

Tajikistan: Husbands demand wives wear head covers, government demands removing

Ferghana News (02.03.2017) – <http://bit.ly/2mB5AcY> – The situation around satr, a locally used term for hijab, or headscarf, is becoming ever more controversial in Tajikistan. Only a few years ago the Tajik society was rather tolerant toward satr with the male part of it encouraging women to wear Islamic attire. But lately, mostly thanks to the Tajik authorities' efforts, the society has gradually started espousing suspicious attitudes toward this Islamic piece of clothing. In the imagination of Tajik authorities, men sporting beards or women wearing headscarves are initial steps toward radicalisation and extremism. Even though Article 26 of the country's constitution reads that "each person has the right to independently determine her/his religious preference, to practice any religion alone or in association with others or to practice no religion, and to participate in the performance of religious cults, rituals and ceremonies", wearing satr is not openly welcomed by the authorities; doing so triggers persecutions in certain cases. That said, even those human rights advocates who used to make bold statements about human rights violations are remaining silent.

During a meeting with students of the National University back in 2010, President Emomali Rakhmon was very critical about women wearing hijabs: "Watching young people, especially young ladies and women in the capital, I can see that some [of them] are copying the style of clothing [practiced] in other countries". He has then seemingly jokingly threatened: "If any one among you prefers the dress style of a different country, then I will send you [there]". Speaking during a meeting with

female activists on March 6, 2015, the president has again brought up the topic of the hijabs, and cited a historical fact: "According to scientific and ethnographic sources, our people had beautiful clothes for women since ancient times. Our women and girls never wore black clothes. Black clothes are traditionally discouraged. You all know well that even mourning clothes of our people are not black. However, some Tajik girls and women are wearing black; they don't know and even don't want to know the history and purpose of such garments. According to some sources, girls and women clad in completely black clothes are visiting the funerals of complete strangers and trying to propagate different ideas that are alien to our ancient history and culture among women there," the president claims.

The head of state's repeated speeches critical of such behaviour did eventually have an impact. For instance, in April 2015, Dushanbe Mayor Mahmadsaid Ubaydulloyev decreed to seize from all stores in the city "all clothes that are alien to the Tajik nation's culture of garments" especially women's clothes. And then came the banning of the Islamic Renaissance Party of Tajikistan later the same year. The official ban then led to persecutions of women wearing satr with renewed vigour: Police districts, national security agencies and prosecutors' offices joined the effort. And our officials are known for their extra zealousness when their interests are concerned: Even though the president was only talking about women and girls wearing black cloths, they started pressuring everyone who would don a headscarf "a-la Muslim" whatever its colour may be.

Nonetheless, despite all prohibitions of wearing and retailing satr, numbers of women wearing it are not diminishing. Many believing women in Tajik simply cannot fathom appearing in public with their hair and necks exposed. After all, satr is an obligatory attribute of clothing according to Islamic teachings. Several Tajik women spoke with Fergana to discuss

why they prefer satr and are not prepared to remove it.

Manzura Maksudova of Kulyab maintains that many satr-clad women do so not necessarily for religious reasons but more as a nod to fashion: "It seems to me this is following fashion and [desire for] beautiful clothes. Mass donning of satr started in Tajikistan after Clone, a colourful and unforgettable Brazilian soap opera, was aired in Russian early 2004. The Tajik audience, just like everyone else in the post-Soviet space, loved watching Russian TV channels. The protagonist is Jadi, a dazzling Muslim woman from Morocco. She used to wear beautiful oriental clothes all the time. A lot of Tajik women liked that, so they started seeking out similar clothes in local marketplaces. Some received such clothes from their relatives visiting the Middle East. And, naturally, businessmen started importing such clothes given the public appetite. So women and girls started wearing colourful clothes and donning "Oriental" headscarves. It seems to me they, many of them anyway, would have voluntarily stopped wearing them if not all these prohibitions. As is known, prohibitions always cause the opposite reactions".

Muhabbat Ziyoyeva of Dushanbe would not wear satr if it weren't her husband's condition: "When I was a [college] student, I used to wear clothes like everyone else did in town. I would not even think of satr until I was engaged. My would-be husband's parents demanded nothing when they came to my parents asking for my hand. It was him who demanded at the very first meeting that I put satr on. I liked that young man right away, so I thought to myself 'why not'? And now not a single day without satr. I can wear colourful clothes at home, but I must not attract attention in public. Of course, wearing satr is annoying sometimes. Women wear various kinds of clothes in this city. But I don't want to upset my husband, so I will have to wear this all my life".

The parents of Zaynura Obiyeva put satr on her when she was 13. Other girls in school would wear more traditional headscarves and Zaynura was in satr. "I am a good obedient daughter. How can one disobey their parents' will? That is sin. And I have myself grown used to covering up. I am more comfortable like this. Nobody bothers me when I'm out [in public]. I am treated with respect, not like those women who are open [covering up less]. They are harassed and they hear various dirty things. They are touched, groped and look at with lust. That is simply bad manners".

Zamira Musoyeva is a girl of principles. She has conscientiously chosen to wear satr. "I was going through a very difficult period in my life. I was in depression for a very long time. I read a lot of Islamic literature at the time, including many books by Shamil Alauddin [a preacher and cleric in Russia]. He explains Islam in a very easy to understand manner—something I have not heard from our religious figures. They only scare and prohibit. I closed [presumably: my entire body with clothes] gradually. Initially I only wore the headscarf. And then I gradually moved on to satr. I feel comfortable in satr. Although no one was expecting this from me because I didn't used to wear even national clothes".

Madina Islamova is lenient toward women in satr. She prefers "European" style of clothes. "I am a Muslim by birth. I read the commentaries of the Koran by Valeriya Porohova. But I will say it openly to you: I am not very religious. I love philosophy of Ghandi and Dalai Lama. But religion is not a dogma for me. I believe Ghandi's words: 'God has no religion.' I think living with [peaceful] conscience is actually what religion is. Obviously, external attributes are not an indicator of the true faith. Faith lives in one's soul. But I do respect the women's choice and their right to wear satr. Having the right to choose is the most important for humans. So if she wants, she'll take [satr] off; if she wants, she'll

keep it on. That does not annoy me. People and their opinion must be obligatorily respected in a secular and lawful society”.

Zarina Mirzokulova argues that belief in God is a spiritual condition. “People believe the way they feel. The majority of women wear satr, most likely, because they are coerced. Others started wearing unconsciously. Many fell for the tribal instinct: ‘Everybody is wearing so I will wear as well to be like everyone else.’ And now those who put it on unconsciously are taking it off under the pretext of ‘they are prohibiting it now.’ And there are few among those who are still wearing it that came to this consciously. I am tolerant toward women wearing satr. But I don’t like those women in satr who believe they are saints and brag about it; they try teaching others to wear it even though they have no spiritual themselves. Unfortunately, the majority are such [women]. There are none—I don’t see them anyway—who would correctly interpret Islam. Nobody wants to go deep into it. There is very little love in this generation, more fear”.

Nazira Mulloyeva, a public activist, often deals with the problems of women and sees men’s fault in the lack of women’s rights. “To put it mildly, men are feudal lords in our country. Men never liked the European style of women’s clothes. Men, including male officials, have always been unsatisfied with such clothes. I think they like it when women are covered up and tacitly encourage doing so. Men usually dictate things. Women oblige; they have no rights in our country. When women started wearing satr, men encouraged that. And now we have new prohibitions with the authorities demanding women take it off. Yet another prohibition. So the male portion of our society is coercing women to put satr on, while the government is prohibiting [doing so]. The woman is between two fires now. The government should first combat the male chauvinism rather than women in satr”.

The issue of satr is very sensitive for Sayram Murodova. She

believes women are forced to wear satr because wearing European-style clothes is now becoming dangerous even in the city's centre. "The situation my acquaintance's daughter found herself in is a testimony to that. The event happened in evening time last summer. She and her friends—attractive and beautiful—were in a cafe with their male course mates. Then they were headed home, preparing to cross a street. A black vehicle drove up close. The windows were rolled down and occupants started spitting and throwing plastic bottles at the girls. That was unexpected, so the girls were startled. One of the young men in the car has contemptuously called them unbelievers and used profanities. The girls couldn't recover from this for a long time. That is what illiteracy and radicalism is. Nobody explains to them Islam correctly. What is also saddening is that there are many illiterate ones like them unfortunately, whose vision of Islam is expressed in such an aggressive manner. It is saddening that they believe they are on the right path. Islam is a religion of light, and the fanatics are making it dark. This leads to a radical treatment of women, whereas there is no such teaching in the Koran. And they listen to various false preachers and don't want to enlighten themselves".

Zebo Kabirova, a marketplace vendor, wears satr as a form of protest of the governmental prohibition. She often finds herself in the vision field of law-enforcement agents. "They tried everything to force me into taking satr off: they pleaded and threatened and took to their police station. But who are they to prohibit? I like [satr], so I'll continue wearing it. I'll take it off whenever I wish to do so".

Aziza Toirova is a spouse of a religious figure. She has been wearing satr for a very long time now. She is a very talented person who graduated from a secular university with honours. "I write poems and read them to my husband. He is my only audience and critic. I work a lot on self-education—computers, languages. Nobody forces me to wear satr as I it is my

personal choice. I am a homemaker and bringing my children up. But that doesn't mean that I am deprived of joy of communicating with my friends. We often meet both as families and individually. They don't wear satr and maintain a different lifestyle. Nonetheless, they understand me. But a complete prohibition will always cause a reaction; that's human nature. We clearly see a crisis of education and upbringing in our society. The education system and enlightenment must be invested in with money. [Presumably: the government] needs to explain, bring up and educate, [instead of] forcibly prohibiting [satr]".

While this article was being prepared for publication, Fergana learnt from several sources in the Tajik government that state-funded institutions are orally instructed to record personal information of women in satr when they apply for government services and report them to [presumably: law-enforcement and national security] agencies.

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BELGIUM: The Belgian ‘burqa ban’: Legal state of play

HRWF (06.02.2017) – The so-called ‘burqa ban’ is a reality in Belgium. The legislative proposal was discussed – and approved with an overwhelming majority – only by the Chamber of Representatives. The Senate opted against discussing the bill. The ‘Act of 1 June 2011 to institute a prohibition on wearing clothing that covers the face, or a large part of it’, was published in the *Belgian Official Journal* on July 13 and entered into force 10 days later.

We present you hereafter the conclusions of this research and afterwards an analysis of the constitutionality of the burqa ban in Belgium.

The Belgian ‘burqa ban’: Legal aspects of local and general prohibitions on covering and concealing one’s face in Belgium (1)

By Jogchum Vrielink, Saïla Ouald Chaib and Eva Brems

“A ban on face-veils in public places in Belgium affects few women, but raises fundamental legal questions. This chapter has served to clarify two issues. In the first place, publicly wearing a face-veil was already prohibited in many places in Belgium prior to the Act of 1 June 2011 being voted. There are indeed many local police ordinances that are interpreted and applied as (including) a ‘burqa ban’. The number of women wearing face-veils, and who are living in a Belgian municipality in which there is no ban, can be regarded as

being either minimal or even non-existent.

Secondly, the enormous political support incorrectly seems to suggest that a 'burqa ban' would be desirable or even allowed in a democratic state governed by the rule of law. An analysis of the parliamentary debates on the matter shows that these were unilaterally aimed at a prohibition. There was hardly any discussion on potential conflicts with fundamental rights, and to the extent that such conflicts were discussed, they were dismissed very quickly. Moreover, it was improperly presumed that face-veils are worn exclusively under duress. When the arguments supporting the prohibition proposal are examined closely, it appears that they are unable to justify a general prohibition, because the measure is either not relevant to achieving the objective in question or because it is not proportionate to the objective.

At the time when the Belgian Parliament discussed the legislative proposals on face-covering for the first time, in 2010, most international human rights actors had not yet expressed themselves on such a prohibition. Only Amnesty International had issued a statement, which held that a general prohibition on face-veils is contrary to the freedom of speech and of religion⁽²⁾. Human Rights Watch,⁽³⁾ and Thomas Hammarberg,⁽⁴⁾ the High Commissioner for Human Rights of the Council of Europe, later also spoke out against a ban, and a unanimous resolution against a general prohibition was passed in the Parliamentary Assembly of the Council of Europe.⁽⁵⁾ Nonetheless, these developments failed to influence the Parliamentary debates in 2011 in any significant way.

In conclusion, it seems conceivable that the Belgian 'burqa ban' may not pass constitutional challenges ⁽⁶⁾ or scrutiny by

the ECtHR. In that case, an alternative approach to this issue will have to be decided upon. In this respect, we feel that legislative action on this subject would remain advisable, but mainly in order to put an end to the tensions and conflicts with fundamental rights brought about by the (application of the) local prohibitions. To this end, the legislator ought to clearly and exhaustively define the circumstances in which a prohibition on face-veils or face-covering is applicable or can be introduced, (implicitly) granting the freedom to wear such garments in (most) other contexts. The latter would *de facto* invalidate the local ordinances, to the extent that these exceed the circumstances prescribed by the law. These circumstances must themselves be strictly delineated for actual safety risks and therefore be limited to certain places and times. In addition, it is also possible to adopt a prohibition that does not concern wearing face-covering garments, but rather the act of compelling or forcing a person to wear such clothing.(7) In that way, the Belgian law could provide optimal protection for both the freedom of religion and women's rights."

- (1) Jogchum Vrielink, Saïla Ouald Chaib and Eva Brems (University of Ghent). The paper of the authors was published in the framework of the RELIGARE project, which received funding under the European Commission's Seventh Framework Programme (Socio-economic Sciences and Humanities) and with funding from the European Research Council for the project 'Strengthening the European Court of Human Rights: More Accountability through Better Legal Reasoning'. See full text at hrlnwf.org.
- (2) Amnesty International, 'Bans on Full Face Veils Would Violate International Human Rights Law', 21 April

2010.

- (3) L. Gerntholtz and G. van Gulik, 'Beyond the Burqa', www.hrw.org
- (4) T. Hammarberg, 'Rulings anywhere that women must wear the burqa should be condemned – but banning such dresses here would be wrong', says Commissioner Hammarberg', *Viewpoint*, 8 March 2010, www.coe.int
- (5) Resolution 1743 of the Parliamentary Assembly of the Council of Europe (23 June 2010), §16-17. See also Recommendation 1927 of the Council of Europe Parliamentary Assembly, 'Islam, Islamism and Islamophobia in Europe'. 37
- (6) Several constitutional challenges were filed against the ban with the Belgian Constitutional Court (see cases 5191, 5204, 5244, 5289 and 5290 at <http://www.const-court.be>). At the time at which this chapter was concluded, the Court was yet to issue its final ruling(s) in these cases.
- (7) Naturally, with the exception of circumstances in which such obligation can be legitimate, such as when imposing safety clothing and the like.

The constitutionality of the Belgian burqa ban

By Jelle Flo and Jogchum Vrieling

Open Democracy (14.01.2013) – On 6 December 2012, the Belgian Constitutional Court held that the 2011 so-called “burqa ban” does not violate the Belgian Constitution. A boundary is crossed when rights of individuals are simply sacrificed to

majority sentiments; a boundary which should be protected by institutions such as the Court.

Following France, Belgium was the second European country to introduce a general prohibition on covering one's face in public, or "burqa ban". The Act of 1 June 2011 renders it an offence to publicly "cover or conceal one's face in whole or in part, so that one is unrecognisable". Exceptions are limited to "legal provisions", "labour regulations", and "local ordinances regarding festivities", which impose or allow for face covering.

The Act was intended to guarantee public safety. Other stated purposes include considerations of a societal nature, including "promoting 'living together'", with an emphasis on communication and recognisability, and protecting women's rights.

Several appeals were filed with the Belgian Constitutional Court. Applicants argued that the prohibition violated several rights and principles, including the principle of legality, the freedom of religion, and the right to non-discrimination. Save for one minor proviso, the Court rejected all these arguments.

Principle of legality

Applicants argued that the scope of application of the law is unpredictable and potentially boundless, while there are only limited exceptions. This would render it impossible for citizens to ascertain whether their behaviour is in compliance with the law. This is all the more problematic, since intent is not required: mere negligence is sufficient to be punishable. All of this was claimed to violate the principle of legality, which requires laws to be clear, ascertainable and sufficiently precise.

The Court finds that this principle has not been breached. Concepts such as "recognisability", "covered in part" and

“places accessible to the public” are all deemed sufficiently clear to allow a citizen to determine their scope. Any remaining margin of appreciation for the judge does not pose problems of legality.

These general statements by the Court however in no way clarify the reach of the burqa ban, and they certainly do not limit the prohibition in any way. As such, it will have to be assumed that all types of partial concealment of one’s face, which impede “recognisability”, regardless of intent, are forbidden in Belgium. It follows that somebody who wears a scarf and a winter hat to protect himself from the cold is punishable. The same goes for cyclists wearing dust masks, human mascots at sports events, veiled brides, and Boy Scout leaders who disguise themselves during a game.

Safety

The Court devotes most of its attention to the alleged violation of applicants’ freedom of religion. The Court finds that the stated purposes of the law are all legitimate, and that the ban also meets the proportionality standard.

The Court accepts, for instance, that the legislator has good reason to fear that facial covering may indeed harm public safety. In doing so, the Court acknowledges that in Belgium, thus far, the Islamic full-veil has not in fact given rise to any actual safety issues yet. However, the Court reasons that it does not follow from the fact that there are no problems (yet), that the legislator should not be allowed to act. The latter is allowed to ‘anticipate’.

The American author Philip K. Dick described in his dystopian short story *“The Minority Report”* (written in 1956 and adapted into a feature film in 2002) how, in a future totalitarian society, clairvoyants (‘precogs’) were able to predict crimes. Potential criminals were pre-emptively apprehended, until it turned out that not all potential criminals would in reality

commit crimes. The difference between the 1956 fiction and present-day Belgian reality is that the antidemocratic measures in the fictional short story were at least effective in improving public safety.

Prior to the introduction of the burqa ban, Belgian legislation already allowed for identity checks to be performed by the police. It is hard to see why this would be deemed insufficient from a public safety perspective. Moreover, most types of face covering pose no security risk whatsoever. And it seems rather unrealistic to assume that those who intend to rob a bank would refrain from doing so out of fear of committing the additional infraction of wearing a mask in public.

'Living together'

The Court also considers the promotion of 'living together' (*'le vivre ensemble'*) to constitute a legitimate aim. In this context, the Belgian legislator referenced the French philosopher Emmanuel Levinas who according to the legislator has stated that "our humanity is expressed through our face". The legislator moreover declared that a person of whom only the eyes are visible would be "unable to participate in democratic dynamics".

It is remarkable, to say the least, that the Belgian Constitutional Court would accept that a violation of the freedom of religion would *de facto* be justified by a violation of the right to privacy. Freedom of religion is, after all, restricted in order to pursue an invasion of people's privacy, as the State wishes to force people to communicate with each other when in public, with the State deciding how such communication should take place in order to be valuable or 'democratic'. Would it not be more respectful of democratic values to leave it up to individual citizens to determine whether and when they want contact with their fellow citizens in the streets? Even if one were to consider it a legitimate

purpose to promote such contacts, criminal punishment does not seem a fitting means to do so.

Women's rights

The Constitutional Court also finds in favour of the legislator's concerns about gender equality in justifying the burqa ban. Following the legislator, the Court makes a distinction between women who are forced to wear a face-veil and women who do this of their own free will.

The Court indicates that, in the hypothesis that women are *forced* to wear the full-veil, the legislator may assume that the "fundamental values of a democratic society" oppose such coercion, and justify a ban. In doing so, the Constitutional Court disregards the fact that the law punishes not those who are *exerting* the coercion, but those who are the *victims* of such coercion. The Court responds to this objection with a mere reference to article 71 of the Belgian Criminal Code, which excludes criminal liability in cases of *force majeure* or coercion. Not only does this contradict the Court's preceding statement that punishing the wearer is legitimate even if coercion is involved, but the Court also fails to take into consideration that a woman who is repressed to such an extent that she may be coerced into wearing a full-veil, is highly unlikely to invoke this defence, in view of the social sanctions this would entail.

The Constitutional Court accepts that gender equality also justifies a ban if wearing the full-veil is instead a "well-considered choice by the woman". The reasons why the Court allows for this are twofold. To begin with, the Court points out that the requirement to wear such clothing is limited to *women*, and additionally the full-veil serves to deprive its wearers "of a fundamental element of their individuality". The Court thus accepts that the legislator can or even should 'emancipate' women against their own well-considered and informed opinion. This despite the fact that all available

empirical research (carried out in Denmark, France, the Netherlands and also in Belgium) shows that the women who are affected by the ban experience the full-veil not as something that *deprives* them of their individuality, but instead as a means to *express* their individuality.

This may seem counterintuitive to many of us, but – as pointed out by the German philosopher Andrea Roedig – by the same token that the full-veil can be interpreted (and prohibited) as a symbol of oppression, the crucifix could, viewed by an uninformed outsider, be taken as a sign of veneration of torture and inhumane treatment.

Rule of law

The only restriction the Constitutional Court imposed is that the 'burqa ban' may not apply in "places of worship", as this would unduly restrict the freedom of religion. A similar reservation was made by the French Constitutional Council (*Conseil Constitutionnel*) in respect of the French ban. Government interference in religious matters has gone far indeed when it has become necessary to point out that there should still be a right to cover one's face in a place of worship.

All in all, the decision of the Belgian Constitutional Court seems regrettable. Fundamental rights ultimately exist to protect minorities, unpopular minorities in particular, against the tyranny of the majority. A boundary is crossed when rights of individuals are simply sacrificed to majority sentiments; a boundary which should be protected by institutions such as the Court. In other matters, the Constitutional Court has not hesitated to fulfil this role. In the case of the burqa ban, however, these boundaries seem to have evaporated, making for the constitutional equivalent of a Schengen area.

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