minister Annette Schavan said that the headscarf is "seen as a symbol of cultural division and part of a history of oppression of women." Schavan defended the decision not to include Christian or Jewish symbols in the ban, saying the state constitution placed Christian and Western values and culture at the heart of the education system.

The ban is a clear violation of freedom of religion in contravention of the European Convention of Human Rights, the International Covenant on Civil and Political Right and other international treaties. It is also clear religious discrimination as Jewish and Christian symbols have not been included in the ban. Again, the ban may result in Muslim girls staying at home and many female Muslim teachers leaving their posts. This will result in a violation of these Muslims' fundamental rights to education and to work.

Bavaria is the second state in Germany to draft such a bill. Baden-Wuerttemberg was the first and it is expected to ratify its bill sometime next month. Other states planning similar legislation are Berlin, Brandenburg, Hesse, Lower Saxony and Saarland. Of those, Berlin, Hesse and Saarland want to extend the prohibition to all public institutions.

Comparable Cases

In September 2003, a Muslim teenager was expelled from a private school in Quebec for wearing her hijab. The Quebecan Minister for Education was helpless to remedy the situation as it was a private school. A ruling in February 1995 by the Quebecan Human Rights Commission declared that banning headscarves from school contravened the Quebecan Charter of Human Rights and Freedoms.

This worrying trend is on the increase throughout the world in places as diverse as the United States, Tunisia, Singapore, Turkey and Israel. A recent UNESCO report revealed that many girls face "sharp discrimination" in getting access to schooling in most developing countries. The ban on headscarves in public schools will deny even more girls access to schooling in the "developed" world. Muslim girls should not have to choose between their faith and their education. Both these rights are guaranteed by international law. Compelling them to do so will marginalize Muslim women from society. It will lead to a generation of uneducated and unemployable Muslim women which can only lead to isolation and resentment.

Fahad Ansari, 16 December 2003

i. Hijab is the headscarf worn by Muslim women as part of their faith.

ii. Gurfunkiel, Michel, 'Islam in France: The French Way of Life is in Danger' in The Middle East Quarterly (March 1997) Vol. IV(1)



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