

# Law and the Wearing of Religious Symbols

European bans on the wearing of religious symbols in education

Erica Howard

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# Law and the Wearing of Religious Symbols

Written in accessible language, *Law and the Wearing of Religious Symbols* is a comprehensive analysis of a topical subject that is being widely debated across Europe. The book provides an overview of emerging case law from the European Court of Human Rights as well as from national courts and equality bodies in European countries on the wearing of religious symbols in educational settings. The author persuasively argues that bans on the wearing of religious symbols in educational institutions in Europe constitute a breach of an individual's human rights and contravene existing anti-discrimination legislation. The book offers a discussion of developments in Europe, including the French ban on Islamic head scarves which came into force in April 2011. In addition to an in-depth examination of recent bans, the book also assesses the arguments used for imposing them, as well as the legal claims that can potentially be made to challenge their validity. In doing this, the book goes beyond merely analysing the bans in place to suggest ways in which educational institutions can most fairly respond to requests for accommodation of the wearing of religious symbols and whether, perhaps, the adoption of other provisions or measures are necessary in order to improve the present situation.

This book will be of particular interest to students and academics in the disciplines of law, human rights, political science, sociology and education, but will also be of considerable value to policymakers and educators.

**Erica Howard** is a Senior Lecturer in Law, Middlesex University, United Kingdom.

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# Introduction

## General background

Bans on the wearing of religious symbols are very much at the forefront in political discourse and in the media in many European countries at the moment and especially the wearing of headscarves and face coverings by Muslim women and girls is being widely debated. But why are the latter especially singled out for so much attention? Many of the European states have seen an influx of Muslim migrants and these migrants, as Zwamborn writes:<sup>1</sup>

practise and promote their religion in a more prominent and public fashion, going against the general trend among the Christian denominations which is to see one's religion increasingly as a private, publicly less prominent issue.

Zwamborn is writing specifically about the Netherlands, but it is submitted that this process has also taken and is taking place in many other European states. Most are becoming more and more secularised in terms of traditional religious practices and church attendance in the Christian churches. On the other hand, Christian values are still entrenched in many of these European societies. Although there is a wide variety of traditions regarding the interaction between church and state, 'today the European Union consists of mainly Christian Member States', as Pitt writes.<sup>2</sup> Even in countries that have a strict separation between church and state, the Christian churches have played and are frequently still playing a major part in the daily life of the society. They often also have quite significant influence in the political process.<sup>3</sup> According to Pitt, 'while formal levels of religious observance vary considerably across Europe and are generally in decline, it is nonetheless the case that many aspects of social and cultural life are rooted in Christianity'.<sup>4</sup>

The 'newcomers' in these countries, with their different religion are seen as a threat to Christian values, but, and even more strongly, as a threat to the liberal value of tolerance. Goldschmidt and Loenen express all of this very well. They write that, in the last few decades, in Europe, a number of developments have taken place, one of which is secularisation. This secularisation is:



## 2 Law and the Wearing of Religious Symbols

part of a process of decreasing impact of religious elements in the public sphere, which in Europe took place as part of a decline of active religious participation in the second half of the 20th century.

Almost in the same period, or immediately after the beginning of secularisation in the traditional societies of Europe, however, the entrance of large groups of immigrants with an overwhelming Muslim background implied a revival of religious awareness. These groups claim the same protection that has been awarded to the traditional religious blocs and demand the same public support.<sup>5</sup>

Because Muslims are often the biggest and most vociferous group amongst the new migrants and because of the events of 9/11, the bombings in Madrid and London and other acts of terrorism linked to Muslim religious motives, many European states perceive Muslims especially as a threat to their liberal, tolerant, secular societies. Muslims are seen as putting religion and religious laws above these liberal values and above the law of the land. They are seen as a threat because they are considered to demand too much in terms of legal concessions in relation to their values, which are considered to clash with the values of the state.<sup>6</sup> For example, Skjeie writes that ‘in both Norway and Sweden, clear majorities support the opinion that “Islam is not compatible” with basic societal values’.<sup>7</sup> Because of this threat, many people have a fear of Muslims. This is despite the fact that the percentage of the population in the European countries who are Muslim is only between about 3 and 7 percent.<sup>8</sup>

The debates in many European states about the wearing by Muslim women of the *hijab*, the *niqab* and the *burqa* are illustrative of this fear of the perceived threat Muslims pose.<sup>9</sup> For example, in France,<sup>10</sup> government employees, including teachers at state schools, are prohibited from wearing religious symbols at work. In 2004, France adopted a law prohibiting the wearing of ostentatious signs or dress by which pupils openly manifested a religious affiliation in state primary and secondary schools. This means that girls are usually not allowed to wear a *hijab* at their public school. When the French government proposed a Bill banning the wearing of garments designed to cover the face in public places, it was passed in the lower house with almost unanimity (336 to 1).<sup>11</sup> This despite the fact that the *Conseil D’Etat* had previously reported that a general ban on the wearing of the full face veil in the public space would be ‘legally very fragile’ and would ‘run a serious risk of constitutional or conventional censure’.<sup>12</sup> When the Bill came before the Senate, it also approved it with an overwhelming majority (246 to 1).<sup>13</sup> The *Conseil Constitutionnel* declared, on 7 October 2010, that the Act is constitutional, with the proviso that the law should not apply in public places of worship as this would violate the constitutionally guaranteed freedom of religion.<sup>14</sup> The Act came into force in April 2011.

In April 2010, the lower chamber of the Belgian Parliament approved, also with a near-unanimous vote, legislation banning face covering in public. The