

# Human Rights of Women Wearing the Veil in Western Europe

## Research Paper

### I. Introduction

The present paper analyses legislation, policies, and case-law surrounding religious attire in a number of countries in Western Europe and how they affect the human rights of women and girls who wear the veil in Western Europe. It also more broadly analyses discrimination and violence experienced by women wearing the veil in Europe learning from their own voice.

Throughout the paper, the terminology ‘veil’ is used to refer to a variety of religious attire worn mostly, but not exclusively, by Muslim women. There are different types of clothing that cover the body. This research is focused on manifestations of veils that are the subject of regulation in several Western European Countries. They include the *hijab* (a piece of clothing that covers the head and neck, but not the face), *niqab* (a piece of clothing that covers the face, where only the eyes are visible), *burqa* (a piece of clothing that covers both the face and eyes), *jilbab* (a loose piece of clothing that covers the body from head to toe), or *abaya*, *kaftan*, *kebaya* (a loose, often black, full body cover overcoat). The head and body covers are often combined. In several countries, some of these clothing are based on traditional costumes rather than religion and are often worn by rural communities in the countries of origins. The paper also uses the terminology ‘full-face veil’ or ‘face-covering veil’ to refer to both *niqab* and *burqa*. Furthermore, it refers to *burkini*, a swimsuit that covers the body from head to ankles, completed by a dress.

This paper analyses the legislation and case law in Belgium, France, Germany, the Netherlands, Switzerland and the United Kingdom. After a brief introduction of the legal and theoretical framing (Section II), the paper analyses legislation, case law and recommendations concerning restrictions on the wearing of religious symbols in private and public employment, education institutions and public space at the international (Section III) regional (Section IV) and national (Section V) levels. Section VI includes a broader account of discrimination experience by women wearing the veil. The paper ends with conclusions (Section VII).

The paper is largely based on research conducted for the Office of the High Commissioner for Human Rights by the Human Rights Centre Clinic of the University of Essex. The analysis in the paper is informed by the voices and experience of women who wear the veil in Western Europe, as well as by the views of a variety of experts.

## II. Legal and theoretical framing

This paper is grounded in human rights norms and principles, namely: religious freedom, equality and non-discrimination, and the interdependence and interrelatedness of rights. Intersectionality of discrimination, as well as women's and girls' autonomy and choice are key concepts to fully understand the impact of the restriction analysed.

Religious freedom: No limitations are permitted neither to freedom of thought and conscience nor to freedom to have or adopt a religion or belief of one's choice, since this internal dimension (*forum internum*) of the freedom of religion is protected unconditionally<sup>1</sup>. The freedom to manifest one's religion or belief externally (in the *forum externum*) can be restricted under international and regional conventions in line with permissible limitation clauses<sup>2</sup>. However, such permissible limitations are to be narrowly understood in order to avoid perpetuating or reinforcing inequalities. In Europe, many States depict themselves as secular, in such a way as they "remain neutral with respect to citizens' moral and religious convictions"<sup>3</sup>.

Autonomy and choice in exercising freedom of religion and/or the right to take part in cultural rights should also be taken into consideration in the analysis: the wearing of religious symbols and attire by Muslim women in Europe has raised a debate about the veil's significance and whether wearing it is by coercion or by choice. Even within the feminist movement no consensus is found regarding this issue. Some conceive the veil, particularly the full-face covering veil, as a sign of oppression. Others, while firmly condemning the imposition of the veil on women, recognize that wearing it can be an expression of individuality, a personal choice<sup>4</sup>. Under the latter understanding, restrictions of religious attire are a perpetuation of gender inequality, as they remove agency from Muslim women.

The former Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, stressed that safeguarding "both the positive freedom of religion or belief as manifested by voluntarily wearing or displaying religious symbols, and also the negative freedom from being forced to wear or display religious symbols" were fundamentally important<sup>5</sup>. The Beirut Declaration and its 18 commitments on "Faith for Rights" also highlight everyone's right to free choices and everyone's freedom of thought, conscience, religion or belief.<sup>6</sup>

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<sup>1</sup> Human Rights Committee, General Comment no. 22 on Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, para 3; General Assembly, Interim report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/67/303, para 19; Beirut Declaration and its 18 commitments on "Faith for Rights", A/HRC/40/58, annex II, commitment I.

<sup>2</sup> Article 18, paragraph 3, of the ICCPR and Article 9, paragraph 2, of the ECHR. See also Jeremy Gunn, 'Permissible limitations on the Freedom of Religion or Belief' in John Witte, Jr. and M. Christian Green (eds.), *Religion and Human Rights, an Introduction* (OUP, 2011) 257-258.

<sup>3</sup> John R. Bowen and Mathias Rohe 'Juridical Framings of Muslims and Islam in France and Germany' in John R. Bowen, Christophe Bertossi, Jan Willem Duyvendak and Mona Lena Krook (eds.) *European States and Their Muslim Citizens* (CUP 2014).

<sup>4</sup> Đermana Šeta, 'Forgotten Women: The Impact of Islamophobia on Muslim Women' (ENAR – European Network Against Racism 2016) 16.

<sup>5</sup> See UN Docs E/CN.4/2006/5, paras. 36-37 and 60; A/63/161, para. 47; A/64/159, para. 14; A/65/207, para. 34; A/HRC/6/5, para. 14; A/HRC/7/10/Add.2, para. 54; A/HRC/10/8/Add.2, para. 64; A/HRC/13/40/Add.2, para. 31; A/HRC/13/40/Add.3, para. 60.

<sup>6</sup> Beirut Declaration and its 18 commitments on "Faith for Rights", A/HRC/40/58, annex II, commitment I.

Muslim women in Europe overwhelmingly cite “personal choice and expressing their identity and religion as reasons to wear the veil”<sup>7</sup>. Reasons cited by women to wear a veil are inter alia assertions of identity, faith and independence, “considerations of chastity and modesty; deflecting sexual attention; and connecting with and maintaining their identity as Muslims in day-to-day life”<sup>8</sup>.

Non-discrimination and equality are essential principles of human rights law: any discrimination on grounds of, inter alia, race, ethnicity, sex and religion is contrary to international human rights law<sup>9</sup>. There are direct and indirect forms of discrimination; the former meaning that an individual is treated less favourably than someone else in similar circumstances and the latter meaning that the law is in appearance neutral when in fact it has a disproportionate effect on specific individuals and groups<sup>10</sup>. Moreover, States should not only strive to achieve formal equality (*de jure*) but also substantive equality (*de facto*), taking into account pre-existing structural and historical patterns of discrimination and unequal power relationships between women and men<sup>11</sup>, as “treating people alike despite pre-existing disadvantage or discrimination can simply perpetuate inequality”<sup>12</sup>. Moreover, it is the obligation of States, enshrined in Article 5 (a) of the Convention on the Elimination of Discrimination of Women, to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. This aspect is important when analysing arguments concerning the symbolic value of the veil, in particular the face-covering veil. Cultural bias in determining what perpetuates gender-stereotypes must also be taken into account. The “Faith for Rights” framework also includes the commitment to ensure non-discrimination and gender equality, including by revisiting those religious understandings and interpretations that appear to perpetuate gender inequality and harmful stereotypes.<sup>13</sup>

It is also important to approach these debates through the lenses of intersectionality of discrimination. Intersectionality is the acknowledgement that individuals can face multiple, intersecting and compounded discrimination based on sex and gender linked with other factors, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.<sup>14</sup> When applied to the topic of this paper, it is important to note that Muslim women and girls in Western Europe can face discrimination in at least two ways: because they are women and because they are Muslim. Other characteristics, for example race, age, ethnicity, nationality or immigration status should not be overlooked when analysing their experience.

Considerations should also be given to the rights of minorities. States are bound by Article 27 of the ICCPR stipulating that persons belonging to ethnic, religious or linguistic minorities “shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and

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<sup>7</sup> Erica Howard, 'Islamic veil bans: the gender equality justification and empirical evidence' in Eva Brems (eds.) *The experiences of Face Veil Wearers in Europe and the Law* (CUP 2014) 210.

<sup>8</sup> Jogchum Vrielink 'Symptomatic symbolism: banning the face veil “as a symbol” in Eva Brems (eds.) *The experiences of Face Veil Wearers in Europe and the Law* (CUP 2014) 190.

<sup>9</sup> Daniel Moeckli, 'Equality and Non-Discrimination' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds.) *International Human Rights Law* (OUP 2014) 168.

<sup>10</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, CEDAW/C/GC/28, para. 16.

<sup>11</sup> *Ibid.* See also OHCHR fact-sheet “Women’s Rights are Human Rights”, 30

<sup>12</sup> Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP 2008), 178; *Thlimmenos v. Greece* (ECtHR 2000, no. 34369/97), para. 44.

<sup>13</sup> Beirut Declaration and its 18 commitments on “Faith for Rights”, A/HRC/40/58, annex II, commitment IV.

<sup>14</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, para. 18.

practice their own religion, or to use their own language”.<sup>15</sup> Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group<sup>16</sup>. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in its Article 4, paragraph 2, establishes that States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards<sup>17</sup>. Furthermore, the “Faith for Rights” framework includes the commitment to stand up for the rights of all persons belonging to minorities and to defend their freedom of religion or belief as well as their right to participate equally and effectively in cultural, religious, social, economic and public life.<sup>18</sup>

**Interdependence and indivisibility:** all human rights are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Therefore, the analysis of legislation on the wearing of religious symbols should take into account the overall impact of restrictions on the enjoyment of human rights, beyond the right to religious freedom (such as the right to education, to security etc.). With regard to hate crimes against women wearing the veil, States Parties to the ICCPR must prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20, paragraph 2).

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<sup>15</sup> See also Article 30 of the Convention on the Rights of the Child.

<sup>16</sup> While Article 27 contains no specific limitation clauses, measures taken in the context of the implementation of this Article must equally respect the provisions of Articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. These rights provide protection for the enjoyment of identity-related characteristics underlying national, ethnic, linguistic or religious communities by preventing the state from restricting the expression of linguistic, religious or cultural characteristics among members of a minority; or from using unreasonable or unjustified distinctions when laying down conditions for the accessibility to services, privileges and benefits provided or allowed by the state.

<sup>17</sup> This paragraph calls for more than mere tolerance of the manifestation of different cultures within a State. The creation of favourable conditions requires active measures by the State. The nature of those measures depends on the situation of the minority concerned, but should be guided by the purpose set forth in Article 4.2, which is twofold: On the one hand, individual members of the minority shall be enabled to express the traditional characteristics of the group, which may include a right to use their traditional attire and to make their living in their own cultural ways. On the other hand, they shall be enabled, in community with other persons belonging to the group, to develop their culture, language and traditions.

<sup>18</sup> Beirut Declaration and its 18 commitments on “Faith for Rights”, A/HRC/40/58, annex II, commitment VI, [www.ohchr.org/Documents/Press/Faith4Rights.pdf](http://www.ohchr.org/Documents/Press/Faith4Rights.pdf).

### III. United Nations human rights standards and jurisprudence

#### a. Overview

Overall, the UN human rights bodies and mechanisms interpret quite restrictively exceptions or limitations on individual rights to freedom to manifest one's religion through the wearing of religious symbols and dress. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) provides that the right to manifest one's religion may be subject only "to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". Even though this is almost the same wording as Article 9 ECHR, the Human Rights Committee interpreted much narrower grounds for limitations, as we will see below.

The Human Rights Committee, in General Comment 22, stated that such limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observed that the concept of "morals" derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.<sup>19</sup> Also, in terms of proportionality, the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, advises that blanket bans on veils would clearly be a disproportionate intrusion on women's rights and encourages states to "facilitate interfaith communication and to invest in both religious literacy and religious freedom literacy" in order to facilitate respect for freedom of religion<sup>20</sup>.

As mentioned above, Asma Jahangir, stressed the importance of safeguarding both the positive freedom to voluntarily display religious symbols and also the negative freedom from being forced to display religious symbols. In this context, she noted that "special attention should be paid to the protection of women's rights, in particular in the context of wearing the full head-to-toe veil"<sup>21</sup>.

Her successor Heiner Bielefeldt noted that negative freedom of religion or belief "does not mean a right to be free from any confrontation with religious symbols or other manifestations of religious faith or practice in the public domain. Such demands would obviously imply a State policy of purging the public sphere of all religious symbols, which would clearly run counter to the human right to publicly manifest one's religion or belief, either individually or in community with others. Instead, the purpose of the 'negative' side of freedom of religion or belief is to make sure that no one is exposed to any pressure, especially by the State, to confess or practice a religion or belief against one's own convictions. State institutions, such as the police, military and public schools, in which authority is exercised, require special safeguards in this regard."<sup>22</sup>

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<sup>19</sup> Human Rights Committee, General comment no. 34, CCPR/C/GC/34, para. 32.

<sup>20</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion and belief (2018) UN Doc A/HRC/37/49, para. 88.

<sup>21</sup> General Assembly, Interim report of the Special Rapporteur on freedom of religion and belief (2010) UN Doc A/65/207, para. 34.

<sup>22</sup> UN Doc A/HRC/19/60/Add.1, para. 31. See also Heiner Bielefeldt/Nazila Ghanea/Michael Wiener, Freedom of Religion or Belief - An International Law Commentary (OUP 2016), 158-159. Former Special Rapporteur on freedom of religion or belief, Abdelfattah Amor, had already criticized the obligation to wear religious dress in public in certain countries (E/CN.4/1998/6, para. 60) as well as reports of punishment by whipping and/or a fine

The UN human rights mechanisms have expressed concerns that restrictions on the wearing of religious symbols may represent discrimination against specific groups. The former Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Githu Muigai, found discrimination where certain specific groups of women were prohibited from wearing the Islamic veil.

Human rights treaty bodies have pointed to the need to analyse the impact of restrictions on the wearing of the veil/religious symbols with the enjoyment of other rights, such as the rights not to be discriminated against, to privacy, to freedom of expression, to take part in the conduct of public affairs and the rights of minorities. The Committee on the Elimination of Discrimination against Women (CEDAW) expressed concerns in concluding observations about the lack of information on the impact of the ban on wearing headscarves on women and girls and recommended to monitor and assess this impact, in particular in relation to their access to education and employment.<sup>23</sup> The Committee on the Rights of the Child similarly expressed concerns about regulations prohibiting the wearing of a headscarf by women and girls in government offices and in schools and universities.<sup>24</sup>

## **b. Employment**

In a 2018 case against France, the Human Rights Committee found violations of Articles 18 and 26 where a crèche employee had been fired for wearing the headscarf.<sup>25</sup> She had already been wearing the headscarf for multiple years, when she was informed that she would not be allowed back to work wearing the headscarf when coming back from her parental leave. Subsequently, upon her return, while wearing the headscarf, she was dismissed for serious misconduct for insubordination. The Committee underlined that the State party did not explain how the wearing of the headscarf ran counter the objectives of the crèche or how it interfered with the rights and freedoms of others. The Committee also found a violation of Article 26 of the Covenant because of the disproportionate impact of the restriction on the author as a Muslim woman who chooses to wear the headscarf.

## **c. Education**

In a 2004 case of a student excluded from university for wearing a headscarf in Uzbekistan, the Human Rights Committee clarified that restrictions imposed by States are only allowed when based on the grounds specified in Article 18 (3) of the ICCPR. The Committee found a violation as the State had failed to invoke any specific ground for which the restriction imposed on the author would in its view be necessary in the meaning of article 18, paragraph 3.<sup>26</sup> Moreover, those limitations “may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”<sup>27</sup>

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(A/51/542/Add.2, para. 51) and a growing number of women being attacked in the streets (E/CN.4/2003/66/Add.1, para. 59), or even killed after being threatened for failing to wear religious symbols (E/CN.4/1995/91, p. 36).

<sup>23</sup> For example CEDAW/C/BEL/CO/7 paras. 18-19 (Belgium) and CEDAW/C/TUR/CO/6 paras. 16-17 (Turkey).

<sup>24</sup> For example CRC/C/TUN/CO/3 paras. 36-37 (Tunisia).

<sup>25</sup> F.A. v. France, Communication No. 2662/2015, (2018) UN Doc CCPR/C/123/D/2662/2015.

<sup>26</sup> Raihon Hudoyberganova v. Uzbekistan, Communication No. 931/2000, (2004) UN Doc CCPR/C/82/D/931/2000, para. 6.2.

<sup>27</sup> Human Rights Committee, General Comment no. 22 on Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, para 9.

The Committee applied the same reasoning in a recent case against Turkey where the author was refused registration as a student to the university because she was wearing a wig to cover her hair as a substitute for the headscarf.<sup>28</sup> The Committee highlighted the disproportionate impact of the refusal to register the author as a student, namely that she was effectively barred from pursuing her university studies. Moreover, the Committee also found violations of Articles 3 and 26 of ICCPR, noting that the restriction constituted a form of intersectional discrimination against the author as a Muslim woman who chose to cover her hair.

#### **d. Public Space: full-face veil**

In two cases of July 2018 on the ban of wearing of the niqab in the public space, the Human Rights Committee decided that France had violated the individuals' rights under Articles 18 and 26 of ICCPR.<sup>29</sup> More specifically, the Committee held in both cases that "the criminal ban introduced by article 1 of the Act No. 2010-1192 disproportionately affects the author as a Muslim woman who chooses to wear the full-face veil, and introduces a distinction between her and other persons who may legally cover their face in public that is not necessary and proportionate to a legitimate interest, and is therefore unreasonable."<sup>30</sup> The Committee concluded that this provision and its application constituted a form of intersectional discrimination based on gender and religion for the applicants. Important considerations for the Committee were the wide-ranging application of the ban and the fact that no explanation or justification was given as to why covering the face was prohibited for certain religious purposes while exceptions were provided for many other traditions. Furthermore, France had not given an example of a real and significant threat to public safety and order in which such a blanket ban would be justified. To the argument that the ban was necessary to protect the rights and freedoms of others, the Committee replied that the concept of "living together" is very vague and abstract and the State had not explained how wearing a full-face veil would unfairly obstruct any specific fundamental rights or freedoms of others. The Committee also pointed out that, even assuming that the ban was justified by legitimate objectives, a criminal ban is a significant restriction on the rights and freedoms of Muslim women wishing to wear the full-face veil, and France had not demonstrated that the criminal ban would be a proportionate measure to achieve the objective.

However, the decision was not unanimous. The dissenters referred, for example, to republican, secular and democratic order of the French State, and pointed out that the concept of living together is neither vague nor abstract, but rather, precise and specific, founded on the idea that a democratic society and basic human communication can only function in full view of all. In view of terrorist attacks and assassinations in France and elsewhere disguised with niqabs, two dissenters referred to public safety and public order which require that everyone can be identified if need be, to prevent attacks on the security of persons and property and to combat identity fraud.<sup>31</sup>

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<sup>28</sup> *Seyma Türkan v. Turkey*, Communication No. 2274/2013, (2018) UN Doc CCPR/C/123/D/2274/2013.

<sup>29</sup> *Sonia Yaker v. France*, Communication No. 2747/2016, (2018) UN Doc CCPR/C/123/D/2747/2016 and *Miriana Habbadj v. France*, Communication No. 2807/2016, (2018) UN Doc CCPR/C/123/D/2807/2016.

<sup>30</sup> *Sonia Yaker v. France*, Communication No. 2747/2016, (2018) UN Doc CCPR/C/123/D/2747/2016 and *Miriana Habbadj v. France*, Communication No. 2807/2016, (2018) UN Doc CCPR/C/123/D/2807/2016, para. 17.

<sup>31</sup> See the dissenting individual opinions of Committee member José Manuel Santos Pais (in *Hebbadj v. France*, CCPR/C/123/D/2807/2016, para. 11) and of Yadh Ben Achour (in *Hebbadj v. France*, CCPR/C/123/D/2807/2016, para. 2).

## IV. Europe: regional standards and case law

According to Article 2 of the Treaty on the European Union, Europe's values and principles include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. According to the same Article, European societies have pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men in common. However, human rights organizations denounced growing racist, xenophobic, and anti-Muslim sentiments in Europe, with Muslims experiencing hostility and intolerance, often justified under the narrative of combatting terrorism and anti-Semitism, including hate crimes, remaining a serious concern.<sup>32</sup> Extremist parties and ideas exercised an outsize influence over European politics recently.<sup>33</sup>

The European Convention on Human Rights (ECHR) is the main instrument protecting human rights of the **Council of Europe (CoE)**. The provision most relevant to the wearing of religious attire by Muslim women in this international instrument is Article 9 (1) on freedom of thought, conscience and religion<sup>34</sup>. It protects both the freedom to change one's religion or belief and the freedom to manifest it in worship, teaching, practice and observance. The freedom protected under this article is one of the foundations of a democratic society<sup>35</sup>. For the European Court of Human Rights (ECtHR), there is no democracy without pluralism – citing pluralism, tolerance and broadmindedness as hallmarks of a "democratic society"<sup>36</sup>. Therefore, the right to manifest one's religion under the Convention includes protecting the wearing of religious attire or symbols<sup>37</sup>. However, this right is not absolute, and restrictions might be justified under one of the grounds enumerated in Article 9(2) of the Convention; public safety, public order, health or morals, or for the protection of the rights and freedoms of others<sup>38</sup>. National security is not part of this closed list. In addition, such limitations must be 'necessary in a democratic society'.

Other relevant provisions in the Convention are Article 8 (Right to respect for private and family life); Article 14 (Prohibition of discrimination) and; Article 2 of Protocol No. 1 (Right to education). The ECtHR often gives a wide margin of appreciation to domestic authorities, "because they are 'best placed to assess the needs of their society'."<sup>39</sup>

In the **European Union's (EU)** legislation, the principle of non-discrimination is enshrined in Article 19 of the Treaty on the Functioning of the European Union (TFEU), which states that the European Council "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"<sup>40</sup>. The EU's main legal human rights instrument is the Charter of Fundamental Rights of the European Union ('EU Charter')<sup>41</sup>. Particularly important

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<sup>32</sup> Human Rights Watch (2018), 'European Union, Events of 2017', *World Report 2018*.

<sup>33</sup> Human Rights Watch (2019), 'European Union, Events of 2018', *World Report 2019*.

<sup>34</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, amended) (ECHR), Art. 9 para. 2.

<sup>35</sup> Council of Europe, Research Division, 'Overview of the Court's case-law on freedom of religion', Research Division, European court of Human Rights', updated 31 October 2013, 7; Metropolitan Church of Bessarabia and Others v. Moldova (ECtHR 2001, no. 45701/99), paras 115-116.

<sup>36</sup> Handyside v. United Kingdom (ECtHR 1976, no. 5493/72), para. 49 and Young, James and Webster v. United Kingdom (ECtHR 1981, nos. 7601/76 and 7806/77), para. 63. See also Karen Reid, *A Practitioner's Guide to the European Convention on Human Rights* (Sweet & Maxwell, 2012), 65.

<sup>37</sup> Leyla Sahin v. Turkey (ECtHR 2005, no. 44774/98), para. 78.

<sup>38</sup> ECHR, Art. 9 para 2.

<sup>39</sup> Karen Reid, *A Practitioner's Guide to the European Convention on Human Rights* (Sweet & Maxwell, 2012)59.

<sup>40</sup> Treaty on the Functioning of the European Union (European Community Treaty) (TFEU), Article 19(1).

<sup>41</sup> Charter of Fundamental Rights of the European Union (EU Charter) [2010] OJ C 83/02.



for the protection of the rights of Muslim women wearing religious attire are Article 10 on the freedom of thought, conscience and religion, Article 21 on non-discrimination, and Article 22 on cultural diversity. To ensure the implementation of non-discrimination law within the States, the EU has adopted two directives, one dealing with racial discrimination<sup>42</sup> and the other one dealing with other grounds of discrimination, including religion or belief. The latter directive - Council Employment Equality Directive 2000/78/EC - establishes a general framework for equal treatment in employment and occupation<sup>43</sup>. It also defines the principles of direct and indirect discrimination, and states that while direct discrimination is prohibited on any of the grounds covered by each Directive, indirect discrimination gives Member States a margin of appreciation for justification<sup>44</sup>.

## a Private employment

On 14 March 2017, the **Court of Justice of the European Union (CJEU)** issued its first two decisions interpreting the above-mentioned Employment Equality Directive 2000/78/EC to assess whether there was discrimination on religious grounds in employment. While *Bougnaoui*<sup>45</sup> and *Achbita*<sup>46</sup> both deal with whether requiring that an employee take off her Islamic headscarf at work can amount to direct discrimination, the CJEU provided further guidance on whether it could amount to indirect discrimination.

In the Belgian case *Achbita*, where the claimant was not allowed to wear a visible sign of religious belief as it went against the employer's religious neutrality policy, the CJEU ruled that the employer's ban of all visible signs of political, philosophical or religious beliefs at work did not constitute direct discrimination but could constitute indirect discrimination. However, it did not elaborate on that matter as it considered that it was for the national court to decide whether the ban constituted indirect discrimination<sup>47</sup>. In the French Case *Bougnaoui*, a woman was dismissed because she refused to take off her headscarf at work after her employer required her to. The French court asked the CJEU whether article 4(1) of the Employment Equality Directive can be interpreted as meaning that the wish of a customer to not have services provided by an employee wearing a headscarf constitutes a genuine and determining occupational requirement, as it could be the only justification for a direct discrimination. The CJEU asserted that the wish of a customer cannot constitute a "genuine and determining occupational requirement", as it is a subjective consideration<sup>48</sup>. Explicitly referring to the guidance given in *Achbita*, it further stated that a difference of treatment does not amount to indirect discrimination if it is justified by a legitimate aim and the means to achieve it are necessary and proportionate<sup>49</sup>.

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<sup>42</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

<sup>43</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>44</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2(2).

<sup>45</sup> Case C-188/15 Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA [2017] ECLI:EU:C:2017:204.

<sup>46</sup> Case C-157/15 Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV [2017] ECLI:EU:C:2017:204.

<sup>47</sup> Case C-157/15 Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV [2017] ECLI:EU:C:2017:204, para. 44.

<sup>48</sup> Case C-188/15 Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA [2017] ECLI:EU:C:2017:204, para. 40

<sup>49</sup> Case C-188/15 Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA [2017] ECLI:EU:C:2017:204, para. 33.

The rulings provided minimal direction to States although they prompted national media across European States to announce the legality of fully banning the headscarf. As the CJEU determined that proportionality is up to national judges to determine, it is not yet known what impact these rulings may have on private (and public) employment. This might result in a similar outcome to the ECtHR's margin of appreciation, with the CJEU concerning the determination of what constitutes a legitimate aim and which means are necessary and proportionate.

The **European Court of Human Rights** has addressed the matter of the wearing of religious attire in private employment in the joint case *Eweida & Others v. United Kingdom*, which involved the wearing of a religious cross at work rather than of a headscarf. The first applicant, Ms Eweida, wore a cross visibly while working as a member of the check-in staff for British Airways, a private company. British Airways asked her to either remove or conceal the cross and, when she refused, sent her home without pay and subsequently offered her another position without customer contact, which she also refused. The second applicant, Ms Chaplin, was employed at the geriatric ward of a State hospital and also sought to wear her cross, which was refused. She was therefore moved to a non-nursing temporary position. In the case of Ms Eweida, the Court held that, in the private sector, the right to freedom of religion had to be balanced against the interest of corporate image, but concluded that freedom of religion was more important, finding a violation of Article 9 of the Convention<sup>50</sup>. In contrast, in the case of Ms Chaplin, the Court found that justifications of health and safety concerning a hospital worker constituted a proportionate interference with the applicant's rights<sup>51</sup>. It is important to note that despite the Chaplin case being on public employment, the arguments and reasoning are the same as for private employment. In public employment, this hierarchy of health and safety over corporate image as permissible reasons to justify bans on religious clothing and symbols appear consistent with the UK employment tribunal's decisions regarding headscarves.<sup>52</sup> Although this ECtHR decision was not about headscarves, it may give an idea of the Court's future jurisprudence regarding religious attire in private employment.<sup>53</sup>

## **b. Public employment**

The ECtHR has never found a violation of freedom of religion in cases of bans on "ostentatious manifestation of religion" in public employment settings because of the importance given to secularism and neutrality of public officials and the State's duty to be neutral and impartial with regard to religions<sup>54</sup>. The Court considers that, "as public servants act as representatives of the State when they perform their duties, the rules require their appearance to be neutral in order to preserve the principle of secularism and its corollary, the principle of a neutral public service."<sup>55</sup> The duty of neutrality applies to all religious attire, and restrictions by the State are always upheld by the Court. References to

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<sup>50</sup> *Eweida & Others v. UK* (ECtHR 2013, nos. 48420/10, 36516/10, 51671/10 and 59842/10), para. 94.

<sup>51</sup> *Eweida & Others v. UK* (ECtHR 2013, nos. 48420/10, 36516/10, 51671/10 and 59842/10), para. 99.

<sup>52</sup> Interestingly, the hospital in the case of Chaplin did allow two Muslim women nurses to wear a "close fitting sports hijab" as this did not compromise health and safety requirements, while Sikh nurses were not allowed to wear a kara bracelet or Kirpan sword, for the same reason as Ms Chaplin's religious necklace was banned.

<sup>53</sup> However, in August 2018, Ms Eweida announced that she is bringing her case to the Employment Tribunal for compensation, stating that, in practice, while the company's uniform policy has changed, in practice no salary for the period of suspension was paid to her and she still feels unwelcome in her workplace. See Nadia Eweida, 'Join my fight: suspended for wearing a cross - now victimised at work', [www.crowdjustice.com/case/crosscase-victor](http://www.crowdjustice.com/case/crosscase-victor).

<sup>54</sup> About public officials, see *Ebrahimian v. France* (ECtHR 2015, no. 64846/11); *Dahlab v. Switzerland* (ECtHR 2001, no. 42393/98), *Kurtulmus v. Turkey* (ECtHR 2006, no. 65500/01). About the State's duty of neutrality and impartiality, see *Metropolitan Church of Bessarabia and Others v. Moldova* (ECtHR 2002, no. 45701/99) paras. 115-116.

<sup>55</sup> *Kurtulmus v. Turkey* (ECtHR 2006, no 65500/01), paras. 6 and 9.

secularism seem to carry particular weight in cases where it is a recognised constitutional value of the State (e.g. France or Turkey). Public employment is usually the field in which bans are most far-reaching, since States invoke values of neutrality as a corollary of secularism to justify them, which they cannot do regarding private employment or private citizens<sup>56</sup>. Secularism is not usually an argument in matters concerning public spaces or private employment.

However, this duty of neutrality should not apply to private citizens, e.g. in a courtroom. In the recent case of *Lachiri v. Belgium*, the Court found a violation where the applicant was removed from the court room in the context of her being a civil party to a case concerning the killing of her brother.<sup>57</sup> The Court held that, while it did not consider a courtroom to be part of the public space but rather a public institution, the rationale for the applicant's exclusion from the courtroom was not the preservation of the neutrality of the public space and, as the applicant was not disrespectful and did not constitute or threaten to constitute a threat to the proper conduct of the proceedings, her exclusion was not a proportionate measure.<sup>58</sup>

### c. Education

The jurisprudence in the field of education is similar to that applied to public employment and is an area in which secularism has been recognised as a valid argument by the ECtHR.

Regarding teachers, the ECtHR has considered it justified to limit freedom of religion to protect the secularity of the State and neutrality of public service, and the rights and freedoms of others<sup>59</sup>. In *Dahlab v. Switzerland*, the young age of the children led the Court to believe that a teacher wearing a hijab might influence them in their opinions. For the Court, the headscarf is not easily reconcilable with “the message of tolerance, equality and non-discrimination” that teachers in a democratic society should convey to pupils<sup>60</sup>.

Under Article 9 ECHR, the State has a duty of neutrality and impartiality. This is the argument highlighted in *Leyla Sahin v. Turkey* to consider that the context of secularism in Turkey allowed for bans on religious attire for students at university<sup>61</sup>. The Court took context into question, interpreting secularism as allowing numerous restrictions deemed ‘necessary in a democratic society’. On the other hand, Heiner Bielefeldt, former UN Special Rapporteur on Freedom of Religion or Belief, stated that international human rights standards are better protected if there is a general – but reversible – presumption of the students’ right to wear religious and cultural symbols and dress at school<sup>62</sup>.

The ECtHR acknowledged a lack of data clearly linking the display of religious symbols and any effect on young persons in a case concerning the display of Christian crosses on the walls of public school

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<sup>56</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11).

<sup>57</sup> *Lachiri v. Belgium* (ECtHR 2018, no. 3413/09).

<sup>58</sup> *Lachiri v. Belgium* (ECtHR 2018, no. 3413/09), paras. 46-47.

<sup>59</sup> *Dahlab v. Switzerland* (ECtHR 2001, no. 42393/98) and *Kurtulmus v. Turkey* (ECtHR 2006, no. 65500/01).

<sup>60</sup> *Dahlab v. Switzerland* (ECtHR 2001, no. 42393/98) and *Kurtulmus v. Turkey* (ECtHR 2006, no. 65500/01).

<sup>61</sup> *Leyla Sahin v. Turkey* (ECtHR 2005, no. 44774/98), paras. 116 and 165.

<sup>62</sup> Human Rights Council, ‘Report of the UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt’ (2010) UN Doc A/HRC/16/53; however, he highlights that “in some constellations restrictions on the freedom to manifest religion or belief by wearing religious symbols may be justifiable in order to protect minority students from pressure exercised by schoolmates or their community” (see A/HRC/16/53, para 44; E/CN.4/2006/5/Add.4, para 55; Heiner Bielefeldt/Nazila Ghanea/Michael Wiener, *Freedom of Religion or Belief - An International Law Commentary* (OUP 2016), 152).

classrooms in *Lautsi v. Italy*<sup>63</sup>. The Grand Chamber of the ECtHR further determined that the place accorded to religion was within States' margin of appreciation; interestingly, this was especially because a crucifix was determined to be "an essentially passive symbol"<sup>64</sup>. As such, the Court did not see the crucifix as interfering with the principle of neutrality. It is interesting that while it leaves the place accorded to religion up to States, the ECtHR here does make a judgement regarding which religious symbols are passive, specifically those that do not denote "participation in religious activities."<sup>65</sup> This contrasts directly with the Court's decisions regarding teachers or students wearing the headscarf, or indeed other religious symbols such as turbans, where it considers that this religious manifestation directly affects the rights of others<sup>66</sup>. In interpreting France's 2004 ban on religious symbols in schools the Court describes the headscarf, as well as a kippa or "cross of excessive size" as leading to the immediate recognition of someone's religious affiliation<sup>67</sup>.

#### **d. Public spaces: full-face veil**

According to the ECtHR, the public space is open to all, therefore as a private citizen everyone can choose whether or not to wear religious attire<sup>68</sup>. A total ban of the veil would be contrary to the purpose of the right to freedom of religion and the Convention itself. However, regarding the covering of the face in the public space, e.g. with the niqab or burqa, the Court accords a broad margin of appreciation to the Member States, considering arguments by States that the full-face veil can be contrary to conditions of "living together", i.e. social communication and establishment of social relations<sup>69</sup>. However, the Court emphasizes as well that "a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance".<sup>70</sup>

The Court first followed this line of argument in *S.A.S. v. France*, and noted the impact of a blanket ban on the rights of women wearing the full-face veil<sup>71</sup>. However, it considered the ban necessary and proportionate to the pursuance of the legitimate aim of "the observance of the minimum requirements of life in society as part of the 'protection of the rights and freedoms of others'."<sup>72</sup> The Court thus followed the arguments of the State, defending the requirements of living together and social interaction, and held that such a decision was a "choice of society"<sup>73</sup>, but did not go into detail as to why the full-face veil was a hindrance to living together. A key element nevertheless seems to be the covering of the face, as the Court states it is aware that the impugned ban mainly affects Muslim women who wish to wear the full-face veil but "finds it to be of some significance that the ban is not expressly based on the

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<sup>63</sup> *Lautsi and others v. Italy*, (ECtHR 2011, no. 30814/06), para. 66.

<sup>64</sup> *Lautsi and others v. Italy*, (ECtHR 2011, no. 30814/06), paras. 69 and 72.

<sup>65</sup> *Lautsi and others v. Italy*, (ECtHR 2011, no. 30814/06), para. 72

<sup>66</sup> See *Atkas v. France* (ECtHR 2010, no. 43563/08); *Bayrak v. France* (ECtHR 2009, no. 14308/08); *Gamaleddyn v. France* (ECtHR 2009, no. 18527/08); *Ghazal v. France* (ECtHR 2009, no. 29134/08); *J. Singh v. France* (ECtHR 2009, no. 25463/08); and *R. Singh v. France* (ECtHR 2009, no. 27561/08).

<sup>67</sup> *Kervanci v. France*, (ECtHR 2008, no. 31645/04), paras. 28 and 31

<sup>68</sup> *Ahmet Arslan and Others v. Turkey* (ECtHR 2010, no. 41135/98), para. 48.

<sup>69</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11), paras. 141-142; *Belcacemi and Others v. Belgium* (ECtHR 2017, no. 37798/13), para. 61; *Dakir v. Belgium* (ECtHR 2017, no. 4619/12), para. 60.

<sup>70</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11), para. 149; *Belcacemi and Oussar v. Belgium* (ECtHR 2017, no. 37798/13), para. 52.

<sup>71</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11), para. 139.

<sup>72</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11), para. 140.

<sup>73</sup> *S.A.S. v. France* (ECtHR 2014, no. 43835/11), para. 153

religious connotation of the clothing in question but solely on the fact that it conceals the face.”<sup>74</sup> In 2017, the Court followed this line of thinking in *Belcacemi and Oussar v. Belgium*, when deciding on Belgium’s ban on full-face veil.<sup>75</sup> Importantly, the Court in this case stressed again that the ban mainly affects Muslim women wanting to wear the full-face veil, even when the ban is not based on religious reasons.<sup>76</sup>

The ECtHR, even though it did not find any violations because of the margin of appreciation afforded to the States, stated that it was not convinced by the arguments by France and Belgium based on gender equality, and held that they had “to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public”.<sup>77</sup> Put in even stronger terms, in her Dissenting Opinion to the *Leyla Sahin* case, Judge Tulkens held that she failed 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. Equality and non-discrimination are subjective rights which must remain under the control of those who are entitled to benefit from them. ‘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”.<sup>78</sup>

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<sup>74</sup> S.A.S. v. France (ECtHR 2014, no. 43835/11), para. 151.

<sup>75</sup> *Belcacemi and Oussar v. Belgium* (ECtHR 2017, no. 37798/13).

<sup>76</sup> *Belcacemi and Oussar v. Belgium* (ECtHR 2017, no. 37798/13), para. 52.

<sup>77</sup> S.A.S. v. France (ECtHR 2014, no. 43835/11), para. 153; *Belcacemi and Oussar v. Belgium* (ECtHR 2017, no. 37798/13), para. 52.

<sup>78</sup> Para. 12 of the Dissenting Opinion.

## V. National Legislation and Case Law

This Section analyses national legislation and case law on religious symbols, in particular religious attire, in four areas: a) private employment, b) public employment, c) education, and d) public space.

### a. Private Employment

According to legislation and case law reviewed, none of the States considered has a blanket ban to religious symbols in private employment. In general terms, freedom of religion and the right to wear religious symbols have been given more weight than entrepreneurial freedom and other interests, such as corporate image. Restrictions on the wearing of religious attire have been in some cases justified based on “religious neutrality” policies, particularly for jobs where the employee is in direct contact with clients. In some instances, there seems to be discretion allowed by the State to private employers in determining “occupational requirements” on the basis of which limitations can be justified, leading to more restrictive approaches.

In **Belgium**, there is no legislative ban on religious attire in private employment. However, some private employers have adapted the principle of neutrality that is applied in the public sector to impose – often far-reaching – restrictions in the private sector.<sup>79</sup>

In **France**, employers can ban the wearing of religious symbols and attire in the workplace if they deem it incompatible with occupational requirements, notably for reasons of security and health, as long as this restriction is a proportionate means to a legitimate aim<sup>80</sup>. Yet, the French Equal Opportunities and Anti-Discrimination Commission made clear that “proselytism” cannot be used by an employer as a justification to require an employee to remove a religious sign<sup>81</sup>. In the “Baby-Loup case (2014)” an employee at a privately-run day care centre for children was dismissed for wearing a jilbab<sup>82</sup>. Despite the statement of the Council of State (the highest administrative court of France) that the principle of secularity only applies to public sector employees<sup>83</sup>, the *Cour de Cassation* (the highest court for private law) ruled that because of the secular ethos of the nursery and the young age of the children, prohibiting the jilbab was justified and proportionate to a legitimate aim<sup>84</sup>. This decision led to the adoption of a law<sup>85</sup> establishing that employers can “prescribe the principle of neutrality as a rule and can stipulate

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<sup>79</sup> Elsa Mescoli, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women in Belgium’ (ENAR – European Network Against Racism 2016), 32.

<sup>80</sup> Confédération française démocratique du travail, ‘Le fait religieux en entreprise’ (2015) (France).

<sup>81</sup> Décision de Haute Autorité de lutte contre les discriminations et pour l’égalité (HALDE) du 06.04.09, n° 2009-117, para. 36 (France).

<sup>82</sup> Cour de Cassation, No. 612 du 25 Juin 2014 (13-28.369), ECLI:FR:CCASS:2014:AP00612, Baby-Loup v Hafif (France).

<sup>83</sup> Conseil d’Etat, Etude demandée par le Défenseur des droits, adopted 19 December 2013 (France).

<sup>84</sup> Myriam Hunter-Henin, ‘Religion, Children and Employment: the Baby Loup case’ (2015) 64 ICQL 717, 719. The Court considered that the ban was not of a general character, since it only applied to activities of the day care centre undertaken with children. It held that the restrictions imposed by the day care centre to its employee were (1) pursuant to a legitimate aim, (2) necessary and (3) proportionate, due to the nature of the tasks. However, the Court doesn’t specify what tasks it refers to and how these tasks meet the threshold required for permissible limitations on the freedom of religion and belief and it declares the principles of laïcité and neutrality applicable to private companies.

<sup>85</sup> Code du travail, Article 1321-2-1 (France).

restrictions to the principle of religious freedom for employees”, in accordance with EU Directive 2000/78/EC<sup>86</sup>.

In **Germany**, there is no ban on religious attire in private employment. The Equal Treatment Act (AGG) recognises employees with the right not to be discriminated against on grounds such as religion or sex<sup>87</sup>. The case-law of the Federal Labour Court in Germany holds that the wearing of a hijab by an employee cannot be a reason for dismissal<sup>88</sup>. The exception is cases where the employer is a religious community – for example the wearing of a headscarf when working for a religious community other than a Muslim one. In this case the employer can ask the employee to respect a duty of neutrality and prohibiting headscarves can be justified<sup>89</sup>.

In the **Netherlands**, the Senate approved a ban on face covering dress on 26 June 2018, and the legislation entered into force on 1 August 2019.<sup>90</sup> With regard to education and healthcare the ban appears to apply to private institutions as well. In the Netherlands, arguments such as corporate image have often been rejected as justification for dress codes banning religious clothing or symbols. In 2004, the Arnhem District Court held for example that McDonald's could have designed a dress code incorporating hijab in line with the corporate uniform, instead of banning it<sup>91</sup>.

Case law in **Switzerland** indicates that employers cannot limit the religious freedom of employees by prohibiting the wearing of religious attire, particularly the headscarf<sup>92</sup>.

In the **United Kingdom**, the legitimacy of an imposed dress code is affected by the field of work and the status of the employer. Even where maintaining corporate image is deemed a legitimate aim, it is less likely that basing hiring or dismissal decisions on wearing the headscarf would be deemed proportionate to protect this aim, when compared for example to the aim of protecting health and safety of children and staff<sup>93</sup>.

## **b. Public Employment**

In public employment, legislation and case law point to the existence of restrictions to the wearing of the headscarf and other religious symbols, mainly in the name of the principle of neutrality.

In **Belgium**, in 2012, a young woman signed a student work contract within the Brussels Ministry and was then told that the contract would not allow her to wear hijab. A Labour Court ruled that Belgian constitutional law did not generally recognize the principles of secularism but did so for the principle of

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<sup>86</sup> Erica Howard, ‘Religious Clothing and Symbols in Employment’ (European network of legal experts in gender equality and non-discrimination 2017), 89.

<sup>87</sup> Allgemeines Gleichbehandlungsgesetz (AGG), para. 1. The only exception outlined is §8 AGG: a difference in treatment is allowed, only when it is “essential and decisive” regarding the nature and conditions of work and is legitimate and proportionate. However, it is hard to litigate a case on such a ground, because the burden of proof lies with the claimant.

<sup>88</sup> Bundesarbeitsgericht (BAG), 10.10.2002, 2 AZR 472/01 and Bundesverfassungsgericht (BVerfG), 30.07.2003, 1 BVR 792/03.

<sup>89</sup> BAG, 24.09.2014, 5 AZR 611/12.

<sup>90</sup> Dutch Government [Rijksoverheid], ‘Partial ban on face covering clothing’ [‘Gedeeltelijk verbod gezichtsbedekkende kleding’], see <https://bit.ly/2Ze2G0p> (Netherlands).

<sup>91</sup> District Court Arnhem, Judgment 1 September 2004, ECLI:NL:RBARN:2004:AS6299 (Netherlands).

<sup>92</sup> Tribunal du district d’Arbon du 17 décembre 1990, JAR 1991 254, RSJ 1991 176 (Switzerland).

<sup>93</sup> Begum v Pedagogy Auras UK Ltd T/A Barley Lane Monetssori Day Nursery UKEAT/0309/13/RN; Farrah v Global Luggage Co Ltd ET/2200147/2012; Noah v Sarah Desrosiers T/A Wedge ET/2201867/2007(England)

neutrality in the public sphere<sup>94</sup>, although the Constitution explicitly refers to the principle of neutrality only in the area of education<sup>95</sup>. In a similar subsequent case, neutrality prevailed over the alleged violations to Articles 11 and 19 of the Constitution, which refer to discrimination and freedom of belief respectively.

In **Germany** there is no federal legislation prohibiting religious attire in public employment. However, judges and prosecutors can be limited in their right to wear religious attire<sup>96</sup>. Even trainees are affected and obliged to refrain from wearing any religious attire, due to the official functions of their role as part of the judiciary, in accordance with state neutrality and the protection of rights and freedoms of others<sup>97</sup>. Such a duty of neutrality does not apply to private citizens in the courtroom<sup>98</sup>.

In the **Netherlands**, as mentioned above, a new legislative ban on face covering clothing was approved in June 2018. The ban applies in education, health care, public transport and government buildings. In addition, lower level regulations limiting the wearing of religious clothing already existed, especially for State officials such as the judiciary and police.<sup>99</sup> While this means that a plaintiff may wear a headscarf in court or public, it prevents women wearing the full-face veil from assuming positions of authority in these settings, similar to the situation in Germany<sup>100</sup>. Both the site of work and role are important when it comes to dress codes in the Netherlands. A 2008 decision by the Netherlands Institute for Human Rights (at the time Equal Treatment Commission) determined that a police uniform that does not allow hijab in non-public facing roles was indirect discrimination on religious grounds, because state neutrality was not an objective justification when applied to non-public facing tasks<sup>101</sup>. In 2017, the Netherlands Institute for Human Rights regarded an overall ban of wearing the headscarf with police uniform as indirect discrimination on grounds of religion<sup>102</sup>.

In **Switzerland**, there is no ban on religious attire for public service employees in general.

### **c. Education**

Practices in public and private educational institutions often interfere with the wearing of religious attire. Some countries impose bans on students, teachers and even parents in public schools. In other cases, although there's no overall ban, there seems to be a high level of discretion in imposing restrictions. and they have been upheld by courts. It can be observed that teachers, as a subgroup of public employment, make up the group that is the most affected by restrictions.

In **Belgium**, in private and public schools, there are differing rules between the Federal State, the Regions and the Communities, which has allowed for the institutions to adopt inconsistent positions on

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<sup>94</sup> Jugement Tribunal du Travail, Bruxelles, 24/09/2012, 12/2607/A (Belgium).

<sup>95</sup> Constitution Belge de 1831, Article 24 §1. It defines the concept of neutrality in the field of education as follows: "[...] Neutrality implies notably the respect of the philosophical, ideological or religious of parents and pupils."

<sup>96</sup> Gesetz zur Ausführung der Verwaltungsgerichtsordnung § 6 a (3) (Germany).

<sup>97</sup> Federal Constitutional Court [Bundesverfassungsgericht], 27.06.2017, 2 BvR 1333/17 (Germany).

<sup>98</sup> Federal Constitutional Court [Bundesverfassungsgericht], 27.06.2006, 2 BvR 677/05 (Germany).

<sup>99</sup> Anna Korteweg and Gokce Yudakul. *The Headscarf Debates; Conflicts of National Belonging*. (Stanford University Press 2014), 99.

<sup>100</sup> Anna Korteweg and Gokce Yudakul. *The Headscarf Debates; Conflicts of National Belonging*. (Stanford University Press 2014), 99.

<sup>101</sup> 2008-10-23: Equal Treatment Commission, n. 2008-123 Article 213. The opposite was found for in public-facing roles.

<sup>102</sup> 2017-11-20- Netherlands Institute for Human Rights, n. 2017-135



the matter<sup>103</sup>. For example, there exists a general ban on headscarves in schools of the Flemish community since 2013.<sup>104</sup> However, certain students challenged this policy in two schools in the municipality of Maasmechelen. The court ruled that the girls were allowed to wear the headscarf as a special provision, without striking down the general ban, which is not within its competence.<sup>105</sup> As a consequence of this decision, which is still under appeal, the councillor for education of the city of Ghent announced the wearing of the headscarf in public schools in Ghent would be allowed.<sup>106</sup> However, the current Belgian Secretary of State for Equal Opportunities stated that headscarves should not be worn at school.<sup>107</sup> In August 2019, a court in Leuven decided similarly to allow a girl to wear her headscarf despite the general ban.<sup>108</sup>

In 2003 in **France**, the Commission for reflecting on the Application of the Principle of Secularity in the Republic ('commission Stasi'), led by Bernard Stasi, came to the conclusion that ostentatious religious signs or attire should be forbidden in primary and secondary public education both for teachers and pupils, and that educational institutions should be able to forbid religious signs for reasons such as security, interaction with clients and "internal social peace"<sup>109</sup>. This led to the enactment of a law banning visible religious signs and attire in primary and secondary public education in 2004<sup>110</sup>. The Special Rapporteur on freedom of religion or belief criticized that the implementation of the law by educational institutions had led, in a number of cases, to abuses that have provoked humiliation, in particular amongst young Muslim women, and that the stigmatization of the headscarf had provoked instances of religious intolerance when women wear it outside school<sup>111</sup>. In the years following the 2004 ban in France, the State Council (administrative law) and the Court of Cassation (private law) ruled against Muslim students who refused to take off their headscarf in primary and secondary public schools<sup>112</sup>. In 2012, the Minister of Education of France signed a circular stating that the principles of neutrality in education and public services can legitimately prevent parents accompanying children on school trips from manifesting their religious beliefs through their attire or their speech<sup>113</sup>. A year later the State Council asserted that although parents' freedom to manifest religious opinion could be limited if there is a risk for public order or the proper functioning of the service, in general they should not be subject to the principle of religious neutrality<sup>114</sup>.

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<sup>103</sup> Elsa Mescoli, 'Forgotten Women: The Impact of Islamophobia on Muslim Women in Belgium' (European Network Against Racism 2016), 32.

<sup>104</sup> Association of Flemish Students [Vlaamse Scholierenkoepel], 'Can a school prohibit the wearing of a headscarf' ['Mag de school het dragen van een hoofddoek verbieden?'], <https://bit.ly/2RRgzyg> (Belgium).

<sup>105</sup> Helen Goedgebeur, 'Girls from Maasmechelen are allowed to wear the headscarf' ['Meisjes uit Maasmechelen mogen volgens rechter tóch hoofddoek dragen op school'] (VRT NWS, 2018), <https://bit.ly/2Ch64ji> (Belgium).

<sup>106</sup> Tom Lallemand, 'Headscarf allowed in most schools in Ghent' ['Hoofddoek volgend jaar toegelaten in meeste Gentse stadsscholen'] (SCEPTR, 2018), <https://bit.ly/2RTrBmQ> (Belgium).

<sup>107</sup> Lore Michiels, 'Zuhail Demir: "Prohibit headscarves at school"' ['Zuhail Demir: "Verbied hoofddoek op school"'] (VTM nieuws, 2018) (Belgium).

<sup>108</sup> Hanne Decre, 'Judge decides that girl from Leuven can wear the headscarf at school' ['Rechter beslist dat meisje uit Leuven hoofddoek tóch mag dragen op school'] (VRT NWS, 2019), <https://bit.ly/2jZ7iYO> (Belgium).

<sup>109</sup> Commission Stasi (11 December 2003) 68. More information can be found at [www.ladocumentationfrancaise.fr/rapports-publics/034000725/index.shtml](http://www.ladocumentationfrancaise.fr/rapports-publics/034000725/index.shtml) (France).

<sup>110</sup> Article L141-5-1, Loi n°2004-228 du 15 mars 2004 - art. 1 JORF 17 mars 2004 en vigueur le 1er septembre 2004 (France).

<sup>111</sup> Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief, Mission to France (18 to 29 September 2005), UN Doc E/CN.4/2006/5/Add.4, para 101.

<sup>112</sup> CE 6 Mars 2009 Melle Myriam A ; Cour de cassation chambre civile, Audience publique du mardi 21 juin 2005 N° de pourvoi: 02-19831 (France).

<sup>113</sup> Circular of the Minister of National Education Luc Chatel (2012) (France).

<sup>114</sup> Conseil d'Etat, Etude demandée par le Défenseur des droits, adopted 19 December 2013 (France).

There is no ban on the wearing of religious attire by students in state schools in **Germany**. However, private schools have some discretion as to whether to allow pupils to wear the headscarf<sup>115</sup>. Regarding teachers, in 2003 the Federal Constitutional Court of Germany held that a prohibition for teachers to wear the hijab is unlawful, if this prohibition is not prescribed by law by the Länder (federal states)<sup>116</sup>. Following this judgment, many Länder passed laws to allow for the prohibition on wearing headscarves for teachers in state schools<sup>117</sup>, on the basis of religious neutrality of the State or the protection of the rights and freedoms of others, applying §7 II of the German Constitution<sup>118</sup>. A further concern was gender equality: as only women wore the headscarf, the State saw it as sending a message of gender inequality to children.<sup>107</sup> However, this jurisprudence was overturned by a 2015 decision of the Federal Constitutional Court. The ruling established that a prohibition to wear the headscarf for state school staff is an unjustifiable infringement of freedom of religion (Art. 4 I & II GG)<sup>119</sup>. Only particular circumstances can allow for such a ban, for example a sufficiently concrete danger or disturbance of the school's internal order or neutrality of the State, on a case-by-case basis<sup>120</sup>. The judgement seems not to have stopped such practice and therefore Muslim women wearing the headscarf still have difficulty accessing work as teachers (See Chapter VI). Moreover, despite this decision, a tribunal in Berlin recently upheld the ban on teachers to wear religious attire, based on the principle of neutrality applicable to public servants<sup>121</sup>. On the other hand, 'burkinis' have even been officially admitted as an option for Muslim girls to participate in swimming lessons in Germany<sup>122</sup>.

In the **Netherlands**, the June 2018 legislative ban on face covering clothing also applies to education.

In **Switzerland**, teachers are the most affected by restrictions on religious freedom and the display of religious attire. In a landmark case in 1990, the Swiss Federal Tribunal ruled that the requirement of religious neutrality in school was to be afforded particularly high protection<sup>123</sup>. The Court further considered, in another case, that the infringement of the freedom of religion of an individual wearing the hijab is justified in cases of teachers to protect the religious "peace" of the school and respect the religious beliefs of the pupils and parents<sup>124</sup>. For students, however, no general ban can be admitted. Bans must be based on specific justifications in the public interest, such as religious peace in school, freedoms of other students, students' integration or gender equality<sup>125</sup>.

In the **United Kingdom**, where dress code is a matter for each school to decide, decisions relating to the niqab and jilbab at the High Court and House of Lords have reflected that any possible breaches to Article 9(1) ECHR, protecting the right to manifest one's belief, can be justified through the provisions

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<sup>115</sup> Landesgericht (LG) Bonn, 12.11.2014, Az. 1 O 364/14 (Germany).

<sup>116</sup> Federal Constitutional Court [Bundesverfassungsgericht], 24.09.2003, 2 BvR 1436/02 (Germany).

<sup>117</sup> For example Schulgesetz Nordrhein-Westfalen (SG-NRW) §57 IV; Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen (BayEUG), §59 II 3; Kindertagesbetreuungsgesetz Baden-Württemberg (KiTaG BW), §7 IV and VIII 1 KiTaG BW; Schulgesetz Baden-Württemberg (SchG), §38 II (Germany). See also the laws and bills prohibiting headscarves for teachers and public servants in Germany (compilation of the Institute for European Constitutional Law at the University of Trier), available online at [www.uni-trier.de/index.php?id=24373&L=2](http://www.uni-trier.de/index.php?id=24373&L=2).

<sup>118</sup> e.g. BAG, 12.08.2010, 2 AZR 593/09; BAG, 10.12.2009, 2 AZR 55/09; BAG, 20.08.2009, 2 AZR 499/08 (Germany).

<sup>119</sup> BAG, 27.01.2015, 1 BvR 471/10 (Germany).

<sup>120</sup> BAG, 27.01.2015, 1 BvR 471/10, para. 114 (Germany).

<sup>121</sup> Le Point, 'Allemagne: Une enseignante musulmane interdite de porter le voile' (9 May 2018), <https://bit.ly/2OwoTFS> (Germany).

<sup>122</sup> Oberverwaltungsgericht Land Nordrhein-Westfalen, 20.05.2009, 19 E 1161/08 (Germany).

<sup>123</sup> Tribunal Fédéral, ATF 116 Ia 252 (Switzerland).

<sup>124</sup> Tribunal Fédéral, ATF 123 I 296. Also known as Dahlab v. Switzerland before the ECtHR

<sup>125</sup> Tribunal Fédéral, ATF 142 I 49 (Switzerland).

of 9(2) ECHR which provides for restrictions on manifesting such belief<sup>126</sup>. A student's right to education (under Article 2 of the First Optional Protocol to the Convention) was also deemed not to have been breached by her exclusion due to wearing the jilbab, because the court held she could have studied elsewhere<sup>127</sup>. "Effective communication" was accepted as a restriction on the manifestation of religion under Article 3 of UK Employment Equality Regulations, and Council Directive 2000/78/EC on equal treatment in employment, in a case regarding a support worker in a school who wanted to wear a full-face veil at work<sup>128</sup>. The Department for Children, Schools and Families has issued guidance to schools on school uniform and related policies, emphasizing that each case depends on the circumstances of the particular school and that recent judgements do not mean that banning such religious dress will always be justified, nor that such religious dress cannot be worn in any school<sup>129</sup>.

#### **d. Public Spaces: full-face veil**

With regard to regulation of religious attire in public spaces, specifically Muslim dress covering the face – such as the burka and the niqab –, practices among the countries researched differ, with broad national legislative bans introduced in Belgium and France, a ban in specific public situations in the Netherlands, no legislative bans in Germany or the United Kingdom and regulation at the municipality level in Switzerland.

In **Belgium** federal legislation was passed in 2011 criminalizing the wearing of clothing covering the face<sup>130</sup>. Article 563b of this legislation imposes a fine of 15 to 25 euros and/or an imprisonment from 1 to 7 days on those covering their face and therefore being "unidentifiable"<sup>131</sup>. Several public pools have banned wearing of the 'burkini'. However, the bans in two public pools, one in the city of Ghent ('Van Eyck') and one by the municipality of Merelbeke ('Ter Wallen'), were recently challenged by the court, which stated that the bans were discriminatory and the discrimination could not be justified by reasons of security or hygiene.<sup>132</sup> In the case of 'Ter Wallen', which specifically banned the burkini, direct discrimination was established, whereas 'Van Eyck', banning all kinds of 'body covering swimsuits', had indirectly discriminated against Muslim women wearing the burkini. The bans had to be lifted immediately, even pending appeals by the city of Ghent and the municipality of Merelbeke.<sup>133</sup> However, while the appeal by Merelbeke challenges the fact that there had been direct discrimination, the appeal by Ghent is based on challenging the reasoning of the judge, which only looked at freedom of religion, as the city believes that it is too restrictive and 'body covering clothing' should be possible for everyone.

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<sup>126</sup> House of Lords, *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15, [2007] 1 A. C. 100, [2006] 2 WLR 719; High Court of Justice, *R (on the application of X (by her Father and Litigation Friend) v. Headteachers and Governors of Y School* [2007] EWHC 298 (Admin) (England).

<sup>127</sup> House of Lords, *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* (n 116) (England).

<sup>128</sup> Employment Appeal Tribunal, [2007], I.C.R. 1154, *Azmi v Kirklees Metropolitan Borough Council* (England).

<sup>129</sup> This case-by-case approach was welcomed by the UN Special Rapporteur: see Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to the United Kingdom of Great Britain and Northern Ireland, UN Doc A/HRC/7/10/Add.3, para. 71.

<sup>130</sup> *Loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage* (1 June 2011) (Belgium).

<sup>131</sup> Code Pénal Belge, Article 563b.

<sup>132</sup> Hanne Decré, 'Judge decides: two swimming pools in Ghent cannot forbid burkini' ['Rechter beslist: twee zwembaden in het Gentse mogen boerkini niet verbieden'] (VRT NWS, 2018), <https://bit.ly/2OsIc2N>.

<sup>133</sup> Flemish Radio and Television Broadcasting Organization, 'City Council Ghent: Body-covering swimsuits should be allowed for everyone' ['Stadsbestuur Gent: "Lichaamsbedekkende zwemkledij moet voor iedereen toegelaten zijn"] (2018), <https://bit.ly/2Ad0P1P>.

In **France**, following a long political debate, a new law prohibiting the full-face veil in public spaces was adopted by the General Assembly in 2010<sup>134</sup>. A circular in 2011 justified this law by stating that covering one's face goes against the minimum requirements of life in society, and places Muslim women who wear hijab in a position of inferiority incompatible with the Republic's values<sup>135</sup>. As a result of this law, 1644 women wearing the full-face veil were fined between 2011 and 2016<sup>136</sup>. Not only the full-face veil but also the hijab and other ostentatious religious attire have been subjected to restrictions. In 2005, the Minister of Health issued a circular maintaining that religious beliefs should not undermine the quality of health care, and therefore patients should accept the attire required for the treatment provided and for hygiene<sup>137</sup>. Furthermore, a new rule, in force from 25 January 2018, prohibits the wearing of ostentatious religious clothing within the Assembly building, thereby preventing any full-face veiled woman – and possibly other groups such as Sikh men, Jewish men, priests, monks or nuns – from participating in public affairs<sup>138</sup>. In the summer of 2016, several municipal decrees prohibiting the wearing of 'burkini' were issued in France, such as the decree enacted by the municipalities of Cannes and Villeneuve-Loubet<sup>139</sup>. Collective Against Islamophobia (CCIF) brought the ban in Villeneuve-Loubet before the administrative tribunal of Nice which upheld the decree, arguing that in light of the state of emergency following terror attacks in Paris in 2015, wearing ostentatious religious signs at the beach could disrupt public order<sup>140</sup>. Then, CCIF and Ligue des Droits de l'Homme referred a similar municipal decree to the State Council, which invalidated the decree, stating that there was neither risk of disrupting public order nor legitimate grounds regarding hygiene and decency<sup>141</sup>.

In the **Netherlands**, legislation to prohibit face-covering clothing in education, health care, government buildings and public transport was adopted on 26 June 2018 and entered into force on 1 August 2019.<sup>142</sup> The ban includes the wearing of balaclavas, full-face helmets and niqabs. However, the ban does not apply to public streets. In practice, enforcement proves difficult.<sup>143</sup>

In **Switzerland**, there is no general prohibition of religious attire in public spaces. However, debates have emerged surrounding the full-face veil. This has led the canton of Ticino and, recently, St Gallen, to prohibit the full-face veil in public spaces.<sup>144</sup> This initiative also appeared in other cantons, but with

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<sup>134</sup> Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public (France).

<sup>135</sup> Circulaire du 2 mars 2011 relative à la mise en œuvre de la loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public (France).

<sup>136</sup> L'Express, 'Loi sur le voile intégral, plus de 1600 verbalisations en 6 ans' (2016), <https://bit.ly/2OW5Ggb> (France).

<sup>137</sup> Circulaire DHOS/G no 2005-57 du 2 février 2005 relative à la laïcité dans les établissements de santé (France).

<sup>138</sup> Assemblée Nationale, 'Réunion du mercredi 24 janvier 2018', <https://bit.ly/2CLWkCy> (France).

<sup>139</sup> Le Monde, 'Burkini: le maire de Cannes interdit les vêtements religieux à la plage', (2016), <https://lemde.fr/2IZL7db> (France).

<sup>140</sup> Tribunal Administratif Nice, ordonnance du 13 août 2016, n° 1603470 (France).

<sup>141</sup> Conseil d'État, N° 402742 ECLI:FR:CEORD:2016:402742.20160826 (2016) (France). The Spokesperson for the UN High Commissioner for Human Rights explicitly welcomed the decision of the Conseil d'État and "urge[d] all remaining local authorities which have adopted similar bans to repeal them immediately, rather than exploit the limited geographical scope of this particular decision in order to keep their highly discriminatory bans in place until the end of the current holiday season" (Press briefing notes on France and Bolivia, 30 August 2016, available online at <https://bit.ly/2OZRyT0>).

<sup>142</sup> Dutch Government [Rijksoverheid], 'Partial ban on face covering clothing' ['Gedeeltelijk verbod gezichtsbedekkende kleding'], see <https://bit.ly/2Ze2G0p> (Netherlands).

<sup>143</sup> Daniel Boffey, 'Dutch 'burqa ban' rendered largely unworkable on first day' (The Guardian, 2019), <https://bit.ly/2Kj4fFe>.

<sup>144</sup> Canton of Ticino, 'Ticino Cantoni Legge sulla dissimulazione del volto negli spazi pubblici del 18 Novembre 2015', Article 2 (Switzerland); Swissinfo, 'Voters approve 'burka ban' in St Gallen' (2018), <https://bit.ly/2NyUEXd> (Switzerland).

no success. The City of Geneva has prohibited all bathing suits that extend under the knees and that cover arms, de facto prohibiting the wearing of the 'burkini'<sup>145</sup>.

In **United Kingdom** and in **Germany**, there is no legislative prohibition of the wearing of the full-face veil in public spaces, even though the question has come up in political debates<sup>146</sup>.

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<sup>145</sup> Règlement des installations sportives de la Ville de Genève LC 21 711, Art. 22(4)(a) (Switzerland).

<sup>146</sup> Alice Foster, 'Where in the world are the burka and niqab banned?' (Express, 2016), <https://bit.ly/2Liqvws>.

## IV. The experience of women wearing the veil

The experiences of individuals and communities are not fully represented or recognised in the case law analysed above. There are reports and testimonies that show acts of discrimination aimed at women wearing the veil which are never reported or do not reach the courts. While international and domestic courts have sometimes accepted indirect discrimination as proportionate in pursuit of a legitimate aim, an examination of the situations not seen in the case law reveals a more disproportionate intrusion on the rights of Muslim women wearing a veil. While this section, as the previous ones, focuses on the selected countries, it is also important to acknowledge that discrimination against women choosing to wear the veil equally exists in countries without legal restrictions.

Equally important to recognise is the lack of adequate data often rendering women's experiences invisible. For example, France has no system for collecting data on discrimination<sup>147</sup>, and subsequently the extent of the impact of banning religious attire is unknown and as such cannot be remedied<sup>148</sup>. A similar lack of data is noted with concern by CEDAW regarding bans in Belgium<sup>149</sup>. The absence of disaggregation of data further obscures any understanding of women's perceptions and experiences. Disaggregating data is an important part of complying with international human rights law monitoring and evaluation and of achieving substantive equality. A further, crucial, issue is under-reporting. According to a report on Muslims by the EU Agency for Fundamental Rights, 38% of respondents did not see the benefit of reporting discrimination, as it was just "part of their normal everyday existence"<sup>150</sup>. In employment, women might not report discriminatory incidents for fear of losing their jobs<sup>151</sup>. Additionally, lack of legal migration status could lead victims to avoid contact with the police and thereby not report incidents of discrimination or hate crime.

This Section looks at the following experiences of women wearing the veil: a) experiences in employment, education and the public space; b) experiences of violence and harassment; and c) psychological, emotional, social and economic impact.

### a. Discrimination in employment, education and the public space

The **workplace** is often a fertile ground for discrimination. For example, in the Netherlands 73% of Afghani-Dutch who do wear a veil had experiences workplace discrimination on the basis of religion compared to 11% of Afghani-Dutch Muslim women not wearing a veil.<sup>152</sup> The Netherlands Institute for Human Rights has acknowledged many reports of companies refusing internships to girls wearing the

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<sup>147</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI), Fifth report on France, 2016.

<sup>148</sup> Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: France, (2008) UN Doc CEDAW/C/FRA/CO/6, para. 20; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of France, (2016) UN Doc CEDAW/C/FRA/CO/7-8.

<sup>149</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Belgium, (2014) UN Doc CEDAW/C/BEL/CO/7.

<sup>150</sup> European Union Agency for Fundamental Rights, EU-MIDIS Data in Focus Report 2: Muslims (2009), 3.

<sup>151</sup> Đermana Šeta, 'Forgotten Women: The Impact of Islamophobia on Muslim Women' (ENAR – European Network Against Racism 2016), 9.

<sup>152</sup> Đermana Šeta, 'Forgotten Women: The Impact of Islamophobia on Muslim Women' (ENAR – European Network Against Racism 2016), 3.

veil, and suggests that the problem is lack of awareness in companies around hijab<sup>153</sup>. Amnesty International has identified discrimination on the ground 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”, particularly when the job includes interaction with clients, where they are even more likely to be discriminated against<sup>154</sup>.

Discrimination often begins as early as during the hiring process. A study carried out in Germany identified a ‘veil penalty’, where only 3% of Muslim women wearing a veil in their CV photo were invited to interviews<sup>155</sup>. In Belgium, 44% of employers agree that a veil can impact the selection of candidates<sup>156</sup>. As a consequence of perceived discrimination in recruitment, more than two thirds of Muslim women in a French university felt compelled to remove their veils for a recruitment interview<sup>157</sup>.

In the United Kingdom, 50% of women wearing the veil felt they had missed out on progression opportunities because of religious discrimination<sup>158</sup>. According to the Collective against Islamophobia in France, after coming to work while wearing a veil, several women felt harassed through inappropriate comments made indirectly to or about them. They felt that people often linked veiled Muslim women with terrorism<sup>159</sup>. One woman in a French university study reported seeing her workload decrease substantially after she started wearing hijab at work and as a result was compelled to resign. Another interviewee, who had worked in the same firm for eight years, reported being offered the choice between resigning or taking on a new position which would make her “less visible”<sup>160</sup>.

In the **education sector**, the impact also seems to be stronger than what can be concluded from the case law. Human Rights Watch assessed the impact in Germany of the (now reversed) bans for teachers to wear the veil<sup>161</sup>. The report identified feelings of alienation, exclusion and professional insecurity among women, who had been teachers for years or decades before the bans entered into force. Muslim women have found it more difficult to obtain trainee placements, and to be offered a teaching post after completing placements. Some women opted to use substitutes for hijab, and reported feeling upset and uncomfortable with this limited decision. Others pursued different careers altogether or took prolonged parental leave; subsequent effects include reduced independence and social standing, as well as financial wellbeing.

In France, reportedly there have been several cases of Muslim girls excluded from their schools because they were wearing long skirts, considered by the schools as “ostentatious religious signs”<sup>162</sup>. There is no

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<sup>153</sup> Netherlands Institute for Human Rights [College Voor de Rechten Van de Mens], ‘Written Contribution to the UN Committee on the Elimination of Discrimination against Women’ (2016), <https://mensenrechten.nl/nl/publicatie/36368>.

<sup>154</sup> Amnesty International, ‘Choice and Prejudice: Discrimination against Muslims in Europe’ (2012), 41.

<sup>155</sup> Dr. Asmaa Soliman, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women in Germany’ (ENAR – European Network Against Racism 2016), 42.

<sup>156</sup> Elsa Mescoli, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women in Belgium’ (ENAR – European Network Against Racism 2016), 31.

<sup>157</sup> Collective contre l’Islamophobie en France, Annual Report (2017), 56.

<sup>158</sup> Bharath Ganesh and Iman Abou-Atta, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women in the United Kingdom’ (ENAR – European Network Against Racism 2016), 29.

<sup>159</sup> Collective contre l’Islamophobie en France, Annual Report (2017), 57.

<sup>160</sup> Collective contre l’Islamophobie en France, Annual Report (2017), 57.

<sup>161</sup> Human Rights Watch, ‘Discrimination in the Name of Neutrality: Headscarf Bans for Teachers and Civil Servants in Germany’ (2009).

<sup>162</sup> Collective contre l’Islamophobie en France, ‘Jupes longues: communiqué du CCIF suite à la nouvelle recrudescence des cas’ (2016), <https://bit.ly/2QUmOjL>.

legislation that prohibits the wearing of long skirts in school and these exclusions seemed to specifically target Muslim girls<sup>163</sup>. In certain areas of the UK, school policies that prohibit wearing a niqab affect not only students but parents as well. In countries where such limitations on the hijab exist, Muslim women who wear a veil are excluded from school meetings, as well as school itself, further removing their voices from the arenas where decisions affecting Muslim women can be made<sup>164</sup>. In contrast, social interaction and collaboration has seemed to prevent such dress-code conflicts from escalating. The Equality and Human Rights Commission in the UK has reported some schools consulting with parents to seek a compromise between uniform policy and the religious freedoms of students<sup>165</sup>.

Similarly, in the broader **public space**, the impact concerning access to leisure, medical and other facilities and public services is also reportedly stronger than what emerges from the case law. In France, discrimination against veiled women reportedly arises regarding their access to leisure areas, supermarkets, restaurants, medical establishments, and to public services. Since the beginning of 2017, there have been a number of complaints from women who were not permitted to subscribe to a gym because of wearing the hijab. Recently, a trade union spokesperson gave an interview on French TV about a reform initiated by the government. She was strongly criticised by some of the public and by politicians for wearing her veil while acting as spokesperson of the trade union<sup>166</sup>. This demonstrates how choosing to wear the veil can draw criticism towards women, especially when they participate in public affairs and have public facing jobs and positions.

Of concern is also the growing trend by some sectors – including some media and political platforms – to insert debates on the wearing of the veil in narratives promoting ideas of European cultural distinctiveness<sup>167</sup>, presenting Islam as “inherently opposed to European values of democracy and secularism”<sup>168</sup> with gender equality “as the crucial point of difference between European and Islamic cultures.”<sup>169</sup> In this context, the veil is seen as a visible form of otherness considered by some as incompatible with Western values.<sup>170</sup> These narratives are not informed by the voice of women who choose to wear the veil and can exacerbate the already existing climate of intolerance, harassment and violence against them.

## **b. Violence and harassment**

In recent years, there have been several cases of violence against women who wear the veil, such as aggression on the streets, buses, markets, parks or any other public spaces, often without other people intervening, verbal harassment and abuse. According to a study conducted in 2012-2013, in the States

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<sup>163</sup> Collective contre l’Islamophobie en France, ‘Jupes longues: communiqué du CCIF suite à la nouvelle recrudescence des cas’ (2016), <https://bit.ly/2QUmOjI>.

<sup>164</sup> Sariya Cheruvallil, Nazila Ghanea, Kingsley Purdam, Paul Weller, Religion or Belief, Discrimination and Equality; Britain in Global Contexts (Bloomsbury, 2015), 90.

<sup>165</sup> Equality and Human Rights Commission, ‘Religion or belief: dress codes and religious symbols’, (2017), <https://bit.ly/2Cmk5LW>.

<sup>166</sup> Abel Mestre, ‘Responsable de l’UNEF voilée : Marlène Schiappa dit voir ‘une forme de promotion de l’islam politique’ (Le Monde, 16 May 2018), <https://lemde.fr/2RTtoAmj>.

<sup>167</sup> John R. Bowen, Christophe Bertossi, Jan Willem Duyvendak and Mona Lena Krook ‘An Institutional Approach to Framing Muslims in Europe’ in John R. Bowen, Christophe Bertossi, Jan Willem Duyvendak and Mona Lena Krook (eds.), *European States and Their Muslim Citizens* (CUP 2014) 2.

<sup>168</sup> Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2016) UN Doc A/HRC/32/50, para. 63.

<sup>169</sup> Hilal Elver, *The Headscarf Controversy: Secularism and Freedom of Religion* (OUP 2012) 104.

<sup>170</sup> Susan S. M. Edwards ‘Proscribing unveiling-law: a chimera and an instrument in the political agenda’ in Eva Brems (eds.) *The Experiences of Face Veil Wearers in Europe and the Law* (CUP 2014) 281.



with laws or policies restricting religious clothing, women wearing the clothing under restriction were the victims of two thirds of all harassment involving any religious clothing, demonstrating a statistical link between bans and harassment<sup>171</sup>. The “normalization” of the experience of discrimination, and the fear and disbelief that reporting would make a difference, imply that arbitrary restrictions on religious freedom and unlawful discrimination, violence and harassment on the ground of wearing religious symbols are often not legally challenged by the victims and that much of women’s experiences remains invisible.

Visibility of Muslim faith and of traditional Islamic clothing worn by women reportedly increases the probability of being assaulted in the street.<sup>172</sup> In the United Kingdom, public areas, including streets, public parks, shops and public transport, are common sites of anti-Muslim incidents, particularly affecting women<sup>173</sup>. 68% of cases of verbal abuse perpetrated against Muslim women reported to the charity Tell MAMA in the United Kingdom in 2014-15 were against women wearing religious attire; the majority of perpetrators were white men<sup>174</sup>. According to Lila Charef, director of Collective against Islamophobia in France among the 2500 complaints, information requirements or testimonies received by the organisation every year, many are from victims who are Muslim women wearing religious attire, stating in their 2018 report that 69% of islamophobic acts and 85% of islamophobic aggression with more than eight days of work incapacity are committed against women<sup>175</sup>. The French National Observatory against Islamophobia reported that most verbal or physical aggressions on the ground of religion were directed towards women wearing the veil<sup>176</sup>. Increasing levels of violence, which can include insults, spitting at women wearing the veil and attempts to remove their clothing, have been noted in France and the United Kingdom after terrorist attacks<sup>177</sup>. Collective Against Islamophobia in Belgium (CCIB) stated that according to data from Unia, Belgium’s national human rights institution, 63.6% of the Islamophobic hate crimes and offences registered between January 2012 and September 2015 were perpetrated against women<sup>178</sup>. In the Netherlands, Report Islamophobia received 158 complaints in 2015, 90% of which were from women, most of them wearing the veil<sup>179</sup>. In one incident, a 72-year old woman tried to pull off hijab of a Muslim girl in March 2016. Several violent attempts to remove Muslim women’s veils were noted in the UK in 2013<sup>180</sup>.

In the United Kingdom, Tell MAMA’s data show that women who have been targeted by anti-Muslim activity experience loss of self-confidence which impacts on their mobility, with some unwilling to leave

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<sup>171</sup> Pew Research Centre, ‘Restrictions on Women’s Religious Attire’ (2016), 10-12.

<sup>172</sup> Farah Elahi, Barbara Cohen and Waqas Tufail and Omar Khan (eds.) ‘Islamophobia; still a challenge for us all’ (Runnymede 20th anniversary report 2017), <https://bit.ly/2Ov1TSU>, 42. See also Tell MAMA, ‘With the Niqab Being a Political Football, Let’s Listen to the Voice of One Who Wears It’, (2016) Faith Matters, <https://bit.ly/2RUhhek>.

<sup>173</sup> Farah Elahi, Barbara Cohen and Waqas Tufail and Omar Khan (eds.) ‘Islamophobia; still a challenge for us all’ (Runnymede 20th anniversary report 2017), <https://bit.ly/2Ov1TSU>.

<sup>174</sup> Đermana Šeta, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women’ (ENAR – European Network Against Racism 2016), 26.

<sup>175</sup> Collective contre l’Islamophobie en France, Rapport sur l’islamophobie pendant l’année 2017: dates, chiffres at questions, 2018.

<sup>176</sup> Marjorie Moya, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women in France’ (ENAR – European Network Against Racism 2016), 45.

<sup>177</sup> Đermana Šeta, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women’ (ENAR – European Network Against Racism 2016), 4.

<sup>178</sup> Collective Contre l’Islamophobie en Belgique, ‘Existe-t-il une dimension sexiste dans les actes de l’islamophobie en Belgique?’ (2016) (Belgium), <https://bit.ly/2QVJkss>.

<sup>179</sup> European Union Agency for Fundamental Rights, Current migration situation in the EU: Hate crime (November 2016) 6.

<sup>180</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI), Fifth report on France, 2016.

their house and community areas in which they feel safe and increasingly relying on male family members to do so. Furthermore, some are coerced by the experience to remove their veils to reduce their visibility, which can bring negative emotional and social consequences<sup>181</sup>. Verbal abuse and acts described as “everyday”, such as being refused service or ignored, receiving strange looks and critical comments, are reported to contribute to a "socially adverse environment" that, while not illegal, has psychological and social impacts. Feelings of insecurity and hostility prevent some women from going out alone<sup>182</sup>. In cases where women are coerced into wearing a full-face veil, bans can ultimately further isolate them and confine them to their home<sup>183</sup>. In such cases women can be caught between the harassment discussed above, for abiding by religious dress codes, and harassment from within their own community for perceived violations of religious dress codes through obeying a ban<sup>184</sup>.

### **c. Psychological, emotional, social and economic impact of wearing a veil**

The headscarf has a personal meaning for every woman who chooses to wear it<sup>185</sup>. However, women wearing a headscarf are constantly second-guessed on the autonomy of their choice or asked to justify their decision. For example, women teachers who wear a headscarf are invariably asked to explain why they do so and their independence and views on women's equality are questioned<sup>186</sup>. Women's testimonies clearly demonstrate that being asked to take off their headscarf is an act of humiliation and an attack to their dignity. Women who decide to remove their headscarf describe the same feelings of humiliation and negation of their integrity<sup>187</sup>.

Some of the women that approached the “Collective against Islamophobia in France” stated that although they try to participate in society and integrate, the acts of discrimination they have suffered make them feel like they are only perceived and judged based on their religion and their attire. In the area of employment, some women express the frustration of constantly being considered an intruder and singled out by colleagues or clients; for example, they may feel “disqualified simply on the basis of racist stereotypes and not their actions, which results in feelings of shock and often sadness.”<sup>188</sup>.

Hostility and discrimination against Muslim women result into higher likelihood of poverty and unemployment, exclusion from public life and freedom of movement as well as access to education and use of public space and services, etc. Legislation and policy do influence and legitimise mainstream

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<sup>181</sup> Eirini-Chrysovalantou Zempi, ‘Unveiling Islamophobia; the victimisation of Muslim women’ (Department of Criminology, University of Leicester 2014), 158-9, <https://bit.ly/2PDbfNo>.

<sup>182</sup> Amnesty International, ‘International Day of Tolerance: How can we protect minorities from hate crimes?’ (2014), <https://bit.ly/2OrqlsR>.

<sup>183</sup> Human Rights Watch, ‘France: Face-Veil Ruling Undermines Rights: European Court Upholds Discriminatory Ban’, (2014), <https://bit.ly/1DbgMO9>.

<sup>184</sup> Pew Research Centre, ‘Restrictions on Women’s Religious Attire’ (2016), 8.

<sup>185</sup> Amnesty International, ‘Wearing the Headscarf in the Workplace: Observations on Discrimination Based on Religion in the Achbita and Bougnaoui Cases’ (2016) 13.

<sup>186</sup> Human Rights Watch, ‘Discrimination in the Name of Neutrality: Headscarf Bans for Teachers and Civil Servants in Germany’ (2009).

<sup>187</sup> Fatiha Ajbli, sociologist and expert on Muslim women discrimination in the field of employment, interviewed on 19 June 2015 in ‘Forgotten Women: The Impact of Islamophobia on Muslim Women’ (ENAR – European Network Against Racism 2016). Her academic work is based on interviews of Muslim veiled and educated women aged between 22 and 40.

<sup>188</sup> Đermna Šeta, ‘Forgotten Women: The Impact of Islamophobia on Muslim Women’ (ENAR – European Network Against Racism 2016), 19 and 20.

discourse of anti-Muslim incidents.<sup>189</sup> Paradoxically, the resistance to the headscarf as a sign of oppression and in support of gender equality may in fact result into more discrimination and less empowerment of women.

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<sup>189</sup> Tell Mama, 'A Constructed Threat: Identity, Prejudice and the Impact of Anti-Muslim Hatred' (Annual Report 2016), 7, 11, 16, 22 and 55.

## V. Conclusions

The human rights impact of restriction on religious attire is complex to assess. A number of general conclusions are drawn below, using the principles set out in section II.

On whether restrictions contravene the right to religious freedom: while the extent to which existing laws are in line with international norms cannot be generalized and must be considered on a case by case basis, there are common issues of concern in the cases analysed above.

- *Legitimate aim:* As required by Article 18 (3) of the CCPR, freedom to manifest one’s religion or beliefs can only be subjected to limitations that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. As seen above, States have in some instances failed to explain how the wearing of the veil would be a threat to safety, health or rights of others. As highlighted by the Special Rapporteur on freedom of religion or belief, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals should not be based on principles deriving exclusively from a single tradition.<sup>190</sup> In this connection, justifications based on the vague principle of “living together” seem to be of particular concern. The Special Rapporteur further stressed that limitations should not completely abolish the individual’s freedom to manifest his or her religion or belief. In this regard, absolute bans, particularly in the public space, appear particularly complex to justify.
- *Legality:* Another issue of concern is the uncertainty of the scope of application of existing legal restrictions and the high level of discretion accorded to private employers and public institutions in this regard. This uncertainty leads to bans having a larger *de facto* impact on the enjoyment of rights, because women do not know what they are entitled to claim and therefore have little or no opportunity for redress.
- *Proportionality:* Even if restrictions are justified by a legitimate aim, the measure must be proportionate to the objective. Absolute criminal bans have been deemed unreasonable by the Human Rights Committee, deviating from the European Court of Human Rights’ decisions. In this regard, an analysis of the concrete impact of bans or restrictions on the enjoyment of other rights is important (see below).

On autonomy, choice and gender-based discrimination: An issue of particular interest here is the debate on choice vs. coercion. While, as repeatedly stated, nobody should be forced to wear a religious symbol, the arguments disregarding women’s voices concerning decisions to wear the veil, particularly the full-face covering veil, are considered by some as ignoring women’s agency and capacity to consent. Some argue that when dictated by social pressure, choice is not free. However, this argument could dangerously be extended to policing women’s bodies and dictating by law what women should or should not, *inter alia*, wear. While it is reasonable to state that the existing patriarchal system may lead women and girls to conform to societal expectations, even when they limit their freedom or perpetuate harmful stereotypes, it is questionable whether legal bans or restrictions, punishing the woman herself, would be the most appropriate response or whether they, instead, further marginalize and perpetuate discrimination. Some argue that wearing the full-face covering should be considered a harmful practice similar to child marriage or female genital mutilation and therefore be prohibited, including for adult women. More analysis is needed to determine whether the harmful practice framework developed by human rights treaty bodies could be applicable to the wearing of the full-face covering. Furthermore, an analysis of adequate measures applicable to address the practice would also need to be undertaken. In

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<sup>190</sup> E/CN.4/2006/5, para. 55.

this context it is very important to recall that UN human rights mechanisms have been unanimous in stressing that women undergoing the practice should not be criminalized or penalized themselves.

On non-discrimination and equality, intersectionality and the rights of minorities: As highlighted by the Special Rapporteur on freedom of religion or belief,<sup>191</sup> limitations should neither be intended nor lead to explicit discrimination or camouflaged differentiation depending on the religion or belief involved. In the cases analysed, even when restrictions seem neutral, in practice they disproportionately affect Muslim women. More research would be needed on the extent of existing limitations on other symbols and how these impact other individuals/communities. The experiences of Muslim women wearing the headscarf, beyond the case law, seem to show widespread instances of discrimination, as well as exposure to violence. Given the situation, States should be mindful of how restrictions on the wearing of the veil can further stigmatize Muslim women and prevent them from seeking redress. Moreover, some narratives surrounding debates on the wearing of the headscarf can perpetuate stereotypical, biased perceptions about the Muslim faith and the role of women.

On universality, interrelatedness and interdependence of rights: The findings of this research show how restrictions on the wearing of the veil can result not only into an infringement on the right to freedom of religion, but also into an obstacle to the enjoyment of other rights, such as the right to education, the right to work, cultural rights, and the right to participate in public life. While the reality of women who are coerced into wearing the veil must be acknowledged and addressed, banning wearing veils in the name of gender equality paradoxically can result into less equality and autonomy, and more exclusion and discrimination for Muslim women and girls.<sup>192</sup>

The former Special Rapporteur on Freedom of Religion and Belief developed the set of general criteria to guide legislative and administrative action concerning the regulation of religious symbols.<sup>193</sup> They seem particularly relevant to guide the debate on restrictions on the wearing of the veil. The Special Rapporteur recommended that where a policy decision has been taken at the national level to interfere with the freedom to manifest one's religion or belief with regard to wearing religious symbols, the following questions should all be answered in the affirmative: Was the interference, which must be capable of protecting the legitimate interest that has been put at risk, appropriate? Is the chosen measure the least restrictive of the right or freedom concerned? Was the measure proportionate, i.e. balancing of the competing interests? Would the chosen measure be likely to promote religious tolerance? Does the outcome of the measure avoid stigmatizing any particular religious community? If any of the above questions is negative, then the chosen measure is unduly restricting freedom of religion or belief. Additionally, while acknowledging that the doctrine of "margin of appreciation", may accommodate differing ethnic, cultural or religious practices, it should not lead to questioning the international consensus on the universality, indivisibility, interdependence and interrelatedness of human rights.<sup>194</sup>

The analysis and findings included in this paper call for a balanced conversation and more consultations with Muslim women, both those wearing a veil and not wearing one, and a better acknowledgement of their voice in debates around this issue. There is a need for more disaggregated data, documentation and awareness about the impact of restrictions on the veil, as well as narratives around it. Efforts should also be strengthened to encourage greater reporting of incidents of discrimination, violence and harassment and redress for the victims.

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<sup>191</sup> E/CN.4/2006/5, para. 55.

<sup>192</sup> Human Rights Watch 'Questions and Answers on Restrictions on Religious Dress and Symbols in Europe', (2010), <https://bit.ly/2gTtrDR>

<sup>193</sup> E/CN.4/2006/5, paras. 51-60.

<sup>194</sup> Commission on Human Rights, Report of the Special Rapporteur on freedom of religion and belief, Asma Jahangir (2006) UN Doc E/CN.4/2006/5, para. 59.

Awareness-raising programmes in schools and workplaces regarding women's rights and religion to rectify misconceptions related to veils should also be encouraged. Such efforts could be especially beneficial in companies reported to discriminate based on religious attire. Public awareness-raising would also be useful. Sharing Muslim women's stories on online platforms has for example prompted hundreds of messages of support from readers of many backgrounds. Participatory and inclusive spaces should be provided to discuss ways to address rising xenophobia, incitement to hatred and to prevent violence and harassment against women wearing the veil.

In this context, the 'Faith for Rights' framework<sup>195</sup> could be a useful tool: it aims at fostering peaceful societies that uphold human dignity and equality for all and where diversity is not just tolerated but fully respected and celebrated. This requires joint efforts by States, religious authorities, faith-based and civil society organizations with a view to ensuring non-discrimination and gender equality, denouncing any advocacy of hatred that incites to violence, discrimination or hostility as well as standing up for the rights of all persons belonging to minorities to participate equally and effectively in cultural, religious, social, economic and public life.<sup>196</sup> The aspiration is to prevent all forms of discriminatory practices and to preserve the space for religious or belief pluralism in practice, while safeguarding everyone's right to free choices.<sup>197</sup>

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<sup>195</sup> OHCHR, 'Beirut Declaration and its 18 commitments on "Faith for Rights"', A/HRC/40/58, annexes, <https://bit.ly/2yI8xz7>.

<sup>196</sup> Beirut Declaration and its 18 commitments on "Faith for Rights", A/HRC/40/58, annex II, commitments V, VI and VII, [www.ohchr.org/Documents/Press/Faith4Rights.pdf](http://www.ohchr.org/Documents/Press/Faith4Rights.pdf).

<sup>197</sup> Ibid, commitments I and IV, [www.ohchr.org/Documents/Press/Faith4Rights.pdf](http://www.ohchr.org/Documents/Press/Faith4Rights.pdf).