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# Muslim Women don't need saving

## *Gendered Islamophobia in Europe*

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**STOP  
ISLAMOPHOBIA**

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## Glossary of Terms

*Burka*: clothing that covers a woman’s face, including her eyes

*Burkini*: a bathing suit adapted to cover the body from head to ankles, with a skirt attached

*Hijab*: clothing covering the head and neck, leaving the face visible

*Niqab*: Clothing covering a woman’s face, leaving her eyes visible

## Introduction

Upon declaring a Global War on Terror in 2001, the US administration claimed that the “fight against terrorism was also a fight for the rights and dignity of women”.<sup>1</sup> In the years that followed, western political discourse regularly referred to the need to “free” apparently oppressed Muslim women from the shackles of their religion and way of life, reviving political and societal debates about head coverings, integration, gender equality, secularism, and neutrality. Relying on Islamophobic stereotypes, and with no regard for the rights to freedom of expression or freedom of religion, laws and policies were introduced in a number of European countries, which banned the hijab and/or niqab. In perhaps the most flagrant example of just how entrenched Islamophobia has become, European states, in effect, began legislating on Muslim women’s bodies, dictating which clothes they could or could not wear.

In the post 9/11 era, political discourse increasingly pointed towards an apparent incompatibility between what it is to be European and what it is to be Muslim; it seemed impossible to be both.<sup>2</sup> Although anti-Muslim rhetoric has implications for all Muslims, much of the legislation rolled out and the policies implemented either specifically target, or disproportionately affect, Muslim women. Much can be said about the increased policing of Muslims collectively and the systematic targeting of Islamic places of worship, but Muslim women, in particular, have borne the brunt of state led, racist laws and policies. Those who wear head coverings and Islamic attire are easily identifiable and have thus become easy targets.<sup>3</sup> Following bans on Islamic dress, Muslim women have found themselves increasingly vulnerable and exposed to gendered Islamophobic attacks, while their rights to religious freedom, freedom of expression, equality and non-discrimination have been sidelined or ignored. Attacks motivated predominantly by religion and gender have largely been normalised.<sup>4</sup>

In addition to laws that target clothing specifically because it is religious attire, politicians have also used arguments based on security and a need to see people’s faces at all times. Laws based on either justification may be presented as neutral, in that *any* item of clothing obscuring a person’s face would be forbidden, or that an item of clothing that clearly expressed *any* religion could be covered by a ban. However, laws that are *prima facie* neutral can clearly affect certain groups much more severely than others. As a result of the bans discussed here it is far more likely that Muslim women will be confronted with limits to their religious and personal expression, or face financial penalties, professional discrimination or educational exclusion because of upholding their choice of expression.

## Muslims stereotypes and “Europeanness”

To understand Islamophobia solely as a by-product of the War on Terror leads to a limited and skewed understanding of how deeply rooted Islamophobia or Anti-Muslim racism actually is in the cultural, historical and political archive of Western European countries.<sup>5</sup> Arguably, the perception of Islam and the characterisation of the “Muslim Other” began to form as early as the 7<sup>th</sup> century when the Byzantium Empire started to conquer large parts of the world and moved slowly towards the European continent.<sup>6</sup> Ever since, the religion of Islam, and those who practice it, have been seen as a threat to what we have come to consider “the Western way of life”. With a growing number of Europeans who identify as Muslim, old stereotypes have resurfaced and influence the way that Muslims, and indeed the religion of Islam, are perceived.<sup>7</sup>

The establishment of European imperial power required both territorial domination and sexual control.<sup>8</sup> Whereas Muslim men were presented as the violent other, Muslim women were thought to be submissive, hidden away either in a “harem” or behind a veil.<sup>9</sup> Before the colonial conquest started, countries in Africa and Asia were depicted as sensual

places where people engaged in transgressive sexual behaviour.<sup>10</sup> In order to justify and maintain colonial rule, notions of race, class, sexuality and gender were central to the pacification and domination of the populations encountered.<sup>11</sup> The figure of the veiled Muslim woman has historically, as well as contemporarily, been seen both as oppressed by their male counterpart and therefore in need of saving, while at the same time exoticized.<sup>12</sup>

By the 21st Century, one of the main justifications for the wars declared by Western powers on Afghanistan and Iraq in 2001 and 2003 respectively, was the stereotype of the Muslim woman in need of saving.<sup>13</sup> Oppression of women was portrayed as a sign and extension of Islamist fundamentalism. Within Europe, the same idea was used to underscore Muslim “otherness” and as a sign of their failure to integrate in European society.<sup>14</sup> Western states often point to advances with regard to women’s and LGBTIQ+ rights to uphold or emphasize their image as liberal and progressive nations. They consider that veiled Muslim women are at odds with, or contradict this progress or liberation, and thus need to be guided towards living a more “European way of life”.<sup>15</sup>

This theoretical opposition has also grown from misunderstandings, fear and prejudice about migration. Muslim women’s clothing choices are seen by some as a visible demonstration of an external, opposing culture. Head or face coverings are presented as evidence of gender inequality and therefore, are apparently incompatible with European, democratic values.<sup>16</sup> A review by the European Network Against Racism (ENAR) of written media in five European states found trends presenting negative stereotypes of Muslim women as opposing national values, particularly promoting the fear of an “Islamic invasion”.<sup>17</sup> The invention of national cultural distinctiveness – a reaction to the visibility of those perceived as different – has driven the impetus to (re)define “Europeanness”.

Under Ursula von der Leyen’s European Commission, the position of European Commissioner for Protecting the European Way of Life was created, raising serious questions over whether there is a particularly “European” way of life, before even asking if it needs protecting at all, or what it needs protection from.<sup>18</sup> The fact that the portfolio for this role includes the EU’s migration and asylum policy adds a particularly concerning dimension to the last question.

By depicting Muslim men as violent and oppressive, and Muslim women as in need of liberation, old stereotypical constructs continue to maintain currency. **It would appear that being free actually means “being more like us in the west” and has very little to do with actual freedom at all.**<sup>19</sup> This approach decontextualizes Muslim women’s behaviour, relying on the assumption that women who wear a veil in Europe do so for the same reasons as a woman in a state such as Iran or Saudi Arabia where she would face negative consequences for not wearing one.<sup>20</sup> It misses an important positive freedom to wear or display items that affirm one’s religion, in the pursuit and prioritisation of the “negative freedom from being forced to wear or display religious symbols”.<sup>21</sup> Legislation passed in many European countries removes Muslim women’s right to freely choose their own clothes, which affects how they exercise a number of other basic human rights. It also serves to create and maintain a hostile environment towards anyone who does not “fit in” to the western notion of freedom.

Where Muslim women have been consulted, many refer to personal choice – how to express their personal religious beliefs, how to reinforce those beliefs for themselves, how to assert independence from the mainstream narrative and assert an individual

identity, are all cited as reasons to wear a hijab, burka or niqab.<sup>22</sup> Others cite the deflection of unwanted sexual attention, regarding the modesty created in wearing the garment itself as liberation.<sup>23</sup> Indeed, any women who truly were subjects of coercion into wearing a head or face covering would be all the more isolated for being excluded from public life due to public bans or public displeasure at their clothing.

## The Hyper (in)visibilisation of Muslim Women in Society

Women who choose to express their religious identity by wearing Islamic dress are easily identifiable as Muslims and as such become the target of hate crimes and discrimination.<sup>24</sup> Gendered Islamophobic attacks are not isolated, individualised incidents. European governments have been driving legislation and policy that normalise and institutionalise gendered Islamophobia. Regardless of the apparent intent behind such legislation to liberate or save women, by identifying an Islamic dress code as a symbol that is incompatible with the West, European governments are oppressing Muslim women and have paved the way for violence against them.

It should be noted that beyond the countries where legislation and policies have been introduced restricting Muslim women's wearing of religious attire, political narratives have also discriminated against Muslim women. British Prime Minister Boris Johnson's remarks about women who wear burkas serve as a particularly disturbing case in point.<sup>25</sup> The impact of his words – comparing women wearing a burqa to “letterboxes” and “bank robbers” – was evidenced in a 375% rise in Islamophobic attacks in the following weeks.<sup>26</sup> Furthermore, although legislation may target a particular aspect of Muslim

dress, for example banning a full-face covering, the impact is felt by all Muslim women. Regardless of the attire they wear, the fact that a state legislates against any aspect of Muslim clothing conveys a message across society that Muslim women are suspicious, oppressed, outsiders, or a number of other negative connotations, that expose them to racist attacks whether they wear a burka, hijab or other items to express their faith.

Gaps in public research have made Muslim women's experiences less visible. France, for instance, does not collect data on discrimination in government evaluations,<sup>27</sup> while in Belgium the UN Committee on the Elimination of Discrimination Against Women (CEDAW) has also pointed out a lack of meaningful data on the impact of bans on religious clothing.<sup>28</sup> Where Muslim women's voices are sought out, a simultaneous phenomenon of self-censorship presents a further impediment. The EU Fundamental Rights Agency (FRA) reported in 2009 that 38 percent of respondents to surveys saw no benefit in reporting Islamophobia that they saw as part of their daily life, with some even expecting negative consequences such as loss of employment if they reported discrimination.<sup>29</sup>

**Muslim women are both hyper-visible but simultaneously invisibilised. Their bodies, their clothing and religious attire have become a political battleground in Europe. Anti-Muslim legislation has severely affected how they live their daily lives, as evidenced in their collective experience of gendered Islamophobia.**

According to Meld Islamofobie, an independent, women-led citizens' initiative that collects incidents of Islamophobic violence in **the Netherlands**, in 2015 89 percent of the perpetrators of physical or verbal Islamophobic violence were white, and 82 percent of the violence was committed by men. At the same time, 91 percent of the victims were

Muslim women who wore a hijab or a niqab<sup>30</sup>.

Similarly, the Collective Against Islamophobia in **Belgium** reported that 63.6 percent of the victims of Islamophobic violence in the period between 2012 and 2015 were women<sup>31</sup>.

In 2017, the Collective Against Islamophobia in **France** – CCIF - found that 75 percent of victims of Islamophobia were women, and that Muslim women wearing clothing that covered their face were subject to acts of discrimination from inappropriate comments in public, to a reduction in assigned workload or an imposed change of role at work.<sup>32</sup> Such women are thus compelled either to submit to limits of their clothing choices, or to accept a financial loss. Following the violent attacks in Paris in November 2015 and subsequent attacks in other parts of France, women wearing clothing covered by France's various bans reported an increase in racially motivated violence (including insults, spitting, and attempts to remove their clothing).<sup>33</sup> In 2018, women still made up 70 percent of all victims of Islamophobic abuse in France.<sup>34</sup>

In the UK, hate crime incidents increased by 42 percent in the two weeks following the Brexit referendum result in June 2016. Tellingly, almost half of these incidents were perpetrated against visibly Muslim women; hate crimes against Muslim women rose by 300 percent in this period.<sup>35</sup> Leading members of UKIP, the right-wing populist political party that had driven the "Leave" campaign, had also campaigned for bans on face coverings in public buildings, and specifically of face veils for Muslim women, justifying these calls through security arguments.<sup>36</sup> These figures show that support for bans on Muslim women's face-covering clothing exacerbates, rather than addresses, violent hostility towards them.

Muslim women are more likely to be victims of hate crime and speech in comparison to Muslim men<sup>37</sup>. They are assaulted verbally and physically, offline as well as online. Often, violence against Muslim

women takes place in public spaces such as shops, public transportation and in the workplace. The attacks are wide ranging and vary from insults to attempts of pulling off their clothing.<sup>38</sup> Violence takes many forms, and without downplaying the verbal and physical harm caused by direct attacks, it is equally important to address the opportunities that are taken away from Muslim women because of their clothing choices, giving rise to other forms of violence, including economic violence due to loss of employment or social exculsion and isolation.

Muslim women face greater discrimination in accessing education, health care, and social services and in securing employment.<sup>39</sup> Amnesty International has identified discrimination on the grounds of religious symbols, especially the veil, as "an important barrier for Muslim women whether they are attempting to access the labour market or already in the workplace".<sup>40</sup> In the UK in 2016, half of women who covered their faces consulted in an ENAR study "felt they had missed out on progression opportunities because of religious discrimination".<sup>41</sup> They often face social and economic marginalization because they are considered a minority in the societies in which they live, although many of Europe's Muslims were born in Europe and are European citizens.

In general, Muslim women face discrimination on multiple grounds due to intersecting markers such as race, gender, religion and/or sexuality. Furthermore, their position outside the boundaries of the dominant white, Christian culture means that they are less valued and thus less protected<sup>42</sup>.

## Islamophobic Legislation in Europe – A ban on Muslim women’s right to choose their own clothing

The notion that there are apparently irreconcilable differences between what it is to be Muslim and what it is to be European is gaining traction. By presenting Islam, and by extension Muslims, as a threat to a “European way of life and freedom” and the hijab, niqab or burka as the foremost symbol of that “threat”, violence and hostility directed towards Muslim women is normalised, legitimized and institutionalized through government policy and legislation under the pretext that such legislation will “set them free”.

*The rights of Muslim women to freedom of religion and freedom of expression, as enshrined under International and European Human Rights Law, are consistently problematized, politicized, ignored, and violated by European governments, and Muslim women themselves are left entirely out of discussions on legislation that directly affects them.<sup>43</sup>*

One justification for infringing upon the right of Muslim women to wear the hijab, niqab or burka in public spaces is that such action is needed to protect women who are being forced in to wearing such attire. This analysis entirely misses the point that many Muslim women freely choose to wear the hijab or niqab. Indeed, Muslim women in Europe have overwhelmingly cited “personal choice and expressing their identity and religion” as their main reason to wear a veil.<sup>44</sup> However, their agency in choosing their own attire while simultaneously exercising their right to freedom of expression and religion is increasingly being encroached upon by restrictive legislation in various European states. The right to not wear a hijab or niqab should by default encompass the right to wear it, if we are to apply the basic feminist assumption of women having the choice to control their own bodies and by extension of that the way they dress.

The table below includes a list of European countries where a ban on a full-face covering in public spaces has been introduced in law or policy:<sup>45</sup>

General National Ban on full face covering	Specific National Ban on full face covering	General Localised Ban on full face covering	Specific Localised Ban on full face covering
Belgium Bulgaria Denmark France Latvia Luxembourg	Austria Bosnia and Herzegovina Norway The Netherlands Kosovo	Belgium Switzerland	Germany – in schools and public institutions Italy Spain Sweden



## Some States in focus

### France

The French concept of *laïcité*, or secularism, is perhaps one of the most pronounced examples of the Church and State divide in Europe, and has significantly influenced debates around religious symbols in public life, including Muslim attire.<sup>46</sup> The French Constitution does not recognise minorities because of the belief that any official recognition of difference can create societal division, leading to tension and struggle.<sup>47</sup> As such, French secularism ensures that people are not “confronted” by the religions of others, rather than pursuing a secularism that protects the right to practice any and no religion equally.

A 2002 publication of school teachers’ testimonies presented the observation that Muslim students were “withdrawing” into their own communities, fuelling a new focus on the preservation of cohesion and public order in schools.<sup>48</sup> Under the mandate of former president Jacques Chirac, the Stasi commission led by Bernard Stasi sought ways to implement the principle of *laïcité*, with one of the commission’s recommendations being to ban ‘religious symbols in schools’.<sup>49</sup> The ban on “ostentatious” religious clothing was quickly adopted as a law and was formally implemented in September 2004, applying to both students and teachers.<sup>50</sup> Following the 2004 law, administrative and private courts have ruled against students who claimed it was their right to wear a veil in primary and secondary public schools.<sup>51</sup> “Ostentatious religious clothing” seems to include long skirts; several Muslim girls have been excluded from school because of wearing a long skirt, despite no explicit legislation that includes long skirts. Students of other religions seem not to have been impacted.<sup>52</sup>

A 2010 law adopted by the General Assembly prohibited wearing veils covering the whole face in public spaces.<sup>53</sup> A Circular adopted the following

year asserted that life in society required everyone to show their face, and that Muslim women covering their faces were in a position of inferiority.<sup>54</sup>

Hostility towards Muslim women in public spaces in France was perhaps most overt in 2016, when images were published worldwide of male police officers surrounding a woman on the beach, as she was apparently made to remove her burkini.<sup>55</sup> Municipal prohibitions of the burkini were upheld by courts. The administrative tribunal in Nice referred to the state of emergency in place in France since 2015 to assert that wearing a burkini at the beach could disrupt public order.<sup>56</sup> However, a later Council of State decision stated that a burkini did not in fact negatively affect either public order or hygiene and decency.<sup>57</sup> The original Nice administration’s reasoning directly collated the burkini with religious fundamentalism, by declaring it an inappropriate expression of religious belief due to the incompatibility of religious fundamentalism with French values, as well as referring to gender equality. This reflects the true nature of the aversion to the burkini, though justifications based on hygiene were used to distract from the racist root of the problem.<sup>58</sup> In some municipalities, public order grounds were upheld because of the likelihood that others’ negative reactions to seeing a burkini might increase tension. The court even claimed that the ban was not applied to a specific gender or targeted at a specific religion, and was therefore not discriminatory.<sup>59</sup>

### Germany

A ban on niqab and face-covering veils has been discussed in the Bundestag, though no national ban for public places has been enacted. However, this has not meant that Muslim women have had genuine freedom to choose what to wear.

In schools, there appears to be a measure of reasonable accommodation sought to make it easier for students to wear religious clothing, and private schools have a measure of discretion over students’

dress codes.<sup>60</sup> In 2003, the Federal Constitutional Court held that a prohibition on teachers wearing a hijab was unlawful because it had no adequate legal basis.<sup>61</sup> For such a ban to be lawful, according to the Federal Court, the relevant federal state would have to have a sufficiently clear legal basis in its elected legislature to justify the limits on freedom of religion (protected in the German Constitution article 4).<sup>62</sup> Following this ruling, many states did introduce such legislature prohibiting state-school teachers from wearing veils, with the justification that as only women wore veils, it sent a message of gender-inequality to children.<sup>63</sup>

In 2015, the Constitutional Court ruled that banning state school staff from wearing hijab was, in fact, a disproportionate infringement on freedom of religion.<sup>64</sup> Only the aversion of danger or disturbance of public order, or protecting the neutrality of the state, were permissible reasons to impose a ban. However, while there is no legislation supporting bans on religious clothing in public employment, those with an official judicial role, such as judges, prosecutors and trainees, can be made to remove religious clothing to uphold the principle of neutrality.<sup>65</sup> This principle has also been applied to state-school teachers in Berlin.<sup>66</sup> Muslim women who wear hijab are protected in that the Federal Labour Court does not allow dismissal because of their clothing, though it does allow employers to refuse their staff the option to wear a veil under the aforementioned principle of neutrality if the employer is part of a (different) religious community.<sup>67</sup>

### **The Netherlands**

The wearing of the headscarf in the Netherlands in work-related environments is more normalized.<sup>68</sup> Therefore, the national debate over the need for legislation turned towards the niqab, and in 2019, a ban on face covering was implemented in specific public places.<sup>69</sup>

These debates have been aired in the Dutch Parliament since the 1990s. Rhetoric has used ideas of gender equality to position a Muslim identity as mutually exclusive to Dutch identity, and as a danger to security, with reference to the need for “facial recognition in a time of terror”.<sup>70</sup> The right-wing populist politician Geert Wilders even used the words “*kopvoddentaks*” or “head-rag tax” in 2009, demonstrating the clear hostility to Muslim women that could feature in such discussions.<sup>71</sup>

### **Belgium**

Although bans on Muslim attire are taking hold in many European countries or localised regions, there have also been some critical voices against such measures at national level. For example, in Belgium, King Albert II declared his solidarity with a company owner who was facing death threats because he defended an employer’s right to wear the headscarf.<sup>72</sup> This came in contrast to the banning of the burka in many Belgian municipalities, as well as calls on a national level to follow suit and ban both the burka and the hijab.<sup>73</sup> While there is no national ban on specific items of Muslim women’s clothing, a federal prohibition on clothing that covers a person’s face has been in place since 2011 to prevent people making themselves “unidentifiable”.<sup>74</sup>

Such discourse has increased since 2016, with one study into Islamophobia in Europe that year finding that political discourse and media coverage had legitimised hostility towards Muslim women.<sup>75</sup> The death threats received by the company owner mentioned above are just one example of this.

## Legal Challenges

Muslim women have taken cases before European courts after national remedies were exhausted. These cases are based on human rights norms and principles, namely: religious freedom, equality and non-discrimination, as well as women and girls' autonomy and choice. They illustrate the avenues for legal remedies open to Muslim women when their rights are infringed upon. Moreover though, the court verdicts show the judicial lack of protection for the rights of Muslim women due to the racist political climate in many European countries.

### European Court of Justice (CJEU)

*Achbita and Belgium Centre for Equal Opportunities and Combating Racism vs. G4S Secure Solutions NV.*

Samira Achbita is a Muslim woman who worked as receptionist for the Belgium G4S Secure Solutions company. After working for the company for three years Ms. Achbita decided to wear a headscarf which she perceived as a religious requirement. She informed her employer of her intention to wear the hijab, after which the employer adopted a written rule that "prohibited employees at the workplace to bear visible signs of their political, philosophical or religious beliefs or to perform any kind of rituals that is related to it".<sup>76</sup> Furthermore, G4S claimed that this rule was an already standing unwritten rule. For continuing to wear her hijab, Ms. Achbita was dismissed.

G4S Secure Solutions claimed that their policy of religious neutrality was compromised by Ms. Achbita's choice of clothing due to her client-facing role, and the CJEU upheld that the prohibition of any visible sign of an employee's belief was not direct discrimination.<sup>77</sup> However, the CJEU cautioned that if such a rule affected members of a particular religion disproportionately and did not have a legitimate and necessary aim, it could be classified as indirect discrimination – leaving it up to Belgium to decide in this case. In 2017, The Belgian Court of Cassation ruled that unjustified indirect discrimination could occur if the employer's right to dismiss staff was abused, even where the employer themselves was not at fault, having acted in ignorance of complex discrimination law.<sup>78</sup> They referred this specific case to the Labour Court of Ghent, which ruled that the case showed no discrimination, that Muslim women faced no additional disadvantage compared to other workers from the policy of neutrality, and that G4S had no obligation to find alternative positions for those affected by their policy.<sup>79</sup>

### Bougnoui and ADDH vs. Micropole SA

This French case dealt with a dispute between a Muslim woman, Asma Bougnaoui, and her employer Micropole SA, an IT consultancy company. Ms. Bougnaoui wore a headscarf/hijab during her employment, where she was required to provide in-person service to clients on Micropole's premises. One of her clients considered the headscarf to be an "embarrassment" and requested her not to wear it next time, which Ms. Bougnaoui refused. As a consequence, Micropole SA concluded that her refusal to take the headscarf off made it impossible for her to carry out her functions on behalf of the company. Ms. Bougnaoui was then let go from her position

The legal basis for both cases is the Employment Equality Directive 2000/78, which prohibits employers from discriminating against their employees on grounds such as race, religion, age, disability or sexual orientation<sup>80</sup>. After both cases went through their domestic courts they were referred to the European Court of Justice. The respective questions the Court had to rule on were:

When does European Union (EU) law permit employers to ban employees from wearing clothing that express their religion?<sup>81</sup> (*Achbita*)

Can a requirement not to wear an Islamic headscarf when providing consultancy services to clients be regarded as a “genuine and determining occupational requirement”<sup>82</sup> which falls outside the scope of discrimination on the grounds of religion? (*Bougnoui*)

In *Achbita* the CJEU ruled:

*“that in the light of art. 2.2.A, a prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, **does not constitute direct discrimination based on religion or belief within the meaning of that directive**”<sup>83</sup>.*

The Court then had to decide whether a headscarf prohibition can constitute indirect discrimination. The court argued that:

*“it can constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as **the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality**, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain”.*

In *Bougnoui*, the CJEU had to decide on how to interpret what constitutes “genuine and determining occupational requirement” and whether this includes the wishes of clients. The CJEU ruled:<sup>84</sup>

*“establishing a general framework for equal treatment in employment and occupation **must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision**”*

The above judgments published in 2018 were the first cases in which the CJEU addressed restriction on Muslim women’s clothing. Considering the historical nature of the creation of the Court, primarily for the interpretation of rules regarding the internal economic market, it is not surprising that it did not provide adequate protection for the human rights of Muslim women. Furthermore, although the ruling in *Bougnoui* seems to suggest that the desire of a client will not be sufficient to justify the prohibition, the Court does leave room in the *Achbita* case by accepting the employers wish to maintain neutrality in relationships with customers as

a ground for “justified discrimination”. Furthermore, the Court seems to suggest that since the restrictive measures are indiscriminately applied to all workers and include all possible symbols, no direct discrimination occurred. This argumentation neglects the fact that cases that deal with the restriction of religious clothing predominantly concern Muslims women’s religious clothing.

### **European Court of Human Rights**

The following two cases deal with the question of violations of individual rights by a State through the banning of the hijab/ niqab in national legislation. The ECHR articles at the heart of these cases are article 8 (right to private life), articles 9 and 10 (right to expression of religion) in conjunction with article 14 (prohibition of discrimination).

#### Sahin v. Turkey

This was the first case in which the ECtHR had to address restriction on Muslim women’s clothing. This case was concerned with the law banning headscarves in Turkey’s educational institutions. The claimant, Layla Sahin, was a fifth year medical student at Istanbul University at the time that the university’s Vice-Chancellor distributed a circular banning beards and headscarves in lectures and examinations. Following the circular, Sahin was prohibited from taking exams or entering lecture halls. After exhausting national remedies, Sahin brought a case against Turkey and claimed that her right to education (Protocol 1, article 2) as well as her right to religious expression (articles 9 and 10 ECHR) was violated.

#### SAS v. France

This case was lodged by a French Muslim citizen who wore a niqab regularly. She claimed that the French bill prohibiting the wearing of face covering clothing in public places was discriminatory (article 14 ECHR), violated the right to respect for private life (article 8 ECHR), the freedom to manifest one’s religion or beliefs (article 9), and the right to freedom of expression (article 10). Not complying with the law banning the face covering was punishable with a fine of up to €150 and/or compulsory citizenship classes.

The rights under articles 8, 9, 10, are called two-stage rights because in assessing whether a complaint gives rise to a violation under these articles the Court first looks at whether the complaint falls within the scope of application of the article. If the complaint falls outside the scope of the article then there will be no further examination. However if it does fall within the limits of the article, the Court will examine whether the interference with the right in accordance with (national) law, a legitimate aim is pursued and whether it is necessary in a democratic society. Limitations that occur 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”<sup>85</sup> are considered legitimate aims.

In *Sahin v. Turkey* the ECtHR concluded that the ban on headscarves in universities did not violate article 9 of the ECHR because the ban was necessary to protect the “rights and freedoms of others” and to protect “public order”.<sup>86</sup> The Court accepted Turkey’s argument of secularism<sup>87</sup> and uncritically accepted the connection between the headscarf and extremism by stating:

*"The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts"*

Moreover, the Court also accepted without explaining its rationale the argument that the wearing of the headscarf is an indication of gender inequality<sup>88</sup> by noting:

*"the emphasis placed in the Turkish constitutional system on the protection of the rights of women... Gender equality – recognized by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe."<sup>89</sup>*

In *S.A.S. v. France*, the ECtHR evaluated the French ban on the full-face veil and unanimously ruled that the ban did not constitute a violation of articles 8, 9, 10, and 14 of the ECHR. The Court found that even though the wearing of the veil was an expression of exercising one's religion, the veil prevented people from "living together".

"Living together" is not one of the grounds for a legitimate aim; nonetheless, the Court utilized the concept of the margin of appreciation, "which gives countries great discretion in adopting laws in the 'grey area'".<sup>90</sup> By uncritically accepting the French government's argument that if women cover their faces, they are "breaching the right of others to live in a space of socialization which makes living together easier" the Court problematized Muslim women's choice of dress and created the perception of a right to specific forms of social interaction. The Court failed to recognize that it is not crucial that the face is visible for social interaction. It also failed to take into account that Muslim women in Western countries belong to a marginalized group and the safeguarding of their rights is crucial considering the political and social contexts in which they live.

## Gendered Islamophobia and Feminism

The headscarf and the burka debates in many European countries coincided with third wave feminism, which started in the late 1990s.<sup>91</sup> This wave of feminism focused heavily on individuality and freedom.<sup>92</sup> The assumed patriarchal domination and matriarchal submissiveness of Islam reaffirmed the persistent notion of the cultural inferiority of Islam in relation to a superior West.<sup>93</sup> **Wearing a hijab/burka and the act of taking it off, in this logic, function as proxy measurements of oppression and misogyny associated with Islam on the one hand and gender equality and freedom linked to the West on the other.**<sup>94</sup> Characteristics that identified the emancipation of Western women were

articulated through the negative and stereotypical othering of covered Muslim women;<sup>95</sup> where Muslim women were presented as oppressed and submissive, Western women were characterized as fully in control of all aspect of their lives.<sup>96</sup> Yet, in many European countries, women are still fighting for equality in many domains.<sup>97</sup>

The aim here is not to vilify third wave feminism; there have been attempts within this school to redeem itself by creating an awareness and sensitivity towards the existence of difference between women through markers such as race, class, religion, sex and sexuality. These attempts can be seen as examples of the development of a more inclusive feminism. However, **as many postcolonial feminists have argued, the intention**

**and attempts of including difference do not change the fact that the universal model of how to be a woman, even a feminist woman, is still based on “white liberal ways of being women”.**<sup>98</sup> Therefore, white feminism is easily co-opted into an Islamophobic discourse, where narratives of personal freedoms articulated through the experiences of white women are projected onto Muslim women who choose to veil themselves. As a result, notions of feminism can be used as a justification for restrictive legislation.

**Any legislation that denies Muslim women the basic right of wearing what they want to wear is oppressive and anti-feminist.**

There has been a deafening silence from white feminist movements, who have failed to call out states for legislating on Muslim women’s bodies, often based on the assumption that these women are blinded to the damage being done to them by their patriarchal religion and need saving. Even though there are clear examples of Muslim women who are organised and politically active, including having taken legal cases against states for gendered Islamophobia, their agency is regularly undermined or doubted, simply because they are veiled. The question of Muslim women and restrictions on their chosen attire is rarely a point of discussion for white feminist groups, and rarely are Muslim women included or consulted on issues related to gender equality.

**Surely though, regulating women’s attire, whether it is the bikini or the burkini, is a problem that concerns all of us, across society, not just Muslim women.**

There is positive change on the horizon however. Muslim women, women of colour, and those who identify with a more inclusive feminism, through their activism and grassroots organising, have

already begun actively challenging state legislation and white feminist notions that justify oppressive policy and legislation.

**In the Netherlands, the Collective S.P.E.A.K has been active online, offline and in the media to criticize harmful policies and representations of Muslim women.**

**In Belgium, BOEH, a multigenerational and multiracial feminist organization, has been actively advocating for the rights of Muslim women.**

## Conclusion

Over the past two decades since a war on terror was declared, Muslim women across Europe have borne the brunt of institutionalised Islamophobia. They have experienced significant hostility, stigmatisation and violence, and their rights to freedom of expression and freedom of religion have been systematically ignored and violated by European states through discriminatory legislation and policy, and racist discourse. Through such state led actions, gendered Islamophobia has been normalised and for many Muslim women discrimination and segregation has become a way of life. The impact of clothing bans on Muslim women, both on those who choose to wear a headscarf and/or burka and those who do not, has been significant and must not be understated.

Similarly, European courts have pursued narrow interpretations of the law and have ruled on the side of states and companies failing to uphold the rights of Muslim women as enshrined in European law. This has further marginalised and alienated

them sending a clear message that their religious expression will not be legally protected and does not belong in Europe.

Moreover, at a time when we are all required to cover our faces in public because of a global pandemic, surely states can no longer argue that Muslim women must uncover their faces because to do so would pose a threat to national security. Legislation and policy has disproportionately discriminated against Muslim women and must immediately be revoked and the rights of Muslim women must be upheld and protected.



Although mainstream discourse and white feminism tend to assume that veiled women are submissive, in need of saving, and lacking agency, there are debates taking place in the margins about more inclusive feminisms, about the right to self-determination of all women, where there is space for differentiated experiences on race, gender, class, religion and sexuality. **Muslim women are front and centre in these debates and on the streets as active protagonists and agents of social change, challenging institutionalised and gendered Islamophobia from the bottom up. Watch this space!**

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