

FRANCE: Is the ban on hijab, niqab, burqa... Islamophobia?

By Willy Fautré, Human Rights Without Frontiers

HRWF (18.10.2018) – In September, the French police arrested Raïf Redouane, a dangerous criminal who had escaped from prison in early July and had been on the run for two months. The investigation revealed that he had been able to move unnoticed from one place to another in France. His secret: wearing a full veil... This incident reactivated the debates about the ban on Islamic full-body attire in the country.

In 2010, France, which has the largest population of Muslim culture (about 5 million) in Europe introduced a ban on full-face niqab and burqa veils in public but the law remains widely unimplemented.

Debates in Western Europe, in particular in France, about the ban on various sorts of clothing that do not allow to identify a person, often veer into accusations of alleged islamophobia while lawmakers insist that it is a matter of security, integration and social cohesion. Society in general is also opposed to the wearing of hijab, niqab and burqa in the public space and by staff in public institutions. 'Historical' Muslims in Western Europe also perceive this religious attire negatively.

Muslim majority countries, such as secular post-Soviet states, impose similar bans and are of course never accused of islamophobia. They view it as an attempt by 'alien' forms of Islam to change their secular way of life as well as their peaceful practice of their religion, and to radicalize their youth. Hence the inappropriate use of the accusation of "islamophobia" in historically Christian majority countries.

In the last resort, the rule of law in France and in Europe is

determined by the European Court of Human Rights.

The judgements of the European Court have been very consistent, supporting

- the prohibition for a teacher in an elementary school from wearing a headscarf in her class (*Dahlab v. Switzerland, 2001*)
- restrictions from wearing the veil for university students (*Sahin v. Turkey, 2005*)
- a ban on the face veil in all public spaces (*SAS v. France, 2014*)
- the barring of civil servants from donning the headscarf (*Ebrahimian v. France, 2015*)
- the right of three Belgian municipalities to adopt a by-law banning the wearing in public places of clothing that conceals the face (*Dakir v. Belgium, 2017*).

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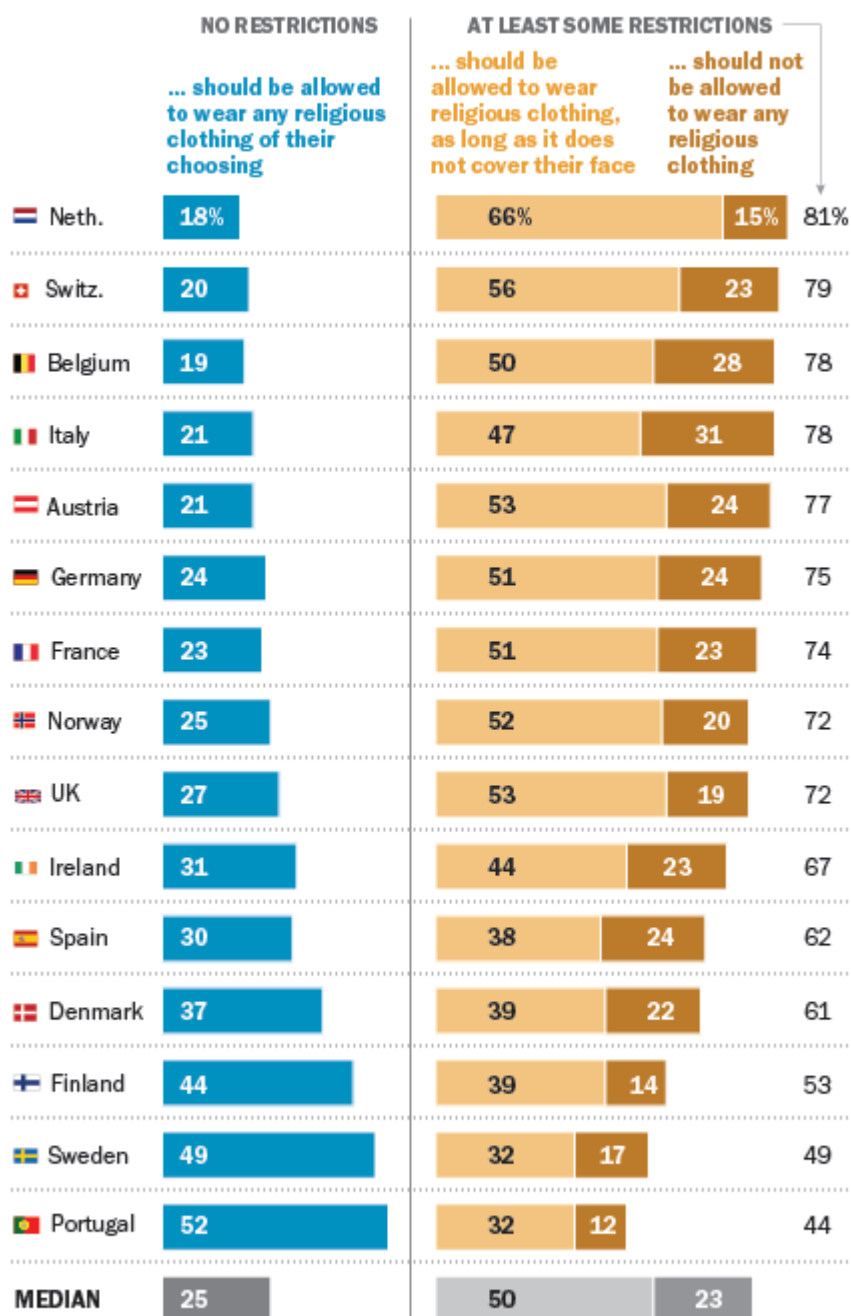
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EUROPEAN UNION: Most Western Europeans favor at least some restrictions on Muslim women's religious clothing

By Ariana Monique Salazar and Scott Gardner

Most across Western Europe support at least some restrictions on Muslim women's religious clothing

% of non-Muslims who say Muslim women who live in their country ...



Note: Don't know/refused responses not shown. Muslims not included in analysis.
Source: Survey conducted April-August 2017 in 15 countries in Western Europe.
"Being Christian in Western Europe"

PEW RESEARCH CENTER

Pew Research Center (17.09.2018) – <https://pewrsr.ch/2Ep3IRc> – A Danish law that took effect in August makes it illegal for Muslim women to wear face-covering veils – such as burqas or niqabs – in public. Austria, Belgium and France, as well as

parts of Italy and Spain, have enacted similar laws in recent years, contributing to government restrictions on religion in the region.

These laws are largely in line with Western European attitudes on the issue. Most non-Muslim adults in Western Europe favor at least some restrictions on the religious clothing of Muslim women who live in their country, according to a recent Pew Research Center survey of 15 countries in the region.

The prevailing view (a regional median of 50%) is that Muslim women should be allowed to wear religious clothing as long as it does not cover their face. Fewer (regional median of 23%) say Muslim women should not be allowed to wear any religious clothing. And a regional median of 25% take the more permissive view that Muslim women should be allowed to wear any religious clothing they choose.

In the United Kingdom, for example, 53% of non-Muslim adults say Muslim women in the UK should be allowed to wear religious clothing as long as it does not cover their face, while 19% favor restricting all religious clothing. Roughly a quarter (27%) support allowing Muslim women to wear the religious clothing of their choosing.

The recently enacted laws in European countries do not explicitly target Muslim women's dress. In the case of Denmark, for instance, the statute prohibits face coverings except for "recognizable purposes," such as cold weather.

Proponents of the recent laws point to public safety and other reasons for the measures. Opponents say the laws are unfairly directed at Muslims and that people should have the freedom to wear what they want.

Overall, most people in Western Europe say they accept religious minorities – Muslims included. For example, a median of 66% of non-Muslim adults in the region say they would accept a Muslim as a member of their family, according to a separate question in the recent survey.

Yet even among non-Muslims with positive feelings about Muslims, large shares in most countries still favor banning face coverings. Among those who say they would be willing to accept a Muslim in their family, a median of 55% support banning facial coverings, and this includes majorities in Germany, the United Kingdom, Austria, Switzerland and the Netherlands. This is not the case in every country, however. For example, about six-in-ten Portuguese adults with these positive feelings about Muslims favor no restrictions on religious clothing.

Among Western Europeans who say they would be unwilling to accept a Muslim in their family, there is relatively significant support for banning all religious clothing. For example, in France, 43% of those who would not want Muslims as relatives support a total ban, compared with only 16% among those who are willing to accept Muslims in their families.

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EUROPEAN COURT/BELGIUM: Exclusion from a courtroom of a woman wearing the Islamic headscarf (hijab)

Lachiri v. Belgium: Case 3413/09

Judgment in French – <https://bit.ly/2Q7z0lu>

Lachiri v. Belgium (no. 3413/09) [Judgment in French only] – Second Section Chamber Judgment 18 September 2018. The applicant complained before the Court that the decision of a magistrate of a court of appeals to exclude her from the courtroom when she refused to remove her hijab to testify at the trial of the man who had killed her brother infringed her rights under ECHR Article 9 to freedom of thought, conscience, and religion. In its judgment of 18 September 2018, the Court

found by six votes a violation of Article 9. [From the Court's press release:] "The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a restriction" on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of "protecting public order", with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri's conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was not justified in a democratic society."

Registrar of the court (18.09.2018) – <https://bit.ly/2zv4M1A> – In today's Chamber judgment in the case of Lachiri v. Belgium (application no. 3413/09) the European Court of Human Rights held, by a majority (six votes to one), that there had been: a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned Mrs Lachiri's exclusion from a courtroom on account of her refusal to remove her *hijab*. The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a "restriction" on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of "protecting public order", with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri's conduct on entering the courtroom had not been disrespectful and had

not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was not justified in a democratic society.

Principal facts

Mrs Lachiri, and other members of her family, applied to join the proceedings as civil parties seeking damages in a crime case in which her brother had been killed. In 2007 the accused was committed to stand trial before the Criminal Court on charges of premeditated assault and wounding resulting in unintentional death. Mrs Lachiri and the other civil parties appealed against that decision, submitting that the offence should be classified as murder and that the accused should be tried by an Assize Court. On the day of the hearing before the Indictments Division, in accordance with a decision of the presiding judge the court usher informed Mrs Lachiri that she could not enter the hearing room unless she removed her headscarf. Mrs Lachiri refused to comply and did not attend the hearing. Subsequently Mrs Lachiri unsuccessfully challenged that decision in an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Mrs Lachiri complained that her exclusion from the hearing room had infringed her freedom to express her religion. The application was lodged with the European Court of Human Rights on 24 December 2008. On 22 March 2016 the Government submitted a unilateral declaration, which the Court decided not to accept.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 9 (freedom of thought, conscience and religion)

Observing that, according to its case-law, wearing the *hijab* (headscarf covering the hair and neck while leaving the face uncovered) could be regarded as an act “motivated or inspired by a religion or religious belief”, the Court considered that excluding Mrs Lachiri from the courtroom on the grounds that she had refused to remove her headscarf had amounted to a “restriction” on the exercise of her right to manifest her religion. The purpose of that restriction, which had been based on Article 759 of the Judicial Code requiring persons entering a courtroom to do so without wearing headgear, had in the present case been to prevent conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court concluded that the legitimate aim pursued had been the “protection of public order”.

With regard to the necessity of the restriction in a democratic society, the Court specified first of all that the

Islamic headscarf was headgear and not, as in the case of *S.A.S. v. France*³, a garment which entirely concealed the face with the possible exception of the eyes. It then noted that Mrs Lachiri was a mere citizen: she was not a representative of the State engaged in public service and could not therefore be bound, on account of any official status, by a duty of discretion in the public expression of her religious beliefs. Moreover, the Court indicated that whilst a court could be part of the “public arena”, as opposed to the workplace for example, it was not a public place comparable to a public street or square. A court was indeed a “public” institution in which respect for neutrality towards beliefs could prevail over the free exercise of the right to manifest one’s religion, like public educational establishments. In the present case, however, the aim pursued in excluding the applicant from the courtroom had not been to maintain the neutrality of the public arena. The Court therefore limited its examination to determining whether that measure had been justified by the aim of maintaining order. In that connection it noted that Mrs Lachiri’s conduct when entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. Consequently, the Court held that the need for the restriction in issue had not been established and that the infringement of Mrs Lachiri’s right to freedom to manifest her religion was not justified in a democratic society.

There had therefore been a violation of Article 9 of the Convention.

Article 41 (just satisfaction)

The Court held (by six votes to one) that Belgium was to pay

Mrs Lachiri 1,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Vučinić and Gritco expressed a joint concurring opinion. Judge Mourou-Vikström expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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SWITZERLAND: The region of St

Gallen votes to ban 'burqa' in public places

Northeastern canton of St Gallen bans face veils in what critics call an Islamophobic move.

Al Jazeera (23.09.2018) – <https://bit.ly/2DmnWdQ> – The Swiss region of St Gallen has voted in favour of a “burqa ban”, prohibiting all face-covering garments in public spaces, a decision that a local Islamic organisation has termed “Islamophobic”.

In a referendum on Sunday in the northeastern canton of St Gallen, nearly 67 percent of voters approved the ban, the second region in Switzerland to do so after Ticino two years ago.

Three other Swiss cantons – Zurich, Solothurn and Glarus – have rejected introducing such bans in recent years.

The referendum was held after local parties, Green Party and Young Socialists, demanded a vote following the passage of a law in St Gallen parliament last year.

That law stated that “any person who renders themselves unrecognisable by covering their face in a public space, and thus endangers public security or social and religious peace will be fined”.

Drafted following an uproar in the canton over a girl who wore a face veil to school, the law, critics said, does not define when a woman wearing veil constitutes a danger. They also warn of arbitrary sanctions.

The Islamic Central Council of Switzerland slammed the ban as "Islamophobic". Other opponents argued the ban was "useless" since very few women wear "burqas" or other face-covering veils in St Gallen.

National referendum

Last year, the Swiss government opposed a nationwide "burqa ban", saying it should be up to the regions to determine if such measures were appropriate.

A national referendum on the issue is expected next year after the right-wing Swiss People's Party gathered 100,000 signatures required to put any subject to vote under Switzerland's famous direct democratic system.

In 2009, Switzerland banned the construction of minarets at mosques in a similar referendum, attracting worldwide attention.

Earlier this year, a survey by two Swiss papers found that an emphatic 76 percent of respondents favoured a ban on face veils, while 20 percent opposed it.

Several other European countries including Belgium, Bulgaria, Denmark, France and the Netherlands have introduced full or partial bans on face veils and head coverings in recent years.

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