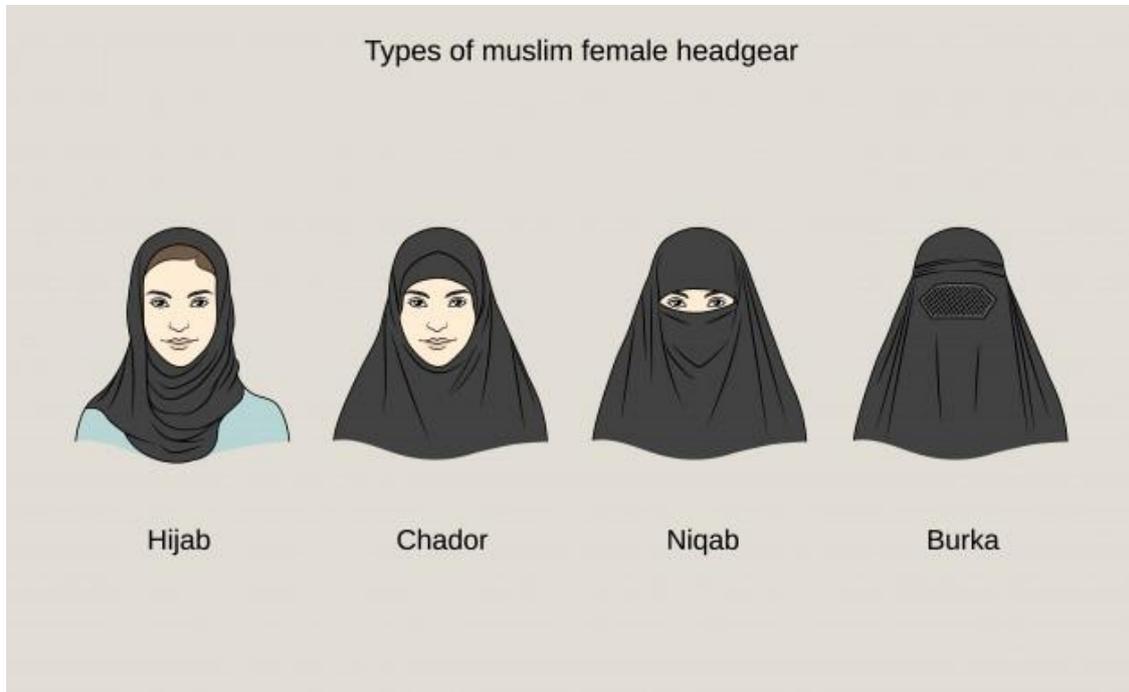


Overview prepared by the European Wergeland Center:

Experiences with general and limited bans on wearing religious symbols and clothing, with a focus on the full-face veil across Europe.

In this overview, the term full-face veil is used to encompass the *burqa* and *niqab*. However, some passages refer explicitly to one or the other or both, in line with the original references. The full-face veil has to be distinguished from the hijab or the Islamic headscarf. See below.¹



Copenhagen University (photo: iStock)

I. THE EUROPEAN HUMAN RIGHTS SYSTEM ON RELIGIOUS SYMBOLS AND CLOTHING

Bans on the full-face veil have been widely criticized within the Council of Europe (CoE) as compromising the very principle of the European Convention on Human Rights System.

- In 2010, Thorbjørn Jagland, Secretary General of the Council of Europe considered the bans on the full-face veil to “miss the point of European democracy and human rights” and “feed on the irrational, popular fear of difference, fear of the unfamiliar.”²
- In the same year, Thomas Hammarberg, the former CoE Commissioner for Human Rights, pointed out that such bans would not liberate oppressed women but might instead lead to their further alienation. In his view, “a general ban on such attire would constitute an ill-advised invasion of individual privacy”, raising “serious questions about whether such legislation would be compatible with the European Convention on Human Rights.”³

¹ See OSF report: Unveiling the Truth, page 9: <https://www.opensocietyfoundations.org/sites/default/files/unveiling-factsheet-english-20110411.pdf>

² Thorbjørn Jagland, Secretary of the Council of Europe, 7 July 2010: http://www.coe.int/t/secretarygeneral/sg/Opeds_jagland/20100707_burqa_en.asp

³ Thomas Hammarberg, then Council of Europe Commissioner for Human Rights, 8 March 2010, available at http://www.coe.int/t/commissioner/Viewpoints/100308_en.asp

Relevant articles under the European Convention of Human Rights

The following articles under the European Convention of Human Rights⁴ have been found relevant in view of individual complaints/cases under the European Court of Human Rights (ECtHR).

Article 9: Freedom of thought, conscience and religion⁵:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 14 Prohibition of Discrimination, based on, among other things, religion and opinions:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, **religion**, political or **other opinion**, national or social origin, association with a national minority, property, birth or other status.”

Article 2 of Protocol No. 1 Right to Education:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching for their children in conformity with their own religious and philosophical convictions.”

The European Court of Human Rights - Wearing of religious symbols or clothing⁶

A healthy democratic society needs to tolerate and sustain pluralism and diversity in the religious sphere. Moreover, an individual who has made religion central to his or her life must, in principle, be **able to communicate that belief to others**, *inter alia* by wearing religious symbols and items of clothing (*Eweida and Others v. the United Kingdom*, § 94).

Wearing such a symbol or item of clothing as motivated by the person’s faith and his or her desire to bear witness to that faith constitutes a manifestation of his or her religious belief, in the form of worship, practice and observance. It is therefore an action protected by Article 9 (*Eweida and Others v. the United Kingdom*, § 89).

However, **the right to wear religious clothing and symbols is not absolute and must be balanced with the legitimate interests of other natural and legal persons.**

The Court’s current case law in this field covers three different areas **a) the public space; b) the workplace; and c) schools and universities.**

⁴ European Convention on Human Rights; http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ Guide Art 2: Freedom of thought, conscience and religion http://echr.coe.int/Documents/Guide_Art_9_ENG.pdf

⁶ The following passage is to a large extent based on two papers: European Court of Human Rights, Fact Sheet – Religious symbols and clothing, updated May 2016, available at: http://www.echr.coe.int/documents/fs_religious_symbols_eng.pdf and, European Court of Human Rights, Guide to Article 9, available at: http://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

The ECtHR has supported many states' bans on religious symbols or clothing in public spaces including schools and universities.

Wearing of religious symbols and clothing in the public space

The most prominent case with regard to wearing religious clothing and symbols in the public space is the complaint against France's ban of the full-face veil in public spaces, 2011 (see also page 6/7).

S.A.S. v. France, 2014 ¹

This case was brought by an unnamed 24-year-old French citizen of Pakistani origin. She complained that she was no longer allowed to wear the full-face veil in public, following the entry into force, 2011, of a law prohibiting the concealment of one's face in public places.

The Court ruled that the French law did not violate articles 8, 9 and 14. In its judgment, the court upheld the French ban as a legitimate and proportionate measure designed to protect "respect for the minimum requirements of life in society," "the protection of the rights and freedoms of others," and the principle of "living together." The concept of living together is yet to be fully articulated.

Furthermore, the court ruled that the ban "was not expressly based on the religious connotation of the clothing in question but solely on the fact that it concealed the face". A court statement said the ruling also "took into account the state's submission that the face played a significant role in social interaction".

However, the court recognized that the law had "admittedly specific negative effects on the situation of Muslim women who for religious reasons wished to wear the full-face veil in public".

The Court's decision has important legal and public policy implications. The Court's acceptance of the concept of "living together" without a definition of its content may lead to problems in the future. The likely public policy outcome is further legislation seeking to implement similar bans

Wearing of religious symbols or clothing at school and university

As for regulations applying to state educational institutions, the court has emphasized **that states enjoy a very extensive margin of appreciation in this field**. It is not possible to discover a uniform conception of religion in society throughout Europe. The meaning or impact of the public expression of religious beliefs will differ according to time and context. Consequently, rules in this sphere will vary from country to country according to **national traditions** and the requirements imposed **by the need to protect the rights and freedoms of others and to maintain public order**.

Thus, the form and extent of regulations should be left, up to a point, to the State concerned, as it will depend on the specific domestic context (*Leyla Şahin v. Turkey* [GC], § 109).

The cases, which have been assessed by the court, can be broken down into two different categories, based on whether the applicant demanding the right to wear religious clothing was a **teacher or a student (or pupil)**.⁷

Teachers

The court has balanced the teacher's **right to manifest her/his religion against respect for the neutrality of state education and the protection of the students' legitimate interests by ensuring inter-faith harmony.**

The court emphasized that the nature of the school teachers should be considered. They are both "participants in the exercise of educational authority" and "representatives of the state in the eyes of their pupils". Furthermore, the pupils' age is an important factor to consider, since younger children are more easily influenced than older.

In line with the above, the court has not found a violation under the ECHR in the following cases:^{8 9}

Dahlab v. Switzerland, 2001

A prohibition on a primary school teacher responsible for a class of small children (aged four to eight) wearing an Islamic headscarf while teaching. She complained for violation of her freedom to manifest her religion under article 9. The Court claimed that the applicant had every right to wear her headscarf at school. Nevertheless, the court attached particular importance to the fact that wearing the headscarf, a "powerful external symbol", was difficult to reconcile with the message of tolerance, respect for others, and above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils. The court also justified the ban in view of the aim of protecting the rights and freedoms of others, in particular being a teacher of children 'of tender age' in the state education sector.

Kurtulmuş v. Turkey, 2006

A disciplinary sanction imposed on an applicant, an associate professor at a State University in Turkey, for wearing the Islamic headscarf while teaching, breaking the rules on dress for public servants. The court found that in a democratic society, the state is entitled to require public servants to be loyal to the constitutional principles, and therefore, she, a representative of the state could have been expected to comply with the rules requiring her not to express her religious beliefs in public.

⁷ Factsheet of the ECtHR on religious symbols and clothing, pages 24-28, updated May 2016.

⁸ 15 February 2001 in *Dahlab v. Switzerland*, CE:ECHR:2001:0215DEC004239398.

⁹ 24 January 2006 *Kurtulmuş v. Turkey*, CE:ECHR:2006:0124DEC006550001

As regards **to pupils and students**, the court found:¹⁰

Leyla Şahin v. Turkey, 2004

In 1998, Istanbul University informed students and faculty that students wearing headscarves and having long beards would not be permitted to enter lectures and examinations. At that time, Ms Şahin was in her fifth year of medical school at Istanbul University, and she was now denied entrance to lectures and prohibited from taking exams because of her headscarf. The court found that her religious freedom had been restricted, but that the restrictions were legitimate to the aims of the University and of the state to protect the nation's secularism. Furthermore, in the context of Turkey, the issue of the Islamic headscarf could not be assessed without considering the **potential impact of this symbol, presented or perceived as a mandatory religious duty, on those who did not wear it**. According to the Turkish courts, wearing the headscarf had taken on a political meaning in the country; Turkey had extremist movements endeavoring to impose on society as a whole, their religious symbols and conception of society. Against such a background, the regulations constituted a measure preserving pluralism in the university

Furthermore:

- The Court acknowledged that it was not unreasonable to consider that wearing a veil such as the Islamic headscarf was incompatible **on health and safety grounds** with practicing a sport (Dogru v. France, 2008).
- The Court considered that the **aim of protecting the constitutional principle of secularism** in conformity with the values underpinning the Convention was sufficient to justify the imposed measures in several cases. Those measures included **prohibitions on pupils at State primary schools in France wearing “signs or clothing manifesting their religious beliefs”, which prohibition was general, and the exclusion of pupils wearing a Sikh turban or Islamic headscarf from school premises**. The Court does not consider the expulsion disproportionate since the applicants were, during a period of dialogue, **proposed alternative ways of education such as private schools or home schooling**. Therefore, the court concludes that the religious convictions of the applicants “were fully taken into account” in light of the legitimate aim of protecting the rights and freedoms of others and the public order. (Aktas vs France, 2009; Ranjit Singh v. France 2009, etc).^{11 12 13}

In its effort to maintain the balance between the individual applicant and the state, **the court focused primarily on maintaining the principle of secularism and neutrality of the civil service, in particular of state education, and protecting the rights of others.**

¹⁰ECtHR, fourth section, case *Leyla Şahin v. Turkey*, 2004, *Application no. 44774/98* available at: [http://hudoc.echr.coe.int/eng#{"dmdocnumber":\["699739"\],"itemid":\["001-61863"\]}](http://hudoc.echr.coe.int/eng#{)

¹¹ [http://hudoc.echr.coe.int/eng#{"itemid":\["001-89848"\]}](http://hudoc.echr.coe.int/eng#{)

¹² [http://hudoc.echr.coe.int/eng#{"itemid":\["001-93702"\]}](http://hudoc.echr.coe.int/eng#{)

¹³ Freedom of Religion in Public Schools: Strasbourg Court v. UN Human Rights Committee, available at: <https://strasbourgobservers.com/2013/02/14/freedom-of-religion-in-public-schools-strasbourg-court-v-un-human-rights-committee/>

II. COMPARATIVE PRACTICES IN EUROPEAN COUNTRIES

The number of women who wear a full-face veil in non-Muslim majority countries in Europe is rather small. In Denmark, for example, an estimated 150-200 women are wearing the Niqap.¹⁴ Throughout Western Europe, “well below half of one percent of the Muslim population“, wears a full-face veil.¹⁵

Nonetheless, in the context of rising anti-Muslim sentiments¹⁶ and security concerns, a growing numbers of countries have implemented general or limited bans on clothing covering the face including religious clothing such as the full-face veil at national or local level, or locally or are discussing it.

In this context, wearing of the full-face veil has often been problematized across Europe as a symbol of Islamic extremism, women’s oppression and lastly the failure of Muslims to integrate.

The following comparative review shows that only France and Belgium have adopted a general ban including restrictions on wearing the full-face veil in all public areas, while other countries adopted bans with more limited applications. Others are discussing it e.g. Germany and the Netherlands.

European countries often adopt quite different policies, as seen above; many have been tested through the ECtHR for their consistency with the European Convention on Human Rights.

In particular, the wearing of religious symbols and clothing in educational institutions has been and still is an issue of controversy and practices across Europe are very diverse. In France students are not allowed to wear religious and cultural symbols and clothing in any public school, whereas in the Netherlands individual schools make their own policy. In Germany, for example, the veil is banned for teachers, as they are for civil servants.

France

On 11 April 2011, France became the first European country to impose a general ban on “clothing designed to conceal the face” in public spaces, including wearing the full-face veil.¹⁷

The law aims primarily to promote public order and gender equality, and to preserve the principles underlying the French State. As President Sarkozy, whose administration brought in the ban, said, the veils oppress women and were “not welcome” in France.

Any person, French or foreign defying the ban is subject to a fine of 150 EUR and/or required to complete a citizenship course in order to remind the person of “republican values of

¹⁴ 2009 *Report on the Use of Burka and Niqab*, Department of Cross-cultural and Regional Studies at Copenhagen University: <http://www.e-pages.dk/ku/322/>

¹⁵ Ralph Grillo and Prakash Shah, *Reasons to Ban? The Anti-Burqa Movement in Western Europe*, Max Planck Institute for the Study of Religious and Ethnic Diversity, Working Paper 12-05, p. 9, available at http://www.mmg.mpg.de/fileadmin/user_upload/documents/wp/WP_12-05_Grillo_Reasons-to-Ban.pdf

¹⁶ EU Agency for Fundamental Rights, *Respect for and protection of persons belonging to minorities 2008-2010*, (2011), available at http://fra.europa.eu/fraWebsite/attachments/FRA-Report-Respect-protection-minorities-2011_EN.pdf

¹⁷ Law no. 2010-1192 – Act prohibiting concealment of the face in public space, Article 1.

tolerance and respect for human dignity (...).” Anyone found forcing a woman to cover her face risks a 30.000 euro fine.

Interestingly, back in 2010, on request of the prime Minister, an extensive assessment was carried out by the Council d’ Etat on the legality of the proposed ban. In their advisory document, among others, they point out that the ban carries the risk of stigmatising persons of the Muslim faith in France. Despite this advice, the Ministry of Justice presented a draft bill which was adopted the same year.

The ban came into effect after a six-month period of “education” to explain women already wearing full-face veil the consequences of their continuing to do so.¹⁸

France has about five million Muslims, but it is thought only around 2,000 women wear full veils. Data from 2015 showed that 1,546 fines had been imposed under the ban.¹⁹

Report: Unveiling the Truth presenting testimonies of 32 women who live in France, Open Society Foundation, 2011:

- Despite the lengthy period of consultation leading up to the introduction of the law, there was no real engagement with Muslim women who wear the full-face-veil, their families and communities. The cross-party Parliamentary commission heard 211 people, only one of them was a Muslim woman who wore a full-face veil.
- The ban has contributed to discontent and alienation among women who wear the full-face veil.
- Attacks on women wearing the veil have increased alongside political attacks on the veil as a symbol of Muslim culture and a perceived threat to Western/traditional French values.
- Given that the ban is for the protection of the public order, such attacks suggest that precisely the opposite effect bears out in reality. As one respondent put it:

“I had (previously) never been attacked and I had been wearing it for the last 11 years. The first time (it happened) it was the day after our illustrious President of the Republic said before the National Assembly and on TV that the Burqa was not welcome in France.”

As a consequence, women have preferred to limit their time spent outside home.

There is no reliable data detailing how many Muslim women continue to wear the full-face veil in France. A survey conducted by the Open Society Foundation in 2013 which examines the effects of the ban on the daily experiences of women who are subject to the ban points out that many women actively continue to wear the full-face veil. It also shows that women do so despite considerable personal costs.²⁰

¹⁸ Ibid., Article 5

¹⁹ <http://www.bbc.com/news/world-europe-13038095>

²⁰ After the Ban - The Experiences of 35 Women of the Full-Face Veil in France, Open Society Foundation, September 2013, available at: <https://www.opensocietyfoundations.org/sites/default/files/after-the-ban-experience-full-face-veil-france-20140210.pdf>

As mentioned above, the ECtHR upheld the ban in 2014.

In 2015, the European Commission on Racism and Intolerance expressed concerns that Muslim women in France were asked to remove their headscarves when participating in school outings as accompanying parents. It noted that the Conseil d'État issued an opinion in late 2013 stating that accompanying parents are not public service employees and therefore not obliged to observe religious neutrality. It notes that schools have broad discretion regarding the implementation of these provisions and that similar incidents continue to take place on a regular basis.²¹

In the same year, following his visit to France, the Council of Europe High Commissioner for Human Rights warns about the rising number of anti-Muslim attacks in France. Based on data from the French Ministry of the Interior "Women were the victims of over 80% of the various assaults and violent acts of an anti-Muslim nature reported in 2013".²²

Belgium

Belgium was the second country after France to introduce a general ban on "clothing that obscures the identity of the wearer" including wearing the full-face veil. It came into effect in July 2011.

The law bans any clothing that obscures the identity of the wearer in public places like parks and on the street. Individuals who act against the ban can be fined between 15/20 EUR and/or imprisoned for one to seven days.

In December 2012, the Belgium's Constitutional Court rejected appeals for the ban to be annulled, ruling that it did not violate human rights. In 2016, data shows that 60 women have since been prosecuted for wearing the Niqab and Burka.²³

With regards to schools, different practices existed due to education in Belgium being regulated by three different communities (Flemish, French and German speaking), which have a duty to organize neutral education as enshrined in the Belgian Constitution. It implies respect for religious, ideological and political convictions of both pupils and parents.²⁴

In the past, many schools and local authorities adopted internal regulations prohibiting the wearing of head coverings in general or of religious and cultural symbols and dresses in particular.

For example, in 2011 an internal regulation of the municipality of Brussels prohibited students from wearing symbols or clothing showing religious, political, philosophical opinions

²¹ CoE ECRI report on France, December 2015.

²² The Council of Europe High Commissioner for Human Rights, France country visit report 2015, page 8, available at: www.coe.int/sq/web/commissioner/-/france-persistent-discrimination-endangers-human-rights

²³ Reuters: Troubled Europe debates, 2016.

²⁴ Article 24.1 of the Belgian Constitution: "..._La communauté organise un enseignement qui est neutre. La neutralité implique notamment le respect des conceptions philosophiques, idéologiques ou religieuses des parents et des élèves".

or identities.²⁵ Already in 2007, in the Flemish area a ban applying to all teachers except for teachers of religion was introduced for several schools.²⁶

In its 2012 report, Amnesty International reported experiences from Muslim girls/women affected by the diverse bans. They can be summarized as follows:²⁷

- Pupils who wanted to wear the headscarf in schools in Antwerp opted for home education. After six months, half of them reintegrated into the school system.
- Girls do take off their headscarves but feel discriminated.
- Friends of students visiting the school premises were asked to leave due to the internal restriction in the municipality of Brussels.
- A non-profit organization was not allowed to conduct a gender awareness-raising training with students at a school run by the municipality of Brussels.
- Failure to consult with pupils ahead of introduction of the ban.
- Decreased tension between the communities and de-facto segregation.

Germany

Germany presently has no general ban restricting wearing the full-face veil. The Federal Constitutional Court has decided that such a general ban would be against Germany's secular constitution.²⁸

However, on 6 December 2016, Chancellor Angela Merkel said at a CDU party meeting that the wearing of the full-face veil should be prohibited in Germany "wherever it is legally possible". Her comments came after plans to ban any full-face veil in the public sector including universities and schools were proposed by Interior Minister de Maiziere in August.

Opposition parties have criticized a national ban, saying it is a distraction from the real issues of integration and radicalization, and is alienating Muslims and spreading hate.

As for today, eight of 16 Laender have enacted laws prohibiting teachers from wearing particular visible items of religious clothing and symbols in public schools, including the full-face veil, with the argument that most teachers are state officials.²⁹ The laws do not explicitly target Islamic dress, but they make exceptions for clothing and symbols linked to Christianity and other Western tradition. Several also apply to students.

In most incidents, students and schools have usually reached an agreement before going to court, however there are several courses involving schools and universities which went to local/ district courts. Several triggered concerns about an exclusion of Muslim girls/women from education:³⁰

²⁵ Internal Regulation, Municipality of Brussels, Article 2: Declaration of Principle, Article 7.4: respect of neutrality: http://www.jacqmain.be/index.php?option=com_content&view=article&id=256:roi-ville-debruxelles&catid=34:reglements&Itemid=393

²⁶ Amnesty International: Choice and prejudice: Discrimination against Muslims in Europe, 2012

²⁷ Ibid.

²⁸ Wissenschaftliche Dienst des deutschen Bundestages: Burkaverbot in Deutschland? 2016, available at: <http://wobo.de/news/burkaverbot-in-deutschland>

²⁹ See: «Kopftuchverbot fuer Lehrkraefte in Deutschland», Institut für Europäisches Verfassungsrecht, Trier University, available at: <http://www.uni-trier.de/index.php?id=24373>.

³⁰ See Spiegel and Focus online: <http://www.spiegel.de/lebenundlernen/schule/nikab-und-schule-muslimin-bekommt-mit-schleier-keinen-platz-a-1108900.html> and http://www.focus.de/regional/duesseldorf/angst-haben-doch-nur-die-eltern-heikle-debatte-um-gesichtsschleier-verbot-an-einer-duesseldorfer-grundschule_id_5031610.html

School:

In 2016, at a secondary school in Osnabruck, a 18 year old student was forbidden to wear the full-face veil in classes. The school has argued that it could not ensure her educational development. Also, an open communication between students and teachers relied not only on the spoken word but also non-verbal element and body language. The case was lost in court.

In 2014, a young Muslim student got her acceptance at a vocational training school (*Berufsschule*) in Bavaria revoked after she arrived for her first lesson with a niqab. The case was lost in court with the argument that wearing the niqab was an obstacle to teaching and caused communication difficulties.

In 2006, a secondary school in Bonn has expelled two pupils from 11-grade classes for a two-weeks period, after they came to school in a niqab back from holidays. As for an agreement reached, one student took off the niqab and the other left school.

University:

In 2014, a Muslim student was not allowed to attend lectures, seminars and exams at the University in Giessen as a consequence of her wearing the niqab. The University argued that it hinders an academic and scientific discourse. An individual agreement was found and the student agreed to not wear the niqab during University lectures and exams.

Recently, there have been calls for a more standardized provision regulating the wearing of religious clothing and symbols at schools for greater juridical clarity and not to leave schools and its management alone with this responsibility. However, educational authorities (Schulministerium) are yet not planning for that. Like a representative of Bavaria points out: "Schools are very different and only the discourse locally helps."

The *German Teachers Union* (GEW – Gewerkschaft, Erziehung und Wissenschaft), which represents thousands of teachers among its 260,000 members, warns against a ban of the full-face veil for students at school: "*We cannot exclude women from education just because they are wearing the burqa or niqab*".

They underline that school is a safe space where girls who may wish to wear the veil can gain confidence to make their own choices, adding "We should encourage this kind of transformation process not hinder it". Another strong argument in the German case is that the country has to ensure not only the right to education but also compulsory school attendance (*Schulpflicht*). This means that schools, teachers and authorities are responsible to bring also those students to school who wear a full-face veil.³¹

³¹ <https://www.gew.de/aktuelles/detailseite/neuigkeiten/diskussion-um-niqabs-im-klassenzimmer/>

Contrary, the *German Teacher Verband*³² is in favour of a ban of the full-face veil at school, arguing that education is also open communication. Such communication, between students and students as well as teachers and students, would be extremely limited through a full-face veil. In addition, a full-face veil at school would reflect the oppression of girls and women.³³

The Netherlands

The Netherlands presently has no general ban on the full-face veil in public space.

On November 29 2016, the lower house of the Dutch parliament approved a limited ban on “face covering clothing” (ski masks, helmets, the Islamic veils, burqa and niqab are included) in educational and health institutions and on public transport. The legislation has now to be approved by the upper house of parliament.

The bill was previously described as "religious-neutral" by Prime Minister Mark Rutte's ruling Liberal-Labour coalition. The Dutch cabinet backed the legislation in 2015 due to the "necessity to be able to interact face-to-face, for instance in places where public services are performed and safety must be guaranteed".

Attempts to introduce similar legislation before, for example in 2006, failed. Lawyers said it would probably be unconstitutional.

However, the reason many expect the ban will succeed this time is because the ECtHR, as outlined above, has ruled that the national ban introduced in France in 2011 does not constitute a violation of the right of freedom of religion.

Around 5% of the Netherlands' 16 million residents are Muslims, but only around 300 are thought to wear the niqab.³⁴

As for provisions at schools, according to informal data provided by the Ministry of Education to Amnesty International, two thirds of schools in the country are privately run. The majority of these schools are religious based, mainly Catholic and Protestant.

Only a few have policies limit the expression of other faiths in order to “preserve their religious ethos”, including restrictions relating to the wearing of other religious and cultural symbols and clothing. One controversial case in 2010:³⁵

³² The biggest teachers' organisation outside the union.

³³ <http://app.handelsblatt.com/politik/deutschland/umstrittener-gesichtsschleier-gew-frauen-nicht-wegen-burka-oder-nikab-von-bildung-ausschliessen/14460200-2.html>

³⁴ Raad van State website

³⁵ Amnesty International: Choice and prejudice: Discrimination against Muslims in Europe, 2012

The Don Bosco School in Volendam, 2010

In February 2010, I., a 14-year-old Muslim girl of Moroccan background, a student at the Don Bosco College (publicly funded Catholic school), expressed, together with three other pupils, a desire to wear the headscarf within the school premises. An internal regulation prohibited headwear in general. School authorities decided to hold an internal discussion to clarify the issue. Initially I. refrained from wearing the headscarf but at the beginning of the following school year, she decided to do so as school authorities had yet to take a decision. After three weeks, during which I. received education by herself in a room apart from her schoolmates, she was told that she was not allowed to wear the headscarf at school and that she would be expelled if she did not comply with this rule. The school amended its internal regulation by adding the headscarf to the list of items pupils were not allowed to wear. The case was brought before the Equal Treatment Commission, which found a direct discrimination on the ground of religion. In its opinion, issued on 2 July 2010, it said the school had failed to prove that prohibiting headscarves was necessary to preserve its religious ethos. The Commission was clear that denominational schools were entitled to introduce restrictions on the ground of religion insofar as they applied a consistent policy, which was not so in the case of Don Bosco College as the school modified its internal rules only after I. expressed her wish to wear the headscarf. The school did not implement the opinion of the Equal Treatment Commission and thus I. was not allowed to wear the headscarf. Her family took the case to the District Court of Haarlem which found that the Don Bosco College had not discriminated against I. According to the Court, the school's policy was not inconsistent; it had simply adopted a specific policy when the need arose (when I. expressed her wish to wear the headscarf). The Court stated that denominational schools had a wide margin to decide what was necessary in order to preserve their religious ethos and that it was not within the remit of the judiciary to decide on this issue. The Court of Appeal of Amsterdam upheld the judgment in 2011.

MP Geert Wilders, the PPV leader, in a public response to the Court ruling expressed the view that many Christian schools should follow the example of the Don Bosco College.³⁶

The United Kingdom

In contrast to France, Belgium and other European countries, the full-face veil has not often been a topic for 'urgent discussion and legislation' in the UK. Thus, the country does not have national restrictions on the full-face veil.

In 2016, Cameron publicly refused to endorse a French-style blanket ban,: "Going for the more sort of French approach of banning an item of clothing, I don't think that's the way we do things in this country and I don't think that would help."³⁷

The situation in the UK is different due to a commitment to a version of multiculturalism which tends to tolerate diverse practices of minority communities.³⁸ As Professor Robert Jackson

³⁶ Amnesty International: Choice and prejudice: Discrimination against Muslims in Europe, 2012

³⁷ The Telegraph, 2016, available: <http://www.telegraph.co.uk/news/religion/12106833/David-Cameron-I-will-back-schools-and-courts-which-ban-face-veils.html>

³⁸ Human Rights and Religion: The Islamic Headscarf Debate in Europe Paperback by Dominic McGoldrick, 2006.

from the Centre for Education Studies, University of Warwick underlines: *“Personally speaking, I am in Leicester a good deal and simply have got used to seeing women of various ages wearing the niqab in the city, and I regard it as a matter of their freedom of religion or belief. Several mothers do wear niqab at school, but no children are expected to wear it. “*

However, as the government prepares to announce a series of measures designed to stop British Muslims becoming radicalised and traveling to the Middle East to join terrorist groups, policies tightens. Now, some institutions are allowed to request women to remove the veil under certain circumstances, for example if you are in court or at the border.

Since 2007, schools and universities are allowed to decide their own dress code, after lots of attention was paid to wearing of the niqab in the classroom 2007/2008. Most prominently the case of Aisha Azmi (2006):

Aisha Azmi, 2006

A. was employed as a bilingual support worker in a Yorkshire school. She was suspended from the job for refusing to remove her niqab while teaching English to young children. An education official from Kirklees council said that the school's decision has:

“...nothing to do with religion, it's about what makes practical common sense. We accepted that the veil could be worn anywhere in the school except the classroom. We have a lot of pupils who do not speak English as a first language and you have to be able to see people's lips move when being taught.”¹

The employment tribunal dismissed Aisha's case of religious discrimination. She appealed against this decision. The Appeal Tribunal dismissed Azmi's appeal. It found that there had been indirect discrimination, but that this was acceptable on the facts of this particular case because it was an appropriate way of raising educational standards.

Only recently, the debate on school practices has intensified.

Early in 2016, the chief of Ofsted, Office for Standards in Education, Children's Services and Skills,³⁹ suggested that school inspectors could downgrade schools, or rate them "inadequate", if the inspectors thought wearing a veil was clearly hindering communication and effective teaching.⁴⁰

Both the Head Teachers Union and the National Union of Teachers criticized Ofsted. The latter "Rather than assisting school leaders this will have the effect of alienating many staff and pupils."

Andrew Clapham from Nottingham Trent University's education department said: *"Ofsted's threat to penalize institutions where the Muslim veil is worn has no basis in research." There*

³⁹ Ofsted er et britisk forvaltningsorgan som fører tilsyn med utdannelseinstitusjoner i England, herunder offentlige skoler (state schools) og visse privatskoler (independent schools).

⁴⁰ BBC 2016: <http://www.bbc.co.uk/news/education-35411518>

is no credible evidence base to suggest that wearing a piece of clothing on one's head has an impact on intellectual or academic ability."

Denmark

There is no general ban including the full-face veil in Denmark.

There are limited restrictions for judges since 2008, when the government decided that judges in courts should strive for religious and political neutrality. They were no longer allowed to wear visible religious symbols, including crucifixes, kippas and headscarves.⁴¹

The Danish People's Party has pushed for national burka bans three times, in 2004, 2009 and 2014, but without any success. It's recent proposal by EU spokesman Mr Berth to ban burkas and niqabs is centered around security reasons, drawing "inspiration" from Germany's upcoming reform package on security measures. As well, the full-face veil is discussed as a symbol of oppression.

In 2016, one case which sparked controversies:⁴²

The **VUC Lyngby school** for adult education in Northern Copenhagen told 6 students they could not attend classes anymore unless they removed their niqab. The controversial move was an effort to promote "free and unhindered communication" which would be compromised by the face veils. *"This isn't a question of religion or ethnicity but on learning, as we are an educational institution. It's about how to create the best learning and we believe you can do that best when you can communicate openly with one another,"* school official Inge Voller said. The school offered students the possibility to follow classes via e-learning.

Interestingly, back in 2009, after a political debate started by the Conservative party which suggested banning the burka, the government commissioned research looking into the issue of niqabs and burkas in Denmark.^{43 44}

⁴¹ Forbud mod religiøse symboler i retssale:

<http://jyllands-posten.dk/politik/ECE3947121/Forbud-mod-religi%C3%B8se-symboler-i-retssale/>

⁴² *The Independent* 2016: <http://www.independent.co.uk/news/world/europe/danish-school-bans-muslim-students-from-wearing-the-niqab-in-the-classroom-a7014431.html>

⁴³ 2009 Report on the Use of Burka and Niqab, Department of Cross-cultural and Regional Studies at Copenhagen University: <http://www.e-pages.dk/ku/322/>

⁴⁴ *Retsudvalget. (2010). Betænkning over Forslag til folketingsbeslutning om forbud mod at bære burka og niqab i det offentlige rum (Til beslutningsforslag nr. B 11).*

Report on the Use of Burka and Niqab, University of Copenhagen, 2009

The report estimated around 100–200 women wearing the niqab in Denmark and very few wear burka.

As for experiences of the interviewed women, all indicated that they did not feel forced to wear the full-face veil. Furthermore, the report mentions, page 20/ 21:

“Alle de interviewede kvinder er enige om, at det er utrolig hårdt at bære niqab. De bliver mødt med kommentarer, som de oplever som hånlige eller nedladende. De oplever, at folk opfører sig truende over for dem. Kvinderne kan også blive begrænset i deres færden, og har således oplevet at blive udvist af banken, hvor man frygtede bankrøveri.»

«Specielt i forhold til uddannelse og arbejde oplever kvinderne et alvorligt dilemma. Alle kvinderne kommer ind på, at brugen af niqab ikke er tilladt på uddannelsesinstitutioner og i forbindelse med erhvervsarbejde. Konkret har fire af kvinderne oplevet dette i forhold til ungdomsuddannelser, nærmere bestemt gymnasium og hf. En af kvinderne valgte at tage sin niqab af, mens hun tog en pædagoguddannelse. I forbindelse med erhvervsarbejde har to af kvinderne konkret oplevet, at det ikke var tilladt at bære niqab på muslimske friskoler, hvor de henholdsvis skulle udføre sekretærarbejde og undervisning.»

Politicians criticized the report across political parties, in particular the methodology used and the validity of results. Some researchers supported this critique, while most researchers supported the validity of the report, especially because the team from the Copenhagen University only had four weeks to finish the report and were given a very modest budget.

Nevertheless, the critique was repeated in the final white paper of the government's Legal Committee mentioning the report is 'on the "edge" of good research. It concluded with a sentence emphasizing the 'right' of policymakers to base policymaking on moral convictions rather than evidence. (Retsudvalget, 2010)

III. EXISTING RESEARCH

Despite the growing attention, there is no comprehensive research existing on the issue. To begin with, there is a lack of data in many European countries about the percentage of Muslim women actually wearing a full-face veil.

There are some anecdotal international studies from the UK, Canada, France and Denmark looking at the experiences and motivation of women who wear a full-face veil.

Their findings challenge many of the presumptions and stereotypes that are often presented in the media, policy circles and the wider public. Instead of the image of an oppressed woman who is stripped of her dignity through wearing the full-face-veil, they reveal that many Muslim women wear such a veil voluntarily. Their decision is an expression of their personal identity and religious beliefs.

Below, a list of studies and their key findings:

Survey	Sample	Motivation and experiences
<i>Department of Cross-cultural and Regional Studies at Copenhagen University: Report on the Use of Burka and Niqab, Denmark 2009</i>	Interviews with 7 women wearing the full-face veil	<ul style="list-style-type: none"> • Only three women wear burqa, while between 150 and 200 women use the niqab in Denmark. • All women indicated personal choice to wear the full-face veil, as an expression of Muslim identity.
Available at: http://www.e-pages.dk/ku/322/		
<i>Open Society Foundations: Unveiling the Truth: Why 32 Muslim Women Wear the Full-Face Veil in France 2011</i>	Interviews with 32 women wearing the full-face veil	<ul style="list-style-type: none"> • Approximately 1900 women wear the full-face veil. • Testimonies clearly indicate that none of the respondents were forced into wearing the full-face veil. • The adoption of the full-face veil in the great majority of cases is the result of a personal choice without any pressure from family members; 30 out of 32 were the first in their families to wear the full-face veil. • In most cases the women adopted the full-face veil as part of a spiritual journey, many desired to deepen their relationship with god. • All women were had to unveil their faces for identification purposes. • Media attention itself encouraged a number of interviews; ten out of 31 started to wear the niqab after controversies broke out in 2009. • Education: A significant number left or said they had to leave school after they began wearing a headscarf. • 30 women stated that they had suffered some form of verbal abuse from members of the public. Many believed that hostility towards them has increased since the debate started in 2009. • A significant proportion had also been verbally abused by other Muslims including people of Arab descent and accused of giving Muslims a bad reputation. • Most stated, that once the new general ban is in place, they would avoid leaving their homes and several believed they need to leave France.
Available at: https://www.opensocietyfoundations.org/reports/unveiling-truth-why-32-muslim-women-wear-full-face-veil-france		
<i>Amnesty International: Choice and prejudice: Discrimination</i>	200 interviews with Muslim individuals affected by discrimination, CSO focusing	<ul style="list-style-type: none"> • Evidence /cases of discrimination experienced by Muslims in Europe, in particular in employment and education. • Many Muslim women feel discouraged from seeking employments because of policies restricting wearing religious and cultural symbols.

<i>against Muslims in Europe, 2012</i>	on combating racism and xenophobia, organizations representing Muslim women, academic experts' representatives of national equality bodies, etc	<ul style="list-style-type: none"> • On some occasions, states have introduced general bans in public education without proving that they were necessary and proportionate for the achievement of a legitimate aim. • In other contexts, states have failed to ensure that school authorities introduce restrictions at the individual school level in a way that is consistent with anti-discrimination standards or that faith-based schools implement differences of treatment on the ground of religion or belief only when they are necessary for the preservation of their religious or philosophical ethos. • France legislation increased hostility towards Muslim women wearing full-face veils, rather than protect them, which it is intended to do (p.94).
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Full report for download at: <https://www.amnesty.org/en/documents/eur01/002/2012/en/>

<i>Canadian Council of Muslim Women: Women in Niqab Speak, Canada 2014</i>	Interviews with 81 women who wore the Niqab	<ul style="list-style-type: none"> • Highly personal and individual choice. • Religious obligations including one's religious development and expression of Muslim identity was prominently mentioned. • Other factors influencing choice: self-study/religious role models, appropriate gender relations, confidence/self-esteem, freedom from pressure of fashion. • Many women came from families where they faced opposition for wearing it, often taking on the practice without consulting families. • A minority in their rationale for wearing the niqab referred to husband and families. • Overall experience in Canada positive including access to education ("<i>acceptance and comfort in their educational programs</i>") and other government services
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Available at: <http://ccmw.com/women-in-niqab-speak-a-study-of-the-niqab-in-canada/>

CONCLUSIONS:

From the information outlined above it is possible to draw the following conclusions:

European Human Rights System:

- The court decision to uphold the national ban in France has a policy implication, with several European countries debating new bans in line with those in France and Belgium.
- Countries have a relatively big room for regulations limiting the wearing of the religious symbols and clothing in public places, schools and universities.
- Under the ECtHR, many cases deal with teachers and pupils/ students forbidden to wear the full-face veil or other religious clothing in schools and universities. In most cases, the court decided in favor of the state (vs individual right of freedom of religion), primarily focusing on maintaining the principle of secularism of the state, the neutrality of the state education and the protection of the right of others.

Comparative practice:

- There is no European consent on the issue. Only 2 countries have a general ban nationally on wearing the full-face veil, in others there exists limited provisions e.g. connected to specific areas/ places such as courtrooms and educational institutions.
- The majority of adopted bans and those under discussion are restricting wearing all face coverings including religious symbols and clothing. However, the public and political debate has focused strongly on those clothes worn by Muslim women, in particular the niqab and burka.
- Despite often lengthy periods of debating and consultation while preparing for prohibitions, there is little that shows real engagement and dialogue with Muslim girls (pupils) and women who wear a full-face-veil, their families and the communities they live in. Only in Denmark, the government ordered a survey including interviews with Muslim women in preparation of new measures.
- In several countries, for examples Germany, the Netherlands and the UK, the responsibility of regulating the wearing of religious symbols and clothes in schools and universities are transferred to municipalities or left up to the individual school. Some people argue that more standardized national provisions would better support school and its management; others highlight the importance of finding tailor-made solutions and individual agreements through dialogue with those involved.
- Experiences show that a ban, complete or limited, can lead to negative consequences in particular for Muslim women who decide to wear the full-face veil; further stigmatization of Muslim women, women avoiding public places and thus being excluded from parts of society. No evidence was found that bans supports liberation of women.
- Banning the full-face veil for teachers is less controversial in many European countries. Key arguments include; hindering effective communication, barrier to effective teaching and learning, feelings of social comfort. Also, specifically for young children the teacher represents an authority with an enormous influence. Thus, a teacher wearing religious symbols in class may have an undue impact on younger children.
- More controversial are provisions for students at secondary school, with a risk of girls dropping out of school. The right to education includes compulsory school education. In this context, the state has an obligation to provide this part of education to all pupils/students. Alternatives such as home schooling might be provided.
- The neutrality of the state (and education) has been predominantly interpreted across Europe in an exclusive way, rather than as a principle of guaranteeing diversity and equal opportunities for everyone.

Research:

- Contrary to public and political debates in many European countries that the full-face veil is a symbol of oppression, existing research shows that it is often a personal choice expressing one's own identity and religious beliefs.
- Research can help to develop a greater understanding among policy makers, the media and the public by providing knowledge about Muslim women, their decision-making about wearing the full-face veil. Such data can help to challenge existing prejudices and stereotypes. Research also needs to consider how to access women who might have been forced to wear the full-face veil, and to include their voices.
- The example of Denmark shows that there are risks involved when the research-agenda is influenced by different interests, in particular when dealing with such a politicized topic. It can lead to greater gaps between policy and research and to increased dissatisfaction for both parties.
- Available data shows specifically Muslim women are targeted at street level, and those who wear the niqab suffer more anti-Muslim hate incidents and more aggressive assaults. As a consequence, women often withdraw.
- Based on some reports, women who wear the niqab are willing to take off the veil in certain situation. There is an opportunity through dialogue with those involved to come to individual agreements before going to court.
- Despite the rather small survey in 2013 by the Open Society Foundation, interviewing 35 women after the ban in France, we have not found any implementation reports evaluating the effects and impacts of general and limited bans on Muslim women, their families and communities and its effect on integration.

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