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Howard, Erica ORCID: <https://orcid.org/0000-0003-0848-5033> (2012) Banning Islamic veils: is gender equality a valid argument? *International Journal of Discrimination and the Law*, 12 (3) . pp. 147-165. ISSN 1358-2291 [Article] (doi:10.1177/1358229112464450)

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Banning Islamic Veils – Is Gender Equality a Valid Argument?

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Abstract:

Bans on the wearing of Islamic head scarves and veils are often said to be necessary for the promotion of gender equality. In this article, I argue that this is based on a stereotypical view of Islam and of Muslim women which ignores the many different reasons why women wear headscarves and veils. I also argue that bans are unnecessary and even counterproductive to achieving gender equality. For those women who wear these garments because they freely choose to do so, bans are not necessary to promote their equality. And, for those women who are pressured into wearing headscarves or veils, bans could well work against promoting their equality, because they could prevent them from getting an education and a job and could lead to their isolation from society..

Key words: Muslim veils and headscarves, gender equality, meaning of headscarves, stereotypes, emancipation.

Introduction

In many European countries, extensive debates are taking place about the wearing of religious symbols in public places and whether there is a need for legislative bans against this. Especially the wearing of headscarves or *hijabs* and face coverings, like the *niqab* and the *burqa*,¹ by Muslim women and girls appears to be the focus of many of these debates and of the bans in place at present. In France, for example, government employees, including teachers in state schools, are not allowed to wear any type of religious symbol at work. France has also, in 2004, adopted a law in relation to primary and secondary schools which prohibits the wearing of ostentatious signs or dress by which pupils openly manifest a religious affiliation. The Islamic headscarf is usually seen as an ostentatious sign. And the French ban on the wearing of garments covering the face in public places came into force on 11 April 2011. The Bill proposing this ban passed in both lower and upper house of the French Parliament with overwhelming majority (French Parliament 2010 and French Senate 2010) and was declared constitutional by the *Conseil Constitutionnel* (2010; Mahony 2010).

¹ The *hijab* is a scarf that covers the hair and neck, but leaves the face free. The *niqab* is a veil that covers the head and face with the exception of the eyes. The *burqa* is a loose robe that covers the female from head to toe with the exception of the hands and with gauze covering or a slit for the eyes. There are a number of variations on these three with different names, which will be explained where used.

In Germany, after the Federal Constitutional Court had held that States could ban teachers from wearing *hijabs* as long as this ban was laid down in laws which complied with the German constitution,² half of the States have indeed enacted such laws. Some German States are now also planning to ban civil servants from wearing the *burqa* (Impey and Mara 2011).

In Belgium, the law of 1 June 2011 bans the wearing of clothing that covers or conceals the face in whole or in part in public places. However, even before this law was adopted, local police regulations in a large number of municipalities already contained similar prohibitions (Vrielink *et al.* 2011).

In the Netherlands, the cabinet voted for a legal ban on the wearing of face covering clothing at the end of January 2012, but it is not clear whether this ban will become law as the Dutch Government has fallen and new elections will take place in September 2012 (DutchNews.nl 2012). And, in Spain (Johnson 2010), Italy, and Austria (Dahmann 2010), bills on the wearing of the full face veil or face covering clothing are also being discussed, while a majority of the population in Britain (Henessy 2010; Collins 2011) Denmark and Switzerland (Dahmann 2010) support a ban, although there do not appear to be any immediate government plans for legislation in these countries.

Although the laws in France and Belgium and the proposed Bill in the Netherlands ban all face covering clothing, the bans are specifically aimed at the

² *Ludin v Baden-Württemberg* Federal Constitutional Court, Germany (BVerfG), 24 September 2003, 2 BvR 1436/02 NJW 56 (2003), 3111.

wearing of Muslim face-covering veils. This is clear from the fact that, in the parliamentary and wider debates, one of the recurring arguments for imposing a legal ban is that this is necessary to promote equality between women and men and to fight the oppression of (Muslim) women who are made to wear religious head or face coverings by men. The *burqa*, *hijab* and *niqab* are seen as symbols of the oppression of women and as going against a woman's fundamental rights and freedoms.³ This argument that (Islamic) veils go against equality of the sexes and, thus, against one of the fundamental values of Western states, is probably the most widely used to defend bans on *hijabs*, *burqas* and/or *niqabs*. It is also an argument used by many feminists, who are in favour of bans as they consider these necessary to emancipate Muslim women and girls.

In this article, I first analyse the above argument in depth, looking at examples where it has been used in debates and case law in Europe. This is followed by a number of counter arguments which can be brought forward and which show that bans can also be opposed from a gender equality point of view. I conclude that legal bans on the wearing of Muslim religious clothing are unnecessary and could even be counterproductive to the promotion of equality between women and men and to the emancipation of Muslim women and girls. The meaning of the headscarf; the stereotypes which lay behind the arguments;

³ This is only one of a number of arguments used in favour of bans. For an analysis of the arguments in favour of bans and the counter arguments which can be brought forward against these, see Howard 2012. This article focusses on the gender equality argument only.

the ambivalence of feminists on this subject; and, the accusation of paternalism levelled at Islam all form part of the discussion.

Bans are Necessary to Promote Gender Equality

The wearing of Islamic clothing and veils is considered to be a symbol of the oppression of the women and girls who wear these, because, it is asserted, they are imposed on them by men, be it spouses, family, communities, religious leaders or the state (McGoldrick 2006, 13-5). The wearing of the veil is thus seen by many as an infringement of a woman's right to equality with men. This is because Islam is perceived as a paternalistic religion which holds that women are inferior to men. This is the reason, this argument concludes, why (face-covering) veils need to be banned by law.

The argument is clearly discernable in the debates in France. In March 2010, the *Conseil d'Etat* brought out a 'study of possible grounds for banning the full veil' in which it stated that the full veil "testifies to a profoundly inegalitarian conception of the relationship between men and women" (*Conseil d'Etat* 2010, 8). And, French President Sarkozy called the *niqab* 'a sign of debasement and subservience', while another minister called it a male-imposed prison (Gilligan 2011).

In the Belgian parliamentary debates on the law banning face-covering clothing in public, many members saw face-veils as a violation of the dignity and humanity of women and this was based on the assumption that women who wear face-covering veils are (mostly or always) pressured into doing so (Vrieling *et al.*

2011, 631; DCO 2011, 5, 7, 10, 14). The term ‘prison’ or ‘mobile prison’ was also used in relation to the *burqa* (Vrienlink *et al.* *ibid.*; DCO 2011, 9, 10, 14).

In the Netherlands, the Government stated that having to wear a *burqa* or *niqab* in public was contrary to the equality between men and women and that, through the law, the Government was helping these women by taking away a barrier to their participation in society (Rijksoverheid 2012). And, in the debates in Spain, the *burqa* was said to be ‘degrading to women’ and ‘hardly compatible with human dignity’ (Johnson 2010).

The argument is thus often couched in the language of protecting the fundamental human rights and dignity of women and protecting women against dehumanisation. In the Belgian Parliamentary debates, it was said that the sexual morality behind the *burqa* teaches that every woman who isn’t covered up is fair game for all men. The wearing of the face covering veil symbolises the oppressed, voiceless and passive status of women. Therefore, the ban will promote the emancipation of women (DCO 2011, 6).

The Stasi Commission,⁴ set up in 2003 to study the implementation of the principle of secularism in France, states that the headscarf proves that young girls are being blamed for attracting male desire (Commission de Reflexion 2003, 57) and, that non-complying girls are stigmatised as prostitutes and infidels (*ibid.*). This means that women who do not cover up are being blamed for attracting male

⁴ This Commission was named after its chair, Bernhard Stasi. It recommended a number of measures, one of which was a ban on conspicuous religious symbols in public schools.

desires and possible sexual abuse, which is seen as an opinion which does not fit in modern times and this is thus another reason to ban such garments.

The argument that face covering veils need to be banned to preserve dignity and rights not only concerns the dignity and rights of the women who wear the face veil. This public manifestation of inequality between men and women is, as Mullally (2011, 39) writes for France, seen as ‘damaging, not only to the dignity of the veiled woman, but to those who share public spaces with her’. A similar argument can be found in the Parliamentary debates in Belgium, where the face covering veil is seen as a symbol of the oppression of women and as such an offence to the dignity of all women (Vrieling *et al.* 2011, 631).

The argument that bans are necessary to promote gender equality can be heard in debates about banning headscarves as well, as will be clear from Loenen (2009, 315) where she writes: ‘a major argument put forward to ban headscarves in public schools derives from the idea that the headscarf is symbolic of the inferior position of women in Islam and that many girls and women are pressured into wearing it’.

The same argument in relation to the wearing of headscarves was also used by the European Court of Human Rights (ECtHR), which oversees the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950. In *Dahlab v Switzerland*, a primary schoolteacher lost her job because she refused to remove her *hijab*. The ECtHR held that the wearing of the headscarf was hard to square with, among others, the principle of gender

equality.⁵ In *Sahin v Turkey*, where a female Muslim student was refused access to the exams for her medical degree at the University of Istanbul because she was wearing a *hijab*, the ECtHR held that the ban on the wearing of the Muslim headscarf at universities in Turkey served the legitimate purpose of promoting gender equality, among other purposes.⁶ Vakulenko (2007, 192) suggests that in both these cases, ‘the headscarf was attributed a highly abstract and essentialized meaning of a religious item extremely detrimental to gender equality’.

Another frequently raised concern, especially in the case law, is that if some women or girls are allowed to wear religious clothing, those who do not want to wear it will be forced to do so as well. In *Karaduman v Turkey* and *Bulut v Turkey*, the applicants, Muslim female students, had successfully completed a university course, but were refused a certificate because they would not supply an identity photograph without a headscarf. The European Commission on Human Rights considered that the manifestations of a particular religion without restrictions ‘may constitute pressure on students who do not practise that religion or those who adhere to another religion’.⁷ In *Sahin v Turkey*, the ECtHR also

⁵ *Dahlab v Switzerland* App. No. 42393/98, 15 February 2001, 13.

⁶ *Leyla Sahin v Turkey* App. No. 44774/98 (2005) 41 EHRR 8 (Chamber), para. 106 and (2007) 44 EHRR 5 Grand Chamber), para. 115.

⁷ *Karaduman v Turkey* App. No. 16278/90 and *Bulut v Turkey* App. No. 18783/91, both (1993) D & R 74, 93, 108.

mentioned the impact which the wearing of the Islamic headscarf may have on those who choose not to wear it.⁸

This pressure on others is often mentioned in relation to the ban on Islamic clothing or veils in schools. If some girls are allowed to wear the *hijab*, *niqab* or *burqa*, other girls will be under pressure to do so as well. Weil, a Member of the Stasi Commission, writes that ‘in schools where some girls are wearing the headscarf, the Muslim girls who do not wear it are subject to strong pressure to do so’ (Weil 2004, 19). He also reports that, in the increasing number of schools where girls wear the *hijab*, ‘a strong majority of Muslim girls who do not wear the headscarf called for the protection of the law and asked the commission to ban all religious exterior signs’ (ibid). This pressure can come from parents – although Weil mentions that some fathers took their daughters out of public schools and placed them in other schools where they were not under such pressure (ibid) - or religious leaders, but also from fundamentalist and extremist groups.

This pressure on others also played a role in some of the cases in Britain concerning schoolgirls who wanted to wear something different from the prescribed school uniform. Most British schools have a school uniform policy, which dictates what pupils should wear to school. Schools with a number of ethnic minority pupils often have different variants of their uniform. For example,

⁸ *Leyla Sahin v Turkey* App. No. 44774/98 (2005) 41 EHRR 8 (Chamber), para. 106, repeated by the Grand Chamber (2007) 44 EHRR 5, para. 115.

in *Begum*,⁹ the uniform rules allowed Muslim and Sikh girls to wear a *shalwar kameeze*¹⁰ with or without a *hijab* in the school colours. However, Ms Begum wanted to wear a *jilbab*¹¹ to school and the school refused to allow this exception to its uniform rules. The House of Lords mentioned that the school reported that, since Ms Begum had issued her claim, a number of Muslim girls at the school had said that they did not wish to wear the *jilbab* and that they feared they would be pressured into wearing it if the school allowed it. The head and her assistant and some parents had expressed concern that the acceptance of the *jilbab* as a permissive variant of the school uniform would lead to undesirable differentiation between Muslim groups according to the strictness of their views.¹² Davies (2006, 12-3) also comments on the pressure on other girls to wear *the jilbab* if Ms Begum was allowed to do so and mentions that these girls might be ‘seen as “less good” Muslims if they did not do so’.¹³ Blair (2005, 411) points out the repercussion of the Court of Appeal decision in *Begum*, which found that Ms

⁹ *R (on the application of SB) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15 (HL).

¹⁰ A *shalwar kameeze* consists of loose trousers and a smock-like dress.

¹¹ A *jilbab* is a long plain dress with sleeves covering arms and legs.

¹² *R (on the application of SB) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15 (HL), para. 18.

¹³ This pressure on other girls was also mentioned in the case of *X*, where a schoolgirl wanted to wear a *niqab* to school against the school uniform policy, see: *R (on the application of X) v Head Teacher and Governors of Y School* [2008] 1 All ER 249, para 64.

Begum's freedom of religion had been infringed, and writes that 'worryingly, media reports of pressure on young women to wear the jilbab, which they had previously been able to resist because of school uniform rules, emerged within a few months of the *Denbigh* decision'. This suggests that allowing for exceptions to the school uniform rules could lead to those pupils who do not wear the *hijab*, *niqab*, *jilbab* or *burqa* being pressured or even ostracised or singled out for bullying for being 'less good' Muslims.

Gies (2006, 379-80) points out that the House of Lords in *Begum* expressed unease as to whether the wearing of the *jilbab* was truly Ms Begum's own choice or if she was pressured into doing so by her brother (her father had died), and, whether a young girl – and possibly other young girls at her school if the *jilbab* were allowed – may have been forced into accepting a set of radical beliefs. Later on Gies writes that *Begum* raises a similar issue to the French headscarf bans, namely 'the concern of state actors to protect female Muslim pupils from being pressured by their own community into manifesting strict religious beliefs against their will' (ibid, 382). This suggests a link between the wearing of Islamic dress and radical beliefs.

A related aspect to this argument of pressure on others is the possible influence on schoolchildren if their teachers wear religious clothing or veils. Teachers who wear headscarves are not seen as a good role model for children (Schiek 2004, 72) and the wearing of the headscarf by teachers might have some proselytising effect, especially on very young children, as the ECtHR pointed out

in *Dahlab v Switzerland*.¹⁴ Langlaude (2006, 931) argues that the ECtHR in this case expressed the opinion that ‘children need special protection, especially when they are at school, notably because they are entrusted to the teacher’s care. Accordingly, they should not be proselytized at school’. This is thus brought forward as a reason to ban teachers in public schools from wearing headscarves or other religious clothing.

It has also been suggested, in political debates in the Netherlands for example, that the wearing of the *hijab*, *niqab* or *burqa* is an obstacle to Muslim women getting jobs and that unemployment benefits for *burqa* wearers should be cut, because, by wearing a *burqa*, a woman drastically cuts her chances of getting a job (*Cut Benefits* 2009, Dahmann 2010). Therefore, the argument goes that bans would help these women getting jobs.

The conclusion from the above is that the wearing of Islamic clothing and face covering veils must be banned from workplaces and schools because this presents an obstacle to the promotion of equality between women and men, which is one of the fundamental values of Western (European) States and a value to which everyone in those states should be committed.

Wiles (2007, 718) sums the above up quite well where she writes that many feminists see the headscarf as inherently inimical to gender equality because it acts as a marker of women’s inferiority to men. These feminists argue,

¹⁴ *Dahlab v Switzerland* App. No. 42393/98, 15 February 2001, 13. The children in this case were between 4 and 8 years old.

according to Wiles, that schooling is a formative environment and that girls mark themselves by wearing headscarves. This may inhibit their ability to form relationships with others and, may ultimately affect their right to education and their capacity to integrate into the mainstream culture in which they are living (Wiles 2007, 719).

The conclusion from the above is that the wearing of Islamic headscarves and veils must be banned from public spaces, workplaces and schools because this presents an obstacle to the promotion of equality between women and men, which is one of the fundamental values of Western States to which everyone in those states should be committed

Of course, one of the main questions in all this is whether women and girls are voluntarily wearing the *hijab*, *niqab* or *burqa* or whether they are under pressure from others to do so. Or, as Wiles (2007, 719-20) writes: 'is the headscarf solely or invariably a symbol of female submission and inferiority in Islam, or is its meaning more complex and divergent, particularly in contemporary European societies?' This is examined next.

Bans are Counterproductive to the Promotion of Gender Equality

From the above it is clear that gender equality has been used in support of imposing (legal) bans on the wearing of various Islamic clothing and veils. However, does this argument in favour of bans stand up to scrutiny? It is submitted that gender equality can also, and in a much more convincing way, be used as an argument for opposing such bans in two different, although interrelated

and overlapping ways. The first one looks at the meaning(s) attached to the wearing of the veil or headscarf for the women who wear these and how this has been mostly ignored in the political debates and case law. Instead, stereotypical ideas about Islamic veils and headscarves and the women who wear these prevail.

The second way in which gender equality can be used to oppose bans is to look at the effect bans are likely to have on those women and girls who are under pressure to wear these garments. For them, bans could very well be counterproductive to their emancipation as they would act ‘to further exclude them from European societies’ (Freedman 2007, 29).

In her dissenting opinion in *Sahin v Turkey*,¹⁵ Judge Tulkens wonders ‘what, in fact, is the connection between the ban and sexual equality’ and then points out that:

As the German Constitutional Court noted in its judgment of 24 September 2003,¹⁶ wearing the headscarf has no single meaning; it is a practice that is engaged in for a variety of reasons. It does not necessarily symbolise the submission of women to men and there are those who maintain that, in certain cases, it can even be a means of emancipating women. What is

¹⁵ *Leyla Sahin v Turkey* App. No. 44774/98 (2007) 44 EHRR 5 (Grand Chamber).

¹⁶ *Ludin v Baden-Württemberg* Federal Constitutional Court, Germany (BVerfG), 24 September 2003, 2 BvR 1436/02 NJW 56 (2003), 3111.

lacking in this debate is the opinion of women, both those who wear the headscarf and those who choose not to.¹⁷

Judge Tulkens criticises the majority judges for linking the headscarf to the oppression of women and failing to question why Ms Sahin wore the headscarf. This clearly shows the two strands of the first argument: the link to oppression which is based on a stereotypical view of women who wear the headscarf; and, the lack of attention to what the wearing means for the individual person. It also refers to the second argument in that it recognises that the wearing of headscarves can be a means of emancipating women. Judge Tulkens comes to the conclusion that ‘finally, if wearing the headscarf really was contrary to the principle of equality between men and women in any event, the State would have a positive obligation to prohibit it in all places, whether public or private’.¹⁸ Each of these issues is discussed in the following.

Meaning of the Headscarf

It will be clear from the above, that the Islamic headscarf is worn for a variety of reasons.¹⁹ Lister *et al.* (2007, 94) suggest some of these where they write that the

¹⁷ *Leyla Sahin v Turkey* App. No. 44774/98 (2007) 44 EHRR 5 (Grand Chamber). dissenting opinion Judge Tulkens, para 11.

¹⁸ *Ibid*, para 12.

¹⁹ For the reasons why Muslim women wear the full face-veil, see, for Germany, Human Rights Watch (2009); for the Netherlands, Moors 2009; for France, the Report of the Open Society Foundations 2011; for Belgium, Brems *et al.* 2012; and, for Britain, Gilligan 2011.

headscarf 'has become simultaneously a symbol of women's oppression, their resistance to oppression and their right to cultural autonomy and religious freedom'. It can also be 'in the context of Islamophobia, a form of pride and political resistance' (ibid, 99). Based on research across Europe, these authors discuss the following reasons why Muslim women wear headscarves: a) as an ethnic and religious signal; b) because of pressure from family; c) as an affirmation of identity and a means to negotiate one's own identity and as a sign of independence; and, d) as a political act or as a sign of a new and radical interpretation of their faith (ibid, 99-100). Let us look at each of these in turn.

Ethnic and religious signal

This meaning of the wearing of the headscarf is especially associated with older married migrant women (Lister *et al.* 2007, 99; Jopke 2009, 12). According to Jopke (2009, 12),²⁰ it can be found wherever there is immigration from Muslim countries and it exemplifies the permanent nature of the identity of origin. It can be seen as an expression of a sense of belonging to the country of origin and its principles against the new and strange society into which the woman is transplanted. This suggests that it is worn in order to hold on to the old and familiar in the face of the new geographical area and different social and cultural environment. This meaning is, according to Jopke (2009, 12), 'the least controversial'. This meaning could also apply to women outside the group of older married migrant women. Killian (2003, 572), for example, writes that

²⁰ Jopke bases this on Gaspard and Khosrokhavar (1995, 34-69).

women between 18 and 22 were more likely to adopt the veil as a symbol of difference and pride in their ethnic identity; and, that for some women, it is a way to reclaim an ethnic identity. And, of course, older married migrant women, like any other woman, could also wear the headscarf or veil because of pressure from their family or community.

Pressure from family

Both Jopke (2009, 12) and Lister *et al.* (2007, 99) point out that this reason to wear the headscarf or veil is particularly applicable to schoolgirls and college students, who are said to wear these garments because they are pressured by their parents to do so. Jopke (2009, 12) adds that this is imposed on girls by parents ‘as a sign of modesty and for the purpose of controlling their daughters’ sexuality’. Killian (2003, 572) reports on research which showed that, in France, ‘the majority of adolescents and preadolescents who veiled did so because of family pressure. Many indicated that if they did not veil, their parents would not allow them to attend school’. The latter can also be found in Lister *et al.* (2007, 99) and in Jopke (2009, 12), and all these authors point out that wearing a veil or headscarf is the only way some of these girls are being allowed to go to school or to take part in school excursions and sports activities.

On the other hand, Gereluk (2008, 117-8) reports that a number of Muslim girls in London ‘were adamant that they had not been forced to wear the *hijab*’. They ‘felt that there was a difference between “parental guidance” and

“oppression”” and that ‘their parents’ wish to have them wear the *hijab* was a sign of their guidance and love’.

It cannot be denied that, in some cases, pressure from family or community elders or religious leaders is applied not only to schoolgirls and college students, but also to other Muslim women. However, in those cases it could well be that wearing a headscarf or veil is the only way these women can go outside the home and study or work.

It must be noted that the above might suggest that there is a clear distinction between, on the one hand, wearing veils and headscarves out of choice and, on the other hand, doing so under direct coercion. In practice, this is often much more complicated and there are a number of subtle ways in which pressure can be exercised. This must be kept in mind, but further discussion of this goes beyond the scope of this article

Affirmation of identity

The headscarf or veil is worn by many women as an affirmation of their identity, as a means to negotiate their own identity and as a sign of independence. These women freely choose to wear the veil or headscarf because they see it as part of who and what they are. For example, Bousetta and Jacobs (2006, 30) write that ‘young Muslim women are openly claiming their right to wear it [the headscarf] precisely in the name of values of freedom and tolerance dear to the liberal democratic tradition’. These women consciously want to make a statement about their (religious) identity (Roseberry 2009, 341). They make this choice not

because they are being told to do so by men, but because they are modern, emancipated women who make up their own minds about what they wear and how they present themselves in public.

In this sense, banning veils and headscarves can thus be seen as an interference with a woman's human right to autonomy and to free choice as guaranteed by Article 8 ECHR. As Roseberry (2009, 344) writes about using sex equality as justification for the banning of headscarves at work 'rather than promoting sex equality, this kind of justification perpetuates sexist portrayals of women as being weak-willed and unable to act in their own best interests'. And Marshall (2006, 460) writes that 'the position may be reached that banning means imposing one set of standards and denies these women freedom as autonomous persons in their own right: seemingly in the name of gender equality'.²¹ Judge Tulkens, in her dissenting opinion in *Sahin v Turkey*, expressed it as follows:

I fail to see how the principle of sexual equality can justify prohibiting a woman from following a practice which, in the absence of proof to the contrary, she must be taken to have freely adopted ... 'Paternalism' of this sort runs counter to the case-law of the Court, which has developed a real right to personal autonomy on the basis of Article 8.²²

²¹ See on this also Skjeie 2007, Marshall 2008 and Mullally 2011, 38 and 42..

²² *Leyla Sahin v Turkey* App. No. 44774/98 (2007) 44 EHRR 5 (Grand Chamber). dissenting opinion Judge Tulkens, para 12. For the case law on this see the opinion.

It can thus be said that banning headscarves and other religious symbols is just as oppressive of women as forcing them to wear these. What to wear or what not to wear is imposed on women by, in the one case, their family or community or by, in the other case, the state, both without any attention for what the women themselves want or without any respect for their freedom and autonomy to choose for themselves. Or, as Van Gulik (2009), writing about headscarf bans in Germany and the fact that some women are indeed coerced into wearing the headscarf or other religious clothing, sums up rather well:

However, our experience and research tell us that oppression cannot be uprooted by a state itself coercing the victims, but rather through education, access to justice and economic opportunity. Women's rights are about autonomy. And real autonomy means freedom to make choices whether others like these or not.

Political act and sign of radical interpretation of their faith

The fourth reason why women wear the Islamic veil or headscarf is as a political act or as a sign of a new and radical interpretation of their faith. This could be seen as one or as two separate points. Some girls and women might well start wearing the headscarf or veil for no other reason than as a token of protest when the government or local authorities discuss bans in public life and in schools, showing solidarity with those affected by these bans, as Gereluk (2008, 116-7) suggests.

However, sometimes the *hijab*, *niqab* or *burqa* are worn as a sign of a new and radical interpretation of a woman's Islamic faith. This is often the other main reason why bans are supported: they are seen as necessary to fight terrorism because the *hijab*, *niqab* and *burqa* are seen as symbols representative of extremist Muslim politics and a threat to and rejection of common liberal Western values. Mazher Idriss (2005, 275), writing about the cases concerning the *hijab* in France, states that these cases 'have fuelled a fear that behind the hijab is a very well-organised Islamic fundamentalist network, a new "Islamic insurgency"...'.

This shows that there are many different reasons why Muslim women wear headscarves and veils. The reasons discussed are interwoven and a woman might wear a headscarf or veil for more than one of the reasons mentioned. It is also clear that many people, including lawmakers and judges, make assumptions about why women wears these garments, often based on stereotypical ideas about Muslim women and without any attention being given to the opinion of the women themselves. These stereotypes are discussed next.

Stereotypes

Arguments to ban Islamic headscarves and veils are thus often based on stereotypes of Muslim women. The two most prevalent ones are that of the Muslim woman as victim – 'the victim of a gender oppressive religion, needing protection from abusive, violent male relatives, and passive, unable to help herself in the face of a culture of male dominance'- and as aggressor – 'the Muslim woman as fundamentalist who forces values onto the unwilling and undefended'

(Evans 2006, 15-6). These two stereotypes are inherently contradicting each other: women who wear Muslim veils need rescuing from Islam, but at the same time, they are Islamic fundamentalists from whom everyone else needs rescuing (ibid.; see also: Mazher Idriss 2005, 292; Mullally 2011, 37). Evans criticises the ECtHR decisions in *Dahlab v Switzerland* and *Sahin v Turkey*²³ for using these two stereotypes without recognising this inherent contradiction between them and with little evidence that either stereotype is accurate with respect to the applicants in these two cases or to Muslim women more generally (Evans 2006, 15). This completely ignores that, as Evans points out, the applicants in both these cases did not appear to be ‘stereotypically subordinate’ but were educated, intelligent and strong-minded individuals who wore the headscarf of their own free will and who were prepared to fight in domestic and international courts against what they saw as illegitimate regulation of their clothing (Evans 2006, 11-2).

However, these two stereotypes are also prevalent in popular (political) culture as can be clearly seen in the two main arguments used for banning religious symbols mentioned above: bans are necessary to promote gender equality and to improve safety and security by fighting terrorism. The link between the two stereotypes ‘seems to be the idea of threat’, as Evans (2006, 16) writes. She continues that:

²³ *Dahlab v Switzerland* App. No. 42393/98, 15 February 2001; *Leyla Sahin v Turkey* App. No. 44774/98 (2005) 41 EHRR 8 (Chamber); (2007) 44 EHRR 5 Grand Chamber).

The implicit threat in the woman who is too powerful, too intolerant, too aggressive is easy to see. But the victim is a threat too. A threat to the liberal, egalitarian order. A threat to control by the state and secular authorities because their coercion is less effective than that of the family and the subculture. In response the state increases its coercion and control (ibid. 16-7).

It is submitted that it is this threat, the threat of political Islam, which lies behind many bans and proposed bans on Muslim headscarves and face coverings. The ECtHR decision in *Sahin v Turkey*²⁴ shows, as Skjeie (2007, 1330) writes, that the court is strongly influenced by its 'general ambition to curb political Islam', while Rorive remarks that the Court's decision 'seems to be driven by the fear of Islamic fundamentalism' (Rorive 2009, 2684) and relies on 'populist images' which are 'already deeply entrenched in the political debate in many European States' (ibid, 2685). Pimor (2006, 333) also writes that, in both *Dahlab v Switzerland* and *Sahin v Turkey*,²⁵ 'rather than focusing on the Muslim applicants' actual freedom to manifest their religion, national and European authorities diverted the dialogue towards political considerations'. Pimor sums this up well were she writes:

²⁴ *Leyla Sahin v Turkey* App. No. 44774/98 (2005) 41 EHRR 8 (Chamber); (2007) 44 EHRR 5 Grand Chamber).

²⁵ *Dahlab v Switzerland* App. No. 42393/98, 15 February 2001; *Leyla Sahin v Turkey* App. No. 44774/98 (2005) 41 EHRR 8 (Chamber); (2007) 44 EHRR 5 Grand Chamber).

The emerging pattern seems to show that Strasbourg does not necessarily deal with the protection of Muslim women's individual rights per se, but instead endeavours to tackle the polemical and political angle of Islam, the result of which is an attempt to possibly subdue religious expressions of the Muslim faith in order to render Islam more acceptable in Europe, by making it less visible and therefore less threatening to western and secular values (ibid).

This threat is thus of the political discourse across Europe. Islam is identified as the enemy in our midst and one of the strategies to deal with this is 'an assault on [Islamic] dress forms, which is legitimated by ensuring that observers' stereotypical interpretation of these forms of dress, seen as representing either subjugation or strident militancy, take precedence over the wearer's definitions' (Edwards 2010, 127).

Therefore, women wear Muslim veils and headscarves for a variety of reasons but these are often ignored in political debates and in court cases where stereotypical ideas about these veils and headscarves and the women who wear them are used to make decisions. Consultation with women who have chosen to wear these or who have explicitly chosen not to wear these is notably absent in all this.

The argument that bans on these forms of clothing are necessary to promote gender equality is based on one of the prevalent stereotypes, that all Muslim women who wear these garments are forced to do so and thus need

emancipating. But does a woman who freely chooses to wear, or not to wear, a headscarf or veil, need emancipating? This brings us to the second argument.

Counterproductive

The other main counter-argument, linked to the above, is that bans on the wearing of Islamic clothing are not only not necessary for the promotion of equality between men and women, but that they can even be counterproductive and hinder the emancipation of Muslim women and girls. Of course, women and girls should not be, either openly or more subtly, pressured into wearing what they do not want to wear or be prohibited from wearing what they freely choose to wear. But, in the cases where women are forced to wear Muslim headscarves and veils, would bans stop this pressure? It is submitted that, on the contrary, bans could very well increase sex inequality since, as mentioned above, bans might prevent women and girls from going out, getting an (university) education or entering a workplace and this would marginalise these women in society and could very well take away their chances of (economic) independence (Marshall 2006, 460; Roseberry 2009, 343-4 and 347; Sacksofsky 2009, 361). Getting an education and a job is often the way towards gaining more equality with men and for the women and girls who are pressured into wearing these items, this path to emancipation might very well be cut off by bans, because then they are not allowed to go out at all. As Mahlmann (2003, 1111) argues, 'it seems to be a rather surprising strategy to foster the emancipation of Muslim women by blocking their professional careers'.

Therefore, the wearing of the headscarf or veil can itself be seen as a way of emancipating women, of giving them a chance to gain equality in and through work and education. Van Gulik (2009) writes that ‘banning the headscarf is the worst possible response to the need to bring people into mainstream society. Our research²⁶ showed that the ban serves to exclude, rather than include’. She also reports that ‘all of the women we spoke to told us they had freely chosen to wear it. But the bans do them harm, leaving them unable to work in the jobs they had chosen, and causing them to lose financial independence’ (ibid.). Muslim women themselves thus often see the wearing of headscarves as ‘a way to break free from the sexual market place to participate in public life and escape the scrutiny of fathers and brothers’ (Mouritsen 2006, 86).

Banning the wearing of headscarves and veils would thus be counterproductive, as it would prevent these garments playing this emancipatory role. Or, as Schiek (2004, 72) writes, ‘a headscarf ban would in fact hinder steps towards emancipation by Muslim women, who are not (yet) prepared to adapt to Western ideals of equality, and thus not allow them to integrate into public life’. And, bans on the wearing of headscarves and veils in schools could very well lead to girls being withdrawn from education altogether and even to them being sent away and married off at an early age. Bans could thus negatively affect equal access to education and jobs for a number of women. As the research by Killian

²⁶ For this research see: Human Rights Watch (2009).

(2009, 572), reported on above, showed, many French schoolgirls indicated that if they did not veil, their parents would not allow them to attend school.

As mentioned, bans on the wearing of headscarves by teachers are also supported by the argument that this could influence their pupils or put pressure on them in some way. Naturally, teachers are not permitted to indoctrinate children and there is 'no room for missionaries in public schools', but 'just wearing the headscarf does not constitute such a missionary impetus', as Sacksofsky (2009, 361-2) rightly points out. She continues that seeing some teachers with headscarves and some without could teach children about diversity and tolerance.

Besides teaching about tolerance and diversity, a teacher wearing a headscarf could also be a very positive role model for pupils. As Schiek (2004, 72) points out, 'a Muslim woman achieving a career as a teacher and earning her own living could just as well serve as a role model to her Muslim girl pupils, especially when such pupils are confronted by parental demands not to attend further education'.

Therefore, seeing teachers wearing Muslim headscarves could, in fact, have a very positive effect on both younger and older pupils. Moreover, the influence on children of teachers wearing a headscarf might not be all that great because many children will not experience a headscarf as something out of the ordinary or special, as they see them regularly outside school in all kinds of places. For many children, they are part of everyday life.

Conclusion

It is submitted that it is far too simple to say that gender equality requires that the wearing of Islamic headscarves and veils is banned. This argument is based on the view that Muslim women are wearing headscarves or veils because they are being pressured into doing so by men. Islam is thus seen as a patriarchal and paternalistic religion which does not espouse gender equality and which imposes a certain way of dress on women. Therefore, the argument goes, Muslim women wearing these garments must be liberated from the dictates of men and protected against the pressures put upon them and this needs to be done by banning the wearing of Muslim headscarves and veils. However, this is based on the stereotype of Muslim women as victims of oppression and ignores a number of issues.

First of all, it ignores the fact that banning the wearing of headscarves and veils by the state is just as paternalistic and patriarchal as putting pressure on women to wear these garments. Both prescribe what women should wear and do not pay any attention to what the woman in question herself wants to wear. It completely ignores a woman's human right to autonomy and to free choice as guaranteed by Article 8 ECHR. As Lyon and Spini write (2004, 341), 'the answer to one constraint (the religious obligation to wear the *foulard* [headscarf]) cannot be another constraint (the obligation not to wear it): *an effective process of liberation cannot be based on a prohibition* [their emphasis]'.

Secondly, it presumes that women wearing headscarves and veils are oppressed without much evidence that this is indeed the case. Gereluk (2008, 118) writes that ‘it is not enough to suggest that individuals *may* be oppressed by certain clothing, one needs to show supporting evidence to make the case’.

This leads to the third issue which is ignored in this argument. This is that many women wear the headscarf out of their own free choice and for a multitude of reasons, some of which have been discussed above. If a woman wears a headscarf or veil out of her own free choice, which she has made as an autonomous person who is well able to make up her own mind, does she then need liberating?

Of course, there are women and girls who wear headscarves and veils because of pressure by their family or religious community and this can be seen as paternalistic and as going against the idea of equality between men and women. In this case, the woman or girl in question can be said to be oppressed and needs liberating from this oppression, but is a ban on the wearing of these garments going to help this woman or girl? It is this group that is likely to suffer more from bans. As they are oppressed, they will be banned from attending schools and universities and going out to work, thus aggravating the situation because they might lose any chance of getting an education or a job. Bans might thus have the opposite effect of what they are trying to achieve for this group: they might restrict their chances of being liberated or emancipated by further isolating these women and girls and by stopping them from taking any part in society at all.

It is therefore submitted that the gender equality argument for banning headscarves and veils is false and that the women such bans are alleged to liberate are just those people who may well suffer the most from a ban. Without a ban, they could gain more emancipation through education and work. Or, as Evans (2006, 13) concludes, ‘the reality [of banning religious clothing] is that some women will no longer be able to pursue their education or their careers in public places. If a feminist analysis is to be undertaken, the harm done to these women must be taken into account’. The answer to the question posed in the title of this article, whether gender equality is a valid argument for the banning of Islamic veils must thus be a resounding ‘no’.

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