

"Rulings anywhere that women must wear the burqa should be condemned - but banning such dresses here would be wrong" says Commissioner Hammarberg

[08/03/10] **Prohibition of the burqa and the niqab would not liberate oppressed women, but might instead lead to their further alienation in European societies. A general ban on such attires would constitute an ill-advised invasion of individual privacy. Depending on its precise terms, a prohibition also raises serious questions about whether such legislation would be compatible with the European Convention on Human Rights.**

Two rights in the Convention are particularly relevant. One is the right to respect for one's private life and personal identity (Article 8). The other is the freedom to manifest one's religion or belief "in worship, teaching, practice and observance" (Article 9).

Both articles specify that these human rights can only be subject to such limitations as are prescribed by law and are notably necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Those who have argued for a general ban of the burqa and the niqab have not managed to show that these garments in any way undermine democracy, public safety, order or morals. The fact that a very small number of women wear such clothing has made proposals in such a direction even less convincing.

Nor has it been possible to prove that these women in general are victims of more gender repression than others. Those who have been interviewed in the media have presented a diversity of religious, political and personal arguments for their decision to dress themselves as they do. There may of course be cases where they are under undue pressure - but it is not shown that a ban would be welcomed by these women.

No doubt, the status of women is an acute problem within some religious communities. This needs to be discussed, but prohibiting symptoms like clothing is not the way to do it, especially as these may not always be the reflection of religious beliefs, but the expression of broader cultural aspects.

Rightly, we react strongly against any regime ruling that women must wear these garments. This is absolutely repressive and should not be accepted. However, this is not remedied by banning the same clothing in other countries.

A serious approach requires an assessment of the genuine *consequences* of decisions in this area. For instance, the suggestion to ban the presence of women dressed in the burqa/niqab in public institutions like hospitals or government offices may only result in these women avoiding such places entirely.

The fact that the public discussion in a number of European countries has almost exclusively focused on what is perceived as *Muslim* dress has been unfortunate and created the impression of targeting one particular religion. Some of the arguments have been clearly Islamophobic and that has certainly not built bridges or encouraged dialogue.

Indeed, one effect is that the wearing of a full cover dress has become a means of protesting against intolerance in our communities. The insensitive discussion about prohibitions has provoked a polarisation.

In general, the approach should be that the State must avoid legislating on how people dress themselves. It is, however, legitimate to regulate that those who represent the State, for instance police officers and judges, do not wear clothes or carry symbols which signal a partisan religious - or party political - interest. Likewise, civil servants in contact with the public should not have their face covered.

This is where the basic line should be drawn.

The European Court ruled recently in this spirit. This was in a case about the criminal conviction of individuals who had worn headgear and religious garments in a public place. The Court found that this conviction constituted a violation of their right to freedom of conscience and religion and that the interference was not "necessary in a democratic society".¹

Beyond this, there are particular *situations* where there are compelling community interests that make it necessary for individuals to show themselves for the sake of safety or in order to offer the possibility of necessary identification. This is not controversial and, in fact, there are no reports of serious problems in this regard in relation to the few women who normally wear a burqa or a niqab.

A related problem has come under discussion in Sweden. A jobless man of Islamic faith lost his subsidy from a State agency for employment support because he had refused to shake the hand of a female employer when turning up for a job interview. He had claimed religious reasons.

A court ruled later, after a submission from the Equality Ombudsman, that the agency decision was discriminatory and that the man should be compensated. Though this is in line with human rights standards, it was regarded as controversial in the public debate which followed.

It is likely that more issues of this kind will surface in the coming years and, on the whole, it is only healthy that they should be discussed - as long as Islamophobic tendencies are avoided. However, attempts should be made to broaden the discourse to cover essential matters, including how to promote understanding of different religions, cultures and customs. Pluralism and multiculturalism are essential European values and should so remain.

This in turn may require more discussion of the meaning of *respect*. In the debates about the Danish cartoons from 2005 it was repeatedly stated that there was a contradiction between demonstrating respect for believers and protecting freedom of expression as stipulated in Article 10 of the European Convention.

The Strasbourg Court analysed this dilemma in the famous case of *Otto-Preminger-Institute v. Austria* in which it stated that "those who choose to exercise the freedom to manifest their religion ... cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith".

In the same judgment the Court stated that consideration should also be given to the risk that the respect for religious feelings of believers may be violated by provocative portrayals of objects of religious significance and that "such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society".

In other words, tolerance is a two-way street.

The political challenge is to promote diversity and respect for the beliefs of others and at the same time protect freedom of speech. If the wearing of a full-face veil is understood as an expression of a certain opinion, we are talking here about similar or identical rights – though seen from two different angles.

A prohibition of the burqa and the niqab would in my opinion be as unfortunate as it would have been to criminalise the Danish cartoons. Such banning is alien to European values. Instead we should promote multicultural dialogue and respect for human rights.

Thomas Hammarberg

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1. *Ahmet Arslan and Others v Turkey*, judgment of 23 February 2010.