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Burqa, niqab, full-face veil controversies in Europe

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Since the beginning of the twenty-first century, European legislation limiting the wearing of religious symbols in private and public spaces—such as administrative buildings, schools or courts—have increasingly been challenged in national courts, at the European Court of Justice, and the European Court of Human Rights.

It used to be that this type of legislation didn't conflict with religions that were historically present in Europe, including Islam. The devastation of the September 11, 2001 terrorist attacks and subsequent attacks in Europe, however, which were motivated by political Islam, led to large-scale, geopolitical upheavals and to new intersections between religion and politics at the national level.

A host of factors have contributed to the significantly escalated anti-Muslim sentiment in the US and in Europe post 9/11. Muslims in these regions now face increasingly hostile environments and policies, which often exacerbate pre-existing marginalization and stigmatization. Whether immigrants or nationals, xenophobic political rhetoric exacerbates social divisions and can alienate Muslims from social participation and from feeling a sense of national identity that they can share with their fellow citizens. This sense of alienation offers an opportunity for political Islam's masterminds, who are pushing a new "Muslim first" paradigm, to prey on young Muslims searching for a sense of belonging.

New generations of Muslims can easily fall under the spell of religious teachings which superimpose a new glorified and glorifying identity over a mere administrative “national” identity that is sometimes socially and politically questioned.

The masterminds of political Islam have selected their battlefields; one of the largest is an individual’s freedom of expression which guarantees, they argue, the freedom to display their religious convictions through particular items of clothing. This controversy underscores the tension between those who legitimately practice their religion and others who use the same freedom to politically instrumentalize it.

Facing this changed and changing environment, North America and Europe have started to feel that their collective identity is being threatened. The response has been the passage of laws that regulate one’s ability to wear the veil in specific circumstances, banning and criminalizing garments such as the burqa that fully conceal the face.

This is the context that has led to Europe’s proliferate burqaⁱ bans.ⁱⁱ France, Belgium, Denmark, and Bulgaria have passed nation-wide laws banning them in all public spaces. The Netherlands and Norway have prohibited the wearing of full-face veils in specific locations. In Germany, Switzerland, Italy, and Spain, bans have been passed by various regional authorities. Sweden, Finland, the UK, and Portugal, along with almost all EU member states of Central and Eastern Europe—Poland, Romania, Hungary, Slovakia, the Czech Republic, Croatia, Slovenia, and Greece—have no restrictions. These legislative initiatives started in France in the name of state *laïcité* (secularization) and have been adapted by more Western European countries over time.

Restrictions on religiously related clothing

France was the first European country to ban any kind of religious clothing, including head scarves in schools. The legislation was passed in 2004.

In April 2011, a specific ban was placed on the burqa and niqab (a veil covering the face with the exception of the eyes) in public.ⁱⁱⁱ The law states that "in the public sphere, no-one can wear an item of clothing that serves to cover the face." Offenders can be subjected to a €150 fine and an information program on citizenship. Anyone who forces a woman to cover her face risks a fine of €30,000.

It is estimated that about 2,000 women out of a total of 5 million Muslims in France wear either a niqab or a burqa.

Belgium followed suit in July 2011 with a ban on covering one's face in public spaces. A woman caught wearing a veil can be jailed for up to seven days or fined €137.50.^{iv} The government passed the law almost unanimously.

As in France, the ban affects a relatively small number of people. It is estimated that approximately 300 women out of 500,000 Muslims in Belgium wear either a burqa or niqab.

In **Spain**, in a dozen municipalities of Catalonia, local laws were passed against wearing face-covering Islamic veils in council buildings, civic centers, and public sports centers. Offenders faced fines of up to €600.

In 2013, the Supreme Court ruled that such laws limit religious freedom and overturned the ban, but other municipal regions have carried on—referring to a 2014 ECHR (European Court of Human Rights) ruling that banning the veil does not breach human rights.^v

Bulgaria, which has a sizable Muslim minority at around 10%, introduced a burqa ban in October 2016.^{vi} This new law was driven by the far-right nationalist “Patriotic Front” coalition. Women who break the law face fines of up to €750 as well as a suspension of social security benefits.

In 2016, **The Netherlands** introduced legislation regulating the wearing of full-body veils and face veils. Such garments are allowed in public streets, but they are prohibited in public buildings, transport, schools, and hospitals.^{vii} Offenders can incur fines of up to €400. The Dutch government estimates that roughly 100 women are affected by this ban.

Austria officially outlawed face veils in October 2017. The legislation stipulates that all facial features between the chin and hairline must be visible in public. If they aren't, offenders may have to pay a fine of up to €150.

In May 2019, the Parliament passed another law effectively banning Muslim girls from wearing the headscarf in primary schools. To avoid charges of discrimination against Muslims, the text refers to any "ideologically or religiously influenced clothing which is associated with the covering of the head."^{viii}

The bill passed with the support of the governing center-right People's Party (ÖVP) and the far-right Freedom Party (FPÖ). Almost all the opposition voted against it.

The government said that the patka head covering worn by Sikh boys or the Jewish yarmulke would not be banned because the law refers to head garments that "cover all of the hair or large parts of it."

On 31 May 2018, **Denmark** introduced a law forbidding the concealment of one's face in public, which includes some forms of Islamic dress.^{ix} The government claims, however, that the law does not target religious groups. Offenders can incur fines of up to €120. Repeat offenses are punishable by up to ten times that amount.

In June 2018, **Norway**'s parliament voted overwhelmingly in favor of a ban on wearing the burqa and niqab in nurseries, schools, and universities.^x

In March 2019, in **Germany**, the constitutional court of Bavaria rejected an appeal by an Islamic religious community to overturn a ban on judges and prosecutors wearing headscarves. The court stated that justice officials were particularly obliged to be neutral regarding religion and ideology. The ban also forbids officials from wearing religious symbols such as a cross or a kippa during court proceedings.^{xi}

The reasons underpinning such an inflation in legislation targeting the burqa and niqab across Europe stem from a wide range of social and political perceptions such as:

- fearing the radicalization of young Muslims;
- believing that new Muslim immigrants are unwilling to integrate into the host country and seeing the multiplication of ethno-religious ghettos practicing social exclusion as a proof of it;
- considering the self-isolation and self-marginalization of radicalized Muslims as the rejection of the concept of "living together" with others in a diverse society and of the principle of tolerance;
- believing that radicalized Muslims reject the European "way of life" and moral norms;
- preventing social fragmentation and inter-community tensions;
- perceiving security threats in the impossibility to identify the wearers of the controversial clothing in public spaces;
- and protecting society against religiously motivated radicalization that can lead to lethal violence and terrorist attacks.

Within the context of the influx of asylum seekers and migrants from predominantly Muslim countries in the last few years, perceived cultural and identity threats looming on the horizon of the possible so-called "great

replacement”^{xii} play an instrumental role in the sub-conscious motivation and the frantic efforts of lawmakers to force acculturation through law.

The European Court of Human Rights and full-face veils

The European Court judgements have been very consistent concerning the ban of full-face veils. Their rulings have granted states considerable discretion but are for this reason also contested.

S.A.S. v. France (No 43835/ 11), 26 June 2014

In *S.A.S. v. France*, a practicing Muslim and French national argued that she wore the burqa to comply with her faith, her culture, and her personal convictions. The applicant claimed that her religion requires that she cover her entire body, including her face. She emphasized that neither her husband nor any other member of her family pressures her to dress in this fashion. She agreed with the logic of removing face covering for security checks, at a bank, or when taking a plane. Under French law, however, she is forbidden to conceal her face in public places.

The applicant therefore complained that when she wears the veil in public, she could be subject under law to penalties, harassment and discrimination, which constitutes degrading treatment in violation of Article 3 of the European Convention of Human Rights (hereafter the European Convention).

She further invoked Article 8 of the European Convention (respect for private life), Article 9 (freedom of religion), Article 10 (freedom of expression), Article 11 (freedom of association or assembly) and Article 14 (discrimination on the basis of sex, religion, and ethnic origin).

In a Grand Chamber judgment, the Court declared that the applicant's claims under Articles 3 and 11 were inadmissible and found no violation of Articles 8, 9 or 10 separately, or when considered with Article 14. This was largely due to what the Court described as "respect for the minimum set of values of an open democratic society," specifically the requirements for "living together." By "raising a veil concealing the face," an individual could violate the "right of others to live in a space of socialization which made living together easier."

Furthermore, the Court noted that, while the ban disproportionately affected Muslim women, there was nothing in the law which expressly focused on religious clothing and only fully concealing the face was concerned.^{xiii}

Belcacemi and Oussar v. Belgium (No. 37798/13), 11 July 2017

Belcacemi and Oussar v. Belgium addressed Belgium's ban on wearing clothing in public that partially or entirely covers the face. The law went into effect in 2011. The applicants were a Muslim Belgian national and a Muslim Moroccan national living in Belgium, both of whom chose to wear the niqab on account of their religious convictions.

Following the ban's enactment, one of the applicants initially continued wearing the veil in the street. But her fear that she would be stopped and fined or even sent to prison, caused her to temporarily decide to remove her veil. The other applicant shared these fears and so chose to stay at home. As such, the ban restricted her private and social life as well as "living together" with others.

The applicants argued that the ban violated Articles: 3 (degrading treatment), 5 (right to liberty and security), 8 (respect of private and family life), 9 (thought, conscience, belief), 10 (freedom of expression), and 11 (freedom of expression). They also made their case using Article 2 of Protocol no. 4 (freedom of movement) and argued that all of this could be taken separately or together with Article 14 (discrimination).

On 11 July 2017, the Court ruled unanimously that there had been no violations of Articles 8 and 9, and of 14 taken together. The Court found that the restriction sought to guarantee the conditions of "living together" and the "protection of the rights and freedoms of others," that are "necessary in a democratic society." No separate question arose under Article 10, and the other complaints were inadmissible pursuant to ECHR Article 35 §§ 3 and 4 (admissibility).^{xiv}

Dakir v. Belgium (No. 4619/12), 11 July 2017

Dakir v. Belgium concerned a bylaw adopted in June 2008 by three Belgian municipalities (Pepinster, Dison, and Verviers) banning the wearing of clothing that conceals the face in public places.

The Court found that the ban imposed by the joint by-law could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of

“living together” as an element of the “protection of the rights and freedoms of others.” It held that the contested restriction could be regarded as “necessary [...] in a democratic society,” and referred back to *S.A.S. v. France* when deciding whether this law constituted a legitimate action for a Member State.

In the case of *Dakir v. Belgium*, the Court ruled unanimously that there had been no violation of Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion) of the European Convention separately, and no violation of Article 14 (prohibition of discrimination) taken with Articles 8 and 9.^{xv}

Conclusions

The decisions of the European Court have been widely criticized by scholars and legal experts for granting too much leeway to Member States, especially in the ruling of *S.A.S. v. France*.

Human rights organizations generally concede that women should be free to dress as they please and to wear the burqa or the niqab as an expression of their identity or beliefs. They also agree that bans are difficult to implement and that the purposes provided by states for these bans are not served by punitive measures.

When Denmark voted on an anti-burqa law, Fotis Filippou, Amnesty International’s Deputy Europe Director, commented:

Whilst some specific restrictions on the wearing of full-face veils for the purposes of public safety may be legitimate, this blanket ban is neither necessary nor proportionate and violates women's rights to freedom of expression and religion.^{xvi}

When the European Court upheld France’s ban in the case *S.A.S. v. France*, Izza Leghtas, a Western European researcher at Human Rights Watch, said in a press release:

Bans like these undermine the rights of women who choose to wear the veil and do little to protect anyone compelled to do so, just as laws in other countries forcing women to dress in a particular way undermine their rights.^{xvii}

The effect of the bans has been documented most extensively in France. A study by Open Society Justice Initiative^{xviii} shows that the ban has not dramatically reduced the already small number of face veil wearers, but it does have a strong effect on the daily lives of these women. They are uncomfortable leaving their

houses with their faces uncovered and so they greatly reduce their outdoor activities such as shopping, outings with their children, and social contacts.

There is also little evidence to support the claim that the ban improves the conditions for “living together,” as those who wear the face veil are now more isolated from public life than they were before.

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ⁱ The niqab covers a woman’s whole face apart from her eyes while the burqa adds a transparent veil over the eyes.

ⁱⁱ <https://www.economist.com/graphic-detail/2019/08/09/burqa-bans-have-proliferated-in-western-europe>

ⁱⁱⁱ <https://www.bbc.com/news/world-europe-13038095>

^{iv} <https://www.euractiv.com/section/languages-culture/news/belgium-officially-bans-the-burqa/>

^v <https://www.telegraph.co.uk/news/worldnews/europe/spain/9902827/Spain-overturms-Islamic-face-veil-ban.html>

^{vi} <https://www.independent.co.uk/news/world/europe/bulgaria-burka-ban-benefits-cut-burkini-niqab-a7340601.html>

^{vii} <https://nltimes.nl/2019/08/01/burka-ban-takes-effect-face-covering-clothing-govt-buildings-public-transport>

^{viii} <https://www.dw.com/en/austria-bans-muslim-headscarf-in-primary-schools/a-48756057>

^{ix} <https://www.theguardian.com/world/2018/aug/01/danish-burqa-ban-comes-into-effect-amid-protests>

^x <https://www.independent.co.uk/news/world/europe/norway-burqa-ban-schools-universities-parliament-vote-niqab-latest-a8387826.html>

^{xi} <https://www.dw.com/en/germany-bavarian-court-upholds-headscarf-ban-for-judges-prosecutors/a-47960676>

^{xii} This theory states that the current European populations are going to be progressively replaced with non-European peoples through mass migration of Muslims from other continents, demographic growth of the Muslim population in Europe along with a steady drop in the birth rate.

^{xiii} https://www.echr.coe.int/Documents/FS_Religious_Symbols_ENG.pdf

^{xiv} Ibid.

^{xv} [https://hudoc.echr.coe.int/eng/#{"itemid":\["001-175139"\]}](https://hudoc.echr.coe.int/eng/#{)

^{xvi} <https://www.amnesty.org/en/latest/news/2018/08/denmark-face-veil-ban-a-discriminatory-violation-of-womens-rights/>

^{xvii} <https://www.hrw.org/news/2014/07/03/france-face-veil-ruling-undermines-rights>

^{xviii} <https://www.justiceinitiative.org/uploads/86f41710-a2a5-4ae0-a3e7-37cd66f9001d/after-the-ban-experience-full-face-veil-france-20140210.pdf>