

A decorative L-shaped frame made of thick, dark grey lines. The top-left corner is a solid horizontal bar extending to the right, and the bottom-right corner is a solid horizontal bar extending to the left. The vertical bars are on the left and right sides, meeting the horizontal bars at the corners.

THE FULL FACE VEIL AS AN ISSUE OF HUMAN RIGHTS

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Introduction



Multiculturalism is associated with the presence of different cultures, including their religion.

In Western societies, the presence of many religious symbols has proven to have raised some challenges, especially in public places.



Much debate has been developed in Europe, focusing mainly on the admissibility of the Islamic full face veil in educational institutions and other public places, while some states have already introduced legislation enacting an absolute ban of the veil in public places



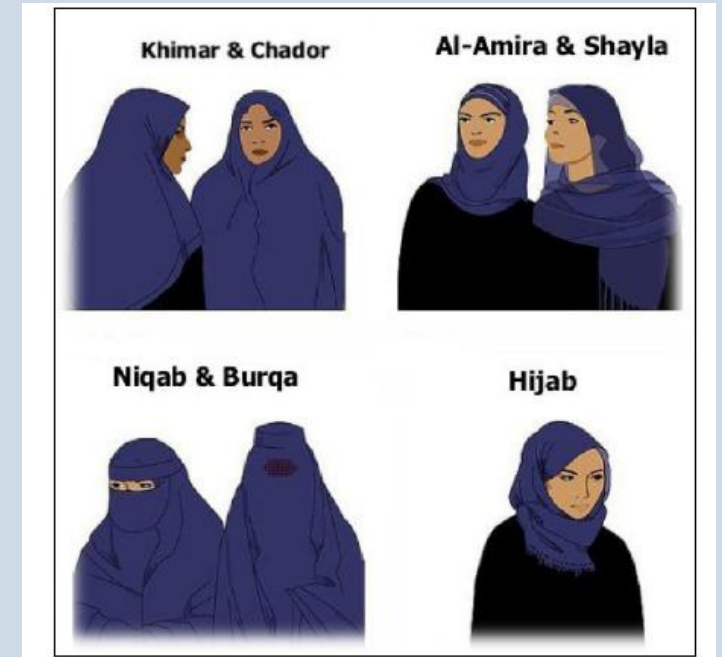
Since the beginning of the 21st century many countries in Europe are struggling to find a balance to the dilemmas that have emerged due to the Muslim or Islamic veils since their wearing by Muslim women has raised a series of questions related to tolerance, to equality, to freedom of religion etc



As a consequence, the veil bans have activated human rights activists and scholars, who are almost unanimous in criticizing and accusing the governments and the competent public authorities of violating the religious freedom and establishing discriminations on grounds of religion and gender Known as Burqa bans

The veil and its styles

- The veil is a representative element of the Muslim religion and the Muslim culture.
- Up to the modern times hijab is considered as the ultimate cultural and religious symbol that is combined with the concept of Islam.
- Nevertheless, it has to be mentioned that the hijab practices vary. Different styles have been developed, while hijab is not only a synonym of veiling but serves as a style of veiling as well.
- In any case it has to be pointed out that the above-mentioned styles are found in many countries, while women are not limited to the veiling style that has been listed to their country.



The debate in western countries as for the lift of the veiling of women under Islam tends to be dismissive of the voices and experiences of the Muslim women. The ban has been based on the argument that it is a patriarchal tool which oppresses and silences the Muslim women

The main arguments that have presented and which support the burqa bans are the followings:

The ban:

- Protects the rights of women, assuming that the veil reflects an infringement of their autonomy, of their dignity and their rights.
- Protects public security and public order because the full face veil restricts social relationships and may be used by criminals as a disguise.
- Protects national identity and enhances the republican values.
- Promotes the integration of the Muslims into western societies, since the veil may have a negative effect on the cohesion of each community.
- Discourages fundamentalist Islam from being established deeply in Europe.

The supporters of the veil ban

Arguments against the veil ban

On the other hand, this debate includes plenty of arguments against the veil prohibition and the enactment of relative strict legislative measures.

- The most important argument is that the bans are as well related to the right of freedom of expression, while they constitute a violation of article 9 of the ECHR, as it will be thoroughly presented below.
- Therefore, the most crucial aspect that is supported as being related to the veil bans is the infringement of the human right to freedom of religion, expression and equal treatment.
- Moreover, it has been argued that such a ban promotes conflicts with national identities and democratic values, shows no respect on diversity and pluralism, while it promotes discrimination against Muslims. This can lead to their alienation and to the demoralization of the Muslim women.
- Finally, it has been pointed out many times that all the policies and the governments' announcements over the lifting of the Muslim veil is strongly related to national interests and are mainly politically motivated, an element that should not be dominant in the context of democratic societies

The full face veil ban in Europe 1

On the 11th of April 2011, France became the first country in Europe to introduce a general ban that concerned “clothing designed to conceal the face” in public spaces.

This prohibition included the full-face veil.

The scope of the law was the promotion of the public order and of gender equality and the preservation of the principles deriving from the constitution and the legal order of France Law No. 2010-1192 – Act prohibiting concealment of the face in public space,

Belgium was the next country that introduced a similar – a general – ban on “clothing that obscures the identity of the wearer” that included – as it can be understood – the case of full face veil.

The full-face veil ban in Europe 2

In Germany no general ban was introduced on the full face veil, since the Federal Constitutional Court had stated that a general ban would contravene the secular constitution of the country.

Nevertheless, on the 6th of December 2016, Chancellor Angela Merkel stated that the use of full face veil would be prohibited in the country wherever this is legally possible.

The related proposal on the prohibition of the full face veil in the public sector, meaning even in schools and universities, was filed by the Interior Minister de Maizier in August of 2016

Moreover, in Italy and Spain the same consideration are being developed over the enactment of legislation prohibiting the full face veil, in order to enhance public safety and order and promote the living together

Finally, it has to be mentioned that even the Netherlands deal with that issue in the same manner. In September 2011 even the Dutch government announced its plans for the introduction of relevant legislation banning the use of the full face veil. This was the aim since 2005 however, due to political reasons there was a delay in this enactmen

The logic behind the veil bans

- The prohibition of the concealing of the face in public in France was based on the argument that such religious clothing is not welcome in the soil of France as it was expressed by the President Sarkozy.
- The arguments that enhanced this view can be distinguished in two categories, the first is the feminist one and the second the philosophical one, meaning the need to preserve the French ideals and values.
- This provision reflects the opinion that women are forced to use the veil, despite their own opinion and conscience while it is supported that such a coercion constitutes a limitation to religious freedom and to expressive freedom of the individual that is involved.
- The French government has supported that the veil – as a form of human right – does not only contain the form of the protection but refers to an obligation as well. Such rights not only prohibit the state from the mistreatment of the citizens but they demand as well that the state should take all the positive actions in order to establish a political and a social space in which those rights will be meaningfully exercised.

The ECHR European Court of Human Rights

- Article 9 established freedom of thought, of conscience and religion as a fundamental right that is not protected only by the ECHR but by a number of national, international and European texts
- Article 9 ECHR protects the right to believe *foro interno* and the right to manifest the belief in the outside world.
- The Court has not doubted that the use of the Islamic veil constitutes such a manifestation of religious belief, while it is accepted that it falls within the scope of the protection of Article 9.
- The veil is considered as a religious symbol that reflects fundamental elements of social order, it refers to the relationships between the two genders, it is related to religious beliefs and the way the latter is related to the duties as a member of a broader society and the duties as they interact with the duties of the rest of the members of that society.
- It is established that wearing religious symbols is subject to restrictive national regimes. Some of them are restrictive to a greater extent and others to lesser extent.
- In any case, the bans that have been imposed are mostly justified on a wide range of grounds, mainly by being referred to the protection of secularism and equality of genders, the protection of human dignity of Muslim women, the promotion of social cohesion and the preservation of public order and safety



The approach of the ECtHR over the religious symbols and clothing ban

- It is essential that individuals who consider their religion as a central element in their lives should mainly be able to communicate their belief to other people, inter alia through the use of religious symbols and pieces of clothing.
- The use of such a symbol or clothing is motivated by his faith or by his desire to bear witness to the chosen faith. This is regarded as a manifestation of his beliefs and constitutes worship, practice and observance. Therefore, all the above actions fall within the scope of Article 9 ECHR
- Nevertheless, this right, i.e. the right to wear religious symbols and clothing, is not an absolute one while it has to be balanced with other legitimate interests of either natural or even legal persons.
- The relevant case law of the ECtHR can be distinguished in three different fields, the first is the public sphere, the second is the workplace and the third is the schools and the universities.
- What is interesting is that the ECtHR has upheld many times states' bans on wearing religious symbols and clothing in public spaces, while universities and schools are included in the latter

The S.A.S. v. France case-law of the ECtHR

- The S.A.S. v. France case is a landmark in the field of the full face veil prohibition, however, it did not result into the expected outcome of the supporters of the veil.
- The complainant is a French citizen that was born in Pakistan and resides in the Paris region. She is a law graduate that completed an internship in Birmingham with a law firm. The S.A.S. case constitutes the first time and individual complaint over the national and general ban of the full face veil reached the ECtHR.
- The grand Chamber accepted the interference with the rights of the applicant and proceeded with an in-depth examination of the aim's legitimacy.
- French government supported that this restriction was aimed at the protection of the public safety and of the rights and freedoms of others.

Conclusions

It is supported that the ECtHR has shown a restrictive attitude in what concerns the freedom of religious clothing in the public places. The secular European governments insist that secular neutrality is harmed because of the religious clothing and the conspicuous religion signs.

The principle of secularism is regarded – even by the Court - as the one to protect the individuals from state interferences and as well from external pressures that may derive from extremist movements. It is considered that the concept of secularism complies with the values of the ECHR.

The reasoning in both the cases (Dahlab and Sahin) demonstrates the broad debate over the Muslim veil and reflects two contradictory views of the women of Islam and their rights. The Court accepts the stereotypes about those women without recognizing that it reproduces stereotypes. Edmunds (2012), op. cit., p.1181

The case law of the Court on the issue of the Islamic veil has received a great amount of criticism, at least prior to the S.A.S. case. It has been argued that in reality there was no supervision or any control on the margin of appreciation that was recognized to the national authorities.

Thank you for your attention.