8. The Headscarf Question: What is Really the Issue?

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Introduction

Dangerous, scary, intriguing, threatening, intimidating, oppressive, irritating, aggressive, traditional, conservative, reactionary ... These are a few of the adjectives one hears in discussions of what is confusingly called in European contexts not only the headscarf, but also the veil,\(^1\) hijab, nikab, tchador, jilbab, burqa or khimar.\(^2\) All these terms designate a scarf that

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\(^1\) In French both terms - *voile* (veil) or *foulard* (headscarf) - are used to refer to the Islamic headscarf, bringing more confusion than clarity to the discussion. In this text, I will stick to the use of ‘headscarf’, which I consider as purely descriptive, while ‘veil’ brings in a lot of Catholic symbolism that is not relevant to our analysis.

\(^2\) All these words refer to a piece of clothing Muslim women put on when leaving their houses to go outside, but they belong to varying regional traditions. The *hijab* usually refers to a scarf covering the hair, neck and shoulders, and sometimes also the breasts (but in the Koran it refers to piece of cloth that serves more widely to hide, cover or screen an object or a person, therefore not only in the limited sense of headscarf). The *nikab* is a face veil that does not cover the eyes. The *tchador*, *djilbab* or *burqa*, cover the body and not only the head. The *burqa* is a single-piece garment, coloured, cloaking the entire body. The *tchador* (Persian) is a full length scarf, usually a semi-circle piece of cloth, thrown over the head and held by the hand. It goes with the *hijab* (under the *tchador*). Similarly, the *jilbab* (Arabic), which is also referred to in the Koran, designates a long garment, usually a coat, covering the entire body but not head, hands or feet. The use and wear of all these garments vary from one place to the other, from one generation to the other. But they also refer to different regions, and do not have the same religious significance.
Muslim women wear when outside the home to cover their hair, shoulders and breasts and, in some cases, their entire body including face and hands. The headscarf has become a sensitive issue, giving rise to legal disputes and political controversies in several EU member states, notably France, Belgium, Germany, the Netherlands and the UK.\textsuperscript{3} Headscarves, and by definition the Muslim women wearing them, nowadays stand for "everything that is thought to be wrong with Islam".\textsuperscript{1} In addition to being obliged to be bare-headed on ID documents as in France, women wearing the headscarf have also been excluded in courts, universities, work places, hospitals and city halls. While the terrain of exclusion is widening, the groups of people affected are also widening to include young girls (adolescents) as well as adults.

In most EU member states, the wearing of the Muslim headscarf is becoming a very awkward issue politically.\textsuperscript{5} The religious dress of Muslim women has generated both moral panic and hysteria.\textsuperscript{7} In many cases overreaction has led to public obsession, with local incidents occupying national debate and attracting extensive press coverage. The debate surrounding the headscarf tends to touch upon numerous broader issues: the challenge to multiculturalism, the validity of secularism as a way of organising the pacific co-existence of different religions in European contexts, the securitisation of cultural markers and increasing Islamophobia, the loyalty of Muslim European citizens (converted or not) because of their alleged essential differences and 'otherness'. Last but not least, the headscarf controversies bring back to the surface very old

\textsuperscript{3} With schools having been the primary arena for the explosion of clashes since the mid-1980s.


conflicts resulting from the close relationship between states and the church in the EU.

Twenty years after the first controversies appeared on the European stage, much has been written on the headscarf by scholars, journalists, politicians, opinion-makers, religious leaders and others. The most striking aspect of the recent upsurge in debate surrounding the wearing of the Islamic headscarf in European contexts is probably the general feeling that everybody has something to say about it and feels concerned by it. Talking about the headscarf, having something to say about it and even taking a position (for or against) have become an obligation for every EU citizen. An important advantage in writing this kind of paper now rather than ten years ago is that the amount of knowledge has accumulated over the last years, for instance on the motivation of women in wearing a headscarf and the many dimensions of its significance. Public awareness of the complexity of the matter is also much greater than it was twenty years ago.

The dominant trend emerging in EU member states, from a political and legal point of view, is to ban the wearing of the headscarf in public institutions. Beyond the ethnographic data that help to map the differences from one context to the other and that have largely been commented upon, this paper focuses on the subtexts of the European headscarf controversy. How did this very pragmatic issue come, in varying degrees of intensity, to create such passionate national confrontations? Why is it that contrasted regimes of citizenship and traditionally opposed models of integration have given rise to similar public discussions on the Islamic headscarf in the European Union? What do headscarves stand for? Who do they speak for? The following text will try to answer this set of questions by looking at the hidden narratives behind the headscarf controversy, focusing on three elements of the debates: religion, gender and national identity.

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8 Not an exhaustive list but recent publications related to some of the contexts mentioned in this paper are Bowen (2006), Amir-Moazami (2007) and Mac Goldrick (2006).

9 Particularly well-known is the empowering dimension of the wearing of the headscarf in specific contexts; see Gole (1996), El Guindi (1999) and Mahnood (2005).
8.1 The diversity of European headscarf controversies

Headscarf controversies can nowadays be found in many EU contexts. Most EU member states have faced a 'headscarf episode' with varying degrees of impact and types of decision. Most recently, burqas, rather than headscarves, have been at the centre of debate in the Netherlands and in Belgium. In France, the headscarf has periodically emerged as an issue since 1989, making the French situation a unique case for its precocity, longevity and intensity. In 2004, the French parliament easily (in the sense that political consensus was reached) passed a law banning the wearing of ostentatious religious symbols from public schools. Part of the surrounding public debate dealt with the way French society defines itself, the confrontation between customary Islamic practices and Republican values being a challenge for French social cohesion and the representation of itself and its principles. The European discussions on the right to wear an

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10 “In the course of the last years the term burka has been added to the Dutch vocabulary, as happened previously with terms such as fatwa and jihad”. (Moors, 2007: 5).

11 In Belgium, following the initiative of some members of the Flemish Christian Democrats, some local police regulations now include articles with standard prohibition for burqas. It is left to the municipalities to decide whether or not this should be implemented. Local bans on the public wearing of the burqa exist in parts of Flemish cities such as Maaseik, with fines being imposed on women continuing to wear it. This echoes the local anti-burqa campaigning organised by the Northern League (Lega Nord) in Italy.

12 For a perspective on the changing dimensions of the headscarf, see Gaspard & Khosrokhavar (1995) and Lorcerie (2005).

13 Some observers have noted that the intense headscarf discussions acted as a substitute for other central social difficulties in France, (integration, male-female relationships, unemployment) in explaining the abstraction of the discussion and its locus in the “sphère éthérique des grands principes” (ethereal sphere of grand principles) (Terray, 2004: 112). As a matter of fact, the female students were never really an issue, while the symbolic significance of their clothing was. Nor were they seriously interviewed by the different commissions created for the purpose of debating the headscarf (see the Commission created in July 2003 by the French President of the Republic to work on the national conditions of implementation of laïcité and the mission of information on the question of religious signs, created by the Parliament created in May 2003).
Islamic headscarf generally focus on abstract principles with the exclusion of central questions like children’s rights. In her report for the United Nations, Asma Jahangir, for instance, points out one of the paradoxes of the French March 2004 law: although its stated aim is to protect minors from being obliged to wear a headscarf or any other religious symbols, at the same time the law is an obstacle to those who choose freely to wear such a symbol, following their own conviction. In these public discussions, Muslim pupils wearing the headscarf ended up being criticised without ever having a real opportunity to speak. How dare French female citizens display their difference by wearing a sign whose meaning is not culturally part of the national historical trajectory? Before the passing of the March 2004 law, the liberal reading provided by the French Council of State (the highest administrative tribunal) in 1989 was the frame of reference for articulating the neutrality of the state and individual religious freedom, ‘public order’ being the key notion in deciding whether or not to ban an individual from public schools (whereas, as mentioned earlier, German agencies would have referred to religious pluralism). The Council of State’s 1989 decision basically stated that none of the constitutional principles (neutrality and freedom of conscience) could be said to take precedence over the other and that every case should be treated individually in a ‘case by case’ perspective (Conseil d’État, 2004).

The passion – or, it might even be said, the hysteria – involved in the French 2003-04 discussion strongly contrasts with the silence, if not to say the indifference, of other European contexts where accommodations were

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14 Nor are the psychological, spiritual and cultural effects of the ban as an assault against women reviewed: the spiritual injury, defilement, silence, denial, shame, guilt, fear, violence, blaming the victim, self-destructive behaviour, ‘emotional death’....


found (as in the UK until autumn 2006), or where distinctions are clearly drawn between users and agents of public services. For instance, in Germany, since 1993 pupils wearing the Islamic headscarf can ask to be exempted from sport lessons (Bundesverwaltungsgericht, 25/98/93; InfAuslR1994, 59). In a Constitutional Court decision of September 2003, banning the wearing of the Islamic headscarf for teachers is considered to be constitutional only if motivated by the protection of constitutional values and grounded on a precise legal basis. The central affair in the German context is based on a primary and secondary school teacher named Fereshtha Ludin. The Constitutional Court does not give more weight to the obligation of neutrality of a public agent (in this case, respect of parents and children's freedom of belief) than to individual freedom of conscience. Ludin defended herself by arguing that the headscarf was part of her personality and made visible an internal conviction. The ruling of the Constitutional Court overturned the decision by the Administrative Federal Court, which said that the headscarf should not be banned, also to protect religious peace in the country.\(^{18}\) The Constitutional Court decision opened the way to local legislation. For instance, in January 2007, the Bavarian Constitutional Court upheld a 2004 state law that bans teachers from wearing religious headscarves. This decision follows the initiative of an Islamic association suing the Bavarian state for not respecting the Bavarian constitution and eliminating Muslim symbols from public life. In the German context, headscarves can be banned only by state law, not following an administrative decision. By early 2007, 8 out of 16 Länder had already passed a law banning headscarves.

In the French as in the German contexts, headscarves cannot be taken as 'classic' public policy objects as are the requests for the construction of a mosque or the opening of a private Islamic school. Wearing a headscarf is a private matter, the result of an individual choice. In some contexts (France), it has to be restricted, in other ones (Germany), it has to be protected. Headscarves do not directly relate to worshipping activities, nor are they systematically the result of social coercion by religious authorities, especially in European contexts. They are mostly situated between a private matter (potentially indicating the faith of an individual), but not

only that) that apparently troubles political authorities and leads them to legislate, and a public issue that attracts conflicting narratives and engages competing public moralities. The argument that integration fails whenever cultural differences become visible is a strong one, in particular if the visible identity markers seem inconsistent with democracy and equality. Differences can only be visible and legitimate in the private sphere, the privatisation of these differences being the most diffused strategy for the good functioning of liberal European democracies (Barry, 2001). In the French context, the discussion about the place to be given to cultural rights was never properly launched as it interferes with the Republican representation of national cohesion through unity.

In the British context, addressing religious diversity in schools has recently become the opening to talk about culture and multiculturalism. The controversy became a nationwide issue after Jack Straw (then leader of the House of Commons) publicly stated his disapproval of the wearing of the veil (i.e. covering all the face except the eyes), giving as his reason that it is an obstacle to good community relations. More generally in the UK, religion today has a similar function in race relations discussions that colour used to have (in the 1960s), race (in the 1970s and 1980s) or ethnicity in the 1990s. In the hijab/djilbab and dress code in public schools debate (2006-07), the central question remains how far schools should be required to go to accommodate the increasingly diverse faiths that now compose British society? The picture is further complicated by the introduction of rules imposed by the EU directives. In the UK, the djilbab became an issue.


21 The traditional way of dealing with dress code issues in the UK context stems from the Mandla v. Dowell Lee affair. This case has established protection for the rights of religious minorities by using provisions of race discrimination legislation.


23 In Britain, the discussion focuses very much on compulsory religious education in schools plus a daily act of worship.
after the highly publicised case of S. Begum, defended by the lawyer Cherie Blair (the then Prime Minister’s wife). A pupil at a North Luton public school since 2000 (where 80% of the pupils are Muslims), Shabina Begum started wearing the jilbab in 2002, after the school year had started, contravening the school’s internal dress code. In a first decision, the breach of Begum’s freedom of religion was recognised and the school was asked to reconsider the decision to exclude her (2004). On appeal, the House of Lords took the opposite position, stating there had been no violation of the plaintiff’s religious freedom (Article 9 of the European Convention on Human Rights).24

As underlined by Lord Bingham of Cornhill, “this case concerns a particular pupil and a particular school in a particular place at a particular time”. Like the French Council of State in 1989, the Parliament cannot be asked to decide whether a British school should or should not accept a student wearing Islamic clothes. Relying on the arguments of the ECHR, Lord Bingham goes on to specify that Article 9 rights are not absolute and may even be limited. While sustaining the authority of the head of school, Lord Bingham of Cornhill underlines his awareness of the school’s ethnic diversity: the dress code gave the possibility to many students to express their religious distinction by wearing specific clothes “in an inclusive, unthreatening and uncompetitive way” (Lord Bingham of Cornhill, Opinions of the Lords of Appeal, 2006, UKHL 15, §34). S. Begum was excluded because of the breach of the school uniform rules, with no violation of Article 9: the multicultural and multi-faith based school had the right to limit her rights in protection of others’ rights. The British decision is consistent with the Sahin decision in the sense that it recognises the interference with one’s right to manifest one’s religion, and this

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24. Article 9 of the European Convention on Human Rights states:

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 the protection of the rights and freedoms of others.
interference of the public state authorities is considered legitimate. Her right to education had not been denied in the sense that she could go to alternative schools or be educated at home.25

8.2 Religion in secular Europe: what is religious? What is politics?

In secular Europe, the diminishing impact of religion on social behaviour is seen as related to the modernisation processes, in particular to an increased individualisation of religious affiliations (the 'do-it-yourself' perspective) and to its 'privatisation' as the solution to cultural conflicts (Barry, 2001). Politics, culture and social morality are supposed to remain independent of any religious influence. Morality has therefore become a personal concern. Religion is supposed to have a declining influence on society, the authority of the church being diminished. To summarise, the secularisation process goes together with the privatisation of beliefs. European citizens are supposed to relate to society as autonomous, responsible, reflective entities.26 Given that secularisation refers primarily to the idea that religious values and behaviours are shaped by individuals, it is no surprise that quantitative evidence of secularisation relies mostly on an assessment of personal religiosity. In that context, church attendance illustrates the decline of a more traditional institutional religiosity.27 But, as pointed out by many authors, different patterns of religious decline should be seen in relation to differences between denominational cultures (Protestants and Catholics): in the Catholic French context for instance, discussion about decline centred on the defence of secularism, while in the Protestant-Catholic German one, it centred on the need to protect religious pluralism. The political horizon contrasts religious pluralism in Germany, the

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27 Churches have been challenged by the emergence of religious pluralism and voluntarism, exposing them to competition between worldviews, relativisation of their regime of truth, introducing the perspective of a voluntary membership rather than a socially compulsory one.
secularist regime in France, with some German politicians explicitly rejecting all forms of importation of the French secular tradition into the German context. The central role of the Constitution in the German context, on the one hand, tends to restrict individual freedom of religion in the name of the protection of a dominant Christian tradition, and, on the other hand, promotes or protects cultural religious plurality. This last point prevents the headscarf from becoming perceived as a symbol of cultural political segregation. The principle of laïcité was used similarly in France: on the one hand, to motivate the banning of the headscarf; on the other, to defend its authorization in public schools.

The wearing of an Islamic headscarf is linked to personal religiosity, i.e. the more emotional part of religious commitment. It results from an individual choice and a rather diffuse religiosity, with no consensus from the religious authorities in determining whether there is an obligation or not to wear it. In the headscarf controversies, however, political authorities and grassroots citizens intervene simultaneously to determine whether a religiously motivated gesture can be tolerated or not in European democratic liberal societies. Religious beliefs cease therefore to be a matter of purely personal preference and again become the subject of public argument in political and moral terms. The discussions that took place in different contexts were never really about religion defined as a system of beliefs and practices oriented toward the sacred or supernatural, affecting the way of life of the individual believers. Liberal secularism (radical in its French version, more flexible in the British one) is based on a confessional freedom: people can believe what they want in the private sphere. As a consequence, the public space is a realm based on a cultural consensus that overrides individual liberty and it is based on the idea that practice can be reduced to preferences and choices. But can practices be dissociated from

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28 Amir Moazami sees it differently and considers that the reading in terms of civilizational paradigm ('Christian heritage' or 'Christian-Occidental background of German society') restricts the pluralistic character of society and attributes to the Christian hemisphere a monopoly on the secularisation theorem. “While in France the notion of secularity has been interpreted in terms of a rupture from the Christian past, in Germany it has been regarded as implying a continuity of the Christian tradition”, (Amir-Moazami, 2005: 271).

29 This supposes a variety of ways of living one’s faith on a scale from religion as a cultural attribute to symbolic identification or normativity guiding everyday life.
convictions (or, in other words, should religion be relegated to the private sphere to make pluralism viable)?

At this stage, we are still left with a series of unanswered questions related to the issue of the “justiciability” (Skach, 2006) of religious freedom in secular contexts (i.e. restricting religious freedom in the name of religious neutrality in EU member states). If religion is a private matter, then why do states care about it? Is cultural distinction a threat to liberal European democracies? From the legal point of view, the claims for equality made by Muslims living in Europe are put forward in a context where religious freedom is no longer absolute. Religions are cultural and historical variables, social and cultural interpretative systems. They are constituents of communities and produce meanings that shape collective as well as individual lives of the members of the community. A belief referring to the personal way one relates to his/her own religion, is probably the easiest term to use in this reflection on ‘what is at stake when banning the Islamic headscarf’ as it encompasses a wide spectrum of differing worldviews, including non-religious ones. It seems to me, however, that the public controversy on the wearing of the headscarf has completely ignored a more intimate part of belief: that is the ‘religiosity’ of individuals. I use the term as a reference to the intimate and inventive way in which an individual performs his/her link to a corpus of dogma. In a secular context, the individual is indeed the only reference for the meaning and the justification to give to his/her actions and social behaviours. In a way, religiosity is what makes religion concrete and visible in society: it gives meaning to action, and it may help one to recognise others as well as helping others to recognise you. In that context, the headscarf represents shared identities but also conflicting ones. The idea of a believer performing his religion on a daily basis remains rather exogenous to the discussion even though it is central to the definition of collective identities that signify to members of a group and to the world who they are, what they stand for and what kind of society they hope to create. However, the absence of the voices of the Muslim women wearing headscarves is a shared European characteristic in the national public debate. This has been underlined by Judge Tulkens in the Sahin ECHR judgement: for instance the opinion of Muslim women, both those who wear headscarves and those who don’t wear them, is missing in the debate.

The strengthening of public positions towards the wearing of the Islamic headscarf in public circumstances tends to affirm the necessity to
limit religious freedom in secular contexts. In some cases, the difference between one system and another (established church, laïcité, concordate type of church and state relationship) as well as the various definitions of ‘disturbances of public order’ may become an incentive for European judges to plead for the limitation of the right to wear a headscarf. The European Court of Human Rights (ECHR) at the moment supports the more restrictive member states on this matter (see Dahlab v. Suisse in 2001, and more recently Leyla Sahin c. Turquie in 2005). According to the ECHR, religious freedom is not absolute and can even be restricted, as in the case of the Islamic headscarf, which does not fit into the European framework of the protection of human rights, public freedoms and public security. Restriction of religious freedom is seen as a necessity in a democratic context. ECHR is, however, extremely cautious in adopting the points made by national authorities. In the Sahin case, the European Court twice points out that there is no violation of freedom of thought, conscience, and religion under Convention article 9 (plus there is no separate question arising from that in conjunction with other Articles of the Convention, for details see Skach, 2006; Bribosia and Rorive, 2004). The ECHR expresses its consideration that the restriction is necessary in democratic societies on the basis that the wearing of the headscarf may impact on others (Blair et al., 2005: 7). The Court adopts a contextual reading of the Turkish case in defending the university president’s decision to forbid the wearing of the headscarf on campus. The subsequent decisions by Turkish jurisdictions have since then been validated by this European support: there has been interference with Miss Sahin’s individual religious freedom (recognised by the Court), but this is justified by the protection of public order. To a certain extent, the ECHR’s position on Sahin interprets the meaning of the


31 The text mentions the challenge of fundamentalism, the need for religious pluralism, highlighting the social dimension of the problem posed by the plaintiff. On the contrary, there is no mention at all of gender equality, a central topic in the equivalent European discussion.

headscarf as political, which is highly arguable in a non-Muslim context. As stated by Baroness Hale of Richmond on S. Begum’s jilbab, none of the arguments of the Western feminists describing the Islamic headscarf as a symbol of oppression of whoever chooses to wear it, can be considered as justification for its ban. (Baroness Hale of Richmond, Opinions of the Lords of Appeal, 2006, UKHL 15, §96).

The headscarf controversies in a post 9/11 context are characterised by the culturalisation of socially sensitive issues related to risk and security. Different frames (migration, security, terrorism, secularism) overlap in the public discussion so that Muslim women with headscarves have become new icons in the landscape of enemies of European values. In EU controversies, their headscarf stands for political threat, gender oppression, religious fanaticism, terrorism, political incorrectness, poor socio-economic conditions and illiteracy. The real motivations of young women in wearing the veil are practically irrelevant. For Muslims living in non-Muslim contexts, this specific stigmatisation has increased the social cost of presenting oneself, as Muslim cultural racism is no longer only a discourse, but also leads to acts of discrimination in several areas of social life (employment, education, housing, health). Thus, headscarf controversies do not only operate as a public discussion of symbols, they also imply practices of exclusion of particular bodies performing and speaking from within national societies. A headscarf is not exotic since it is worn within European societies, by European citizens. Women wearing headscarves make things concrete and have confronted public opinion with visible practices as opposed to abstract principles. Moreover, these women have contributed to the awareness of the gendered dimension of national models of cohesion, merging issues of public morality and national unity.

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33 This is completely different from the opinion delivered by the United Nations Committee on Human Rights (Rahon Hudyberganova v. Uzbekistan, 931/2009, 18 January 2005). It recognises the right of a veiled student who was excluded from a State Institute for Oriental languages (Tachkent) because of her headscarf. Article 18 (freedom of thought, conscience and religion) of the International Convention on civil and political rights had been violated. But the Committee did not retain the headscarf as a political symbol.
8.3 Gendered practices and real bodies

Headscarf controversies are complex issues referring to intricate situations in which it is not easy to identify the motives of discrimination and map the boundaries. What is indeed really at stake? Race, ethnicity, religion, gender? Headscarf controversies mix, for instance, gender, race and religious issues (not to mention in some cases the place of residence, and other socio-economic factors). Wearing the headscarf, women become visible twice, first as members of a religious minority (the Muslim believers), second as gendered social actors (women). Women wearing the headscarf therefore experience double discrimination as a result of the combination of their gender and race/religion characteristics. Moreover, women and girls are more subject to dress restrictions than men.34 Headscarf controversies and related public debates are intricate situations in which nobody knows where the boundaries are, how to classify the discourses and actions or what categories to use to better describe the situation. The category of gender is only partially useful to the understanding of headscarf controversies and it is only recently that specialists of gender issues and feminist theories have entered the discussions on the Islamic headscarf in European societies. The gender perspective is often absent or marginalised. "Where gender is raised, it most often takes the form of a distinction and an opposition between 'the Western/European woman' and 'the other Oriental/migrant woman'".35 At the European level, the Dahlab v. Switzerland was the first case in which the ECHR explicitly referred to the gender dimension issue, invoking the principle of gender equality as a further justification to ask the Muslim convert teacher to remove her headscarf.

Dress is not only about culture, but is mostly about politics, in religious as well as in secular societies (Mahmood, 2005). "Through the medium of the veil therefore, Muslim women’s bodies are gender-coded and form a “cultural text” for the expression of social, political, and

34 Commonly in Europe, the public debate on women’s way of dressing reminds us of the imbalance between the political justification for the intervention of authorities in the case of women, while men’s clothing is largely ignored.
religious meanings”. In the EU context, headscarves are not the only controversial garments inside public schools and universities. In the Dutch context, for example, dress codes ban the headscarf, belly shirt and bomber jacket together, thus addressing and requesting regulation on behalf of the offence some clothes cause to a certain group of the population, to the discrimination of others (Duits and van Zoonen, 2006). “Porno chic” is considered an offence to decency. But decency is never an issue when debating publicly about the Islamic headscarf. Rather, the young woman in a headscarf inside public schools is seen as repressed. However, the discussion on the way certain students dress inappropriately at school is never, as is the case of the headscarf, explicitly mentioning the sexual practices that are associated with it. Clearly, what “holds the two seemingly separate debates about headscarves and porno-chic together is the regulation of girls’ sexuality”. (Duits, Van Zoonen, 2006: 111, see also 105-108). Thus, maybe debates on such apparently opposite issues (the headscarf on the one hand, porno chic on the other) should be analysed together as “part of a single hegemonic discourse about women’s sexuality that transcend this partition”. (Duits, van Zoonen, 2006. 104) Indeed, the headscarf is often identified by people who do not wear it (Muslims as well as non-Muslims) as part of a broad-scale system of domination that affects women as a class.

Muslim women with a headscarf living in Europe operate a double detachment: first towards tradition in a double perspective (distance from previous generations, distance towards cultural interpretations of dogma); second, towards European expectations of how they should behave (politically, culturally and sexually). The conformity to a norm of sexual


37 The connection between decent dress and headscarf is not a newcomer to the debate. I remember the interviews I conducted with followers of Milli Görüs in Germany from 1992 to 1996 and the connection between being authorised to wear a headscarf if others wear a miniskirt was often made by my Muslim interviewees. (Amiraux, 2001).

behaviour ends up being central in the agenda of the public discussion on the legitimacy or not of wearing a headscarf in public schools; as is the corollary stigmatisation of deviant sexual behaviours by young male of North African origin. “In order to mask new forms of social and economic domination experienced by working-class young people of non-European origin (i.e. Black and Arab), it has become necessary and sufficient to stigmatise the ‘sexual deviance’ of Arab boys and thereby invoke the need to impose a ‘civilised’ sexual norm, the quintessential and most recent expression of an integrationist imperative”. This illustrates the spread of racism “through the belief, which is gaining currency in France, that there is an ongoing war between the sexes in the disadvantaged suburbs” (Guénif, 2006: 23). In the French context, the suburbs represent the threat to security and communal existence. Muslim women not wearing the headscarf have played a central part in this process and definitely contributed to the call for the regulation of the appearance and bodies of other women. Through the controversies and the active participation of women from all sides in the condemnation of the headscarf, Islamophobia became gendered. The various public discourses on the headscarf (and on its ban) deny the Muslim female subjects their agency and autonomy by denying them ex ante the right to speak up through their headscarf, and participate in a discussion on the meaning of their dress code.

8.4 Promoting equality in religiously and culturally plural societies

In all European member states, headscarf controversies included the issue of personal choice and individual freedom of choice, the protection of the freedom of religion, gender equality, and secularism. Just as there is no European policy on religious matters, there is no consensus concerning the way national states should cooperate on the policy towards Islam and Muslims. Wearing the headscarf in public schools is therefore still an issue on which there is no convergence between EU member states. The absence of a common attitude on this specific subject is no surprise as there are

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different patterns of secularisation coexisting in Europe. Secularisation was either implemented as a consequence of political confrontation, or as an outcome of the differentiation of roles amongst institutions. This brings us back to the validity of the contextual approach: general principles need to be looked at in their interpretation and application in very specific contexts.41

Two main positions can be identified in the EU member states’ domestic discussion of the legitimacy of wearing a headscarf as a female Muslim European citizen. First, the accommodating position (dominant in the ‘80s but decreasing since the ‘90s) of public authorities towards the request by Muslim women to wear a headscarf in their lives as European citizens,42 and second, the position adopted by those who wish to ban this behaviour from certain parts of the public sphere. Theoretically, European legal receptiveness to religious and cultural diversity would be grounded in the public neutrality of liberal states. This does not fit with the current tendency of national models that move back towards more restrictive definitions of cohesive citizenship. In a culturally plural society, the fight against discrimination is a central element of the organisation of pacified coexistence between competing interpretative systems (as in the case of religions) or between conflicting values (as in neutrality of the state versus individual freedom of religion). For instance, in the Dutch case, prohibiting the wearing of the headscarf cannot be justified in the sense that it would contravene anti-discrimination law and such a move would constitute a case for direct discrimination.43 This Commission on Equal Treatment view was exceptionally not respected when the safety of the individuals was at


42 The situation of Muslim police officers is well known. For instance, in January 2000, a discussion took place in the Netherlands about whether or not to maintain the accommodation making it possible to wear a headscarf in all police departments except in the mobile force for reasons of security. In 2001, the new police uniform did not include ‘blue police’ headscarf. Here accommodation of religious and ethnic specific requests was motivated by practical, pragmatic motivations and awareness of the impact of such a decision on public opinion. (Verhaar & Saharso, 2004).

stake. For similar ‘no discrimination’ motives, the French decision on the banning of the headscarf in public schools (March 2004 Law) does not mention any specific item but refers to “ostentatious signs of religious belonging”. In the British context, until December 2003 it was somehow ‘lawful’ to discriminate against Muslims as Muslims because the courts did not accept that Muslims are an ethnic group. Then an offence of religious discrimination was created but confined to employment (in respect of the EU’s Equality in Employment Directive), and Muslims are now protected as members of an ethnic group.

From one context to another in the European Union, similar fundamental rights are being challenged (freedom of expression, freedom of religion versus neutrality, freedom of ‘the other’ and public order), but the reactions of member states range from a complete ban (French law 2004-228 of March, 2004) to public discussion with no legal decision (as in Italy). There is no consensus on the way to approach the meaning of the headscarf: is it an individual free choice? Is it a religious obligation related to specific circumstances? In the German context, the headscarf was qualified as a sign of ‘cultural segregation’. Discussions are accelerating in the Netherlands in the sense of a ban of the burqa (facial veil) worn by a tiny minority of women, mostly Dutch converts, even if the new Integration Minister, Ella Vogelaar, recently declared that such a ban would be stigmatising and counter-productive. One of the claims made by the supporters of a ban in the UK suggested this practice has consequences on the integration of women (access to the job market). This claim seems to be quite popular in other contexts: in a poll by IPSOS Mori for ITV (October, 2006), 61% of the British interviewees declared that Muslim women are segregating themselves by wearing a headscarf. Different forms of anti-discrimination legislation are, however, insufficient. Equality before the

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45 Face covering is also a problem in Muslim contexts. See, for instance, the declaration in January 2007 by the Egyptian Minister of Culture qualifying the wearing of the headscarf of obscurantism. Full face cover (the niqab) is denied for public officers.
law is a major but insufficient achievement and deep-seated discriminatory structures survive.

What do school authorities aim to prevent by regulating the wearing of the headscarf or, more broadly as in the French law, the wearing of symbols that express religious belonging? The answer includes peace inside schools, the emancipation of girls not wearing the headscarf and protection of them vis-à-vis more 'orthodox' members of the same community of belief. What dominates in the European contexts is deductive reasoning setting up hierarchies between values as a result of the confrontation of competing principles. Almost no space is left for proper consideration of the context, or for the cultural norms eventually framing them. The problem in deciding whether or not an agent of any public institution (police, education, hospital, prisons) could be seen with a specific religious symbol (headscarf) is related to the fact that these individuals represent the public face of authority and thus must be must be impartial and neutral and recognised as such. The classification of the different values/principles that are said to be brought into discussion by the fact that women living in Europe still wish to wear a headscarf varies from one country to the other. Usually, the principle of freedom of religion is assessed as non-absolute. This is reflected in the body of European case-law governing the freedom of religion (and the right to manifest one’s own religion).

Concluding remarks and questions

The exclusion of Muslim women wearing the headscarf from specific public functions and institutions seems likely to become an increasingly general rule. Given both the intensity (sometimes almost hysteria) and confusion surrounding these issues in many European countries, I conclude with some suggestions as to how to calm public discussion about Islamic headscarves.

Firstly, most of the political and legal reasoning related to the headscarf affairs adopts a deductive approach that confronts normative principles explaining the opposition of the parties (in most cases, the neutrality of the state, sexual equality versus freedom of religion and non-discrimination). Considering the different constitutional court (or equivalent) decisions when they were asked to give their opinion on this matter, it seems impossible to make a final decision on the basis of pure abstract reasoning principles (see Conseil d'Etat or Bundesverfassungsgericht). It seems therefore
essential to insist on the need to understand principles systematically in relation to local and individual situations. Any case is specific and needs to be considered in relation to the context of its emergence.

Secondly, less politicisation and more 'juridicisation' of the headscarf controversies may be a provisional solution to solve conflict. By 'juridicisation' I hereby refer to the use, by individuals, of juridical tools and arenas (courts) to seek satisfaction of their needs and answers to their complaints. This would of course give principles, norms and values a central place, but it would also give importance to the narratives brought by the victims (the Muslim women). National decisions in the headscarf controversies lack accountability. A better and more systematic use of legal resources would constitute a step towards accountability in the equal treatment of Muslim citizens in the enlarged EU.

Thirdly, the role of international bodies is central in this search for accountability. ECHR’s decisions and suggestions have stated that religious freedom is not an absolute value. It can be restricted on conditions that these restrictions are motivated and argued. Considering the passionate nature of national discussions, the ECHR can be seen as a central arbiter of citizens and state interactions. More precisely, in the European context of promotion of equality, neutrality should not disproportionately disadvantage minority groups and non-national institutions could be the guarantors of the respect for different principles and fundamental rights framing the lives of individual citizens.

Fourthly, headscarf controversies reveal the porosity of borders that have been taken for granted, the border between private and public as well as of that between religious and secular spheres of social activities. While some theories of secularisation have claimed that religion would disappear from public life through the individual emancipation of citizens, the religious part of the political functioning of society returns to the domestic agenda by addressing the issues of national cohesion and unity. Policy-makers and decision-makers should elaborate more on what is unsaid about religion in European liberal democracies, as a priority at the local level, on the basis of deliberation and public discussion with citizens.

Fifthly and finally, new maps of inequality and experiences of injustice are becoming visible, in particular for individuals embedded in the complex and intersectional context of oppression and discrimination. The headscarf is not only about symbols. It is not only the headscarf that is being excluded; it is individuals and their bodies too.