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COMMENTARY: Headscarves, religion & the state: the reality of European commitment to human rights for all

By Kristine Rødstøl, Postgraduate student in the Norwegian Centre for Human Rights

In this personal commentary contributed to Forum 18 News Service <http://www.forum18.org>, Kristine Rødstøl, a postgraduate political science student on a Fritt Ord scholarship in the Norwegian Centre for Human Rights, looks at the reality of European commitment to human rights for all, as illuminated by the debates over the Muslim headscarf (hijab) in France, Germany and Sweden. She asks whether, after the Madrid bombings, European countries will give equal benefits to all religious communities like Sweden, or discriminate against all religious communities like France.

Debate on the use of the Muslim headscarf (hijab) has recently flared up in many Western European countries, especially in France and Germany, where Muslim girls and women are campaigning for the right to wear the headscarf at school and in the public arena in general. The question touches on a whole series of human-rights issues, such as freedom of religion, freedom of expression, women's rights, children's rights and parental rights.

In Germany the debate has been given a human face by Fereshda Ludin, who has been fighting since 1998 to be able to work as a primary-school teacher without being forced to abandon her headscarf. In France, the two sisters Alma and Lila Lévy have hit the headlines after being expelled from school in October 2003 for refusing to take off their scarves.

In September 2003 Ludin finally won her appeal to the German Supreme Court, but only because no law has yet been found that forbids the use of the headscarf in educational positions. But this has led, so far, to seven out of Germany's 16 federal states now preparing to change the working of the law. In France, the report drawn up by civil ombudsman Bernard Stasi and his commission, published on 11 December 2003, has laid the foundation for a new law which forbids the wearing of any prominent religious symbol - including large crosses, headscarves, kippas (Jewish skullcaps) or Sikh turbans - in state schools. The law gained overwhelming backing in both houses of parliament in February and March 2004 and went to President Jacques Chirac for signature into law.

Both Germany and France have a constitutionally-prescribed division between church and state but, drawing on their different traditions, have chosen to deal with the question of religious freedom and the wearing of headscarves in different ways.

German law is at root open to a close collaboration between different faith communities and the public authorities at individual state level, with a high degree of equality in the way faiths are treated. A legal prohibition on the wearing by Muslim teachers of the headscarf because it is interpreted as a religious symbol must therefore be followed by a corresponding ban on Christian teachers wearing crosses and Jewish ones wearing the kippa - anything else would be a clear break with previous practice.

Will this change, now that seven states have announced that they want to amend the working of the law to prohibit religious symbols in schools? In Baden-Württemberg, where Fereshda Ludin has for the time being won the right to teach with her headscarf, the Christian cross and possibly also the Jewish kippa will fall outside the new legislation, seeing that the law chiefly strikes at "oriental" religious symbols. "Western" religious symbols are accepted, because western religions form part of the school curriculum and are regarded as an important element in German culture.

While the German headscarf issue mainly concerned teachers, most affected in France have been pupils. The French debate goes back 15 years, to when the first girls with headscarves appeared in secular state schools. They were usually expelled, as wearing the hijab ran counter to the state's and the schools' principle of secularism, but whether to expel girls refusing to remove their hijab has until now been a matter for individual schools, and not established by law. Muslim girls with headscarves continue to be expelled, but today they are more numerous and stronger, because the issue no longer affects just schoolgirls but also state-employed Muslim women who are demanding the right to wear the hijab at work.

Debates in both France and Germany have arisen partly as a result of these countries' ever more multicultural social landscape. Germany has a considerable Muslim population (over three million) thanks to the immigration policy of the 1960s and 1970s, while France is today the European country with the largest proportion of Muslim inhabitants (around five million, most of them from North Africa).

France is also among the countries in Europe that promote the sharpest distinction between state and religion, after secularism was enshrined as official policy in 1905. This was intended to ensure a clear delimitation between political and religious power, and to protect the infant French republic from harrowing conflicts between antagonistic religious groupings, which had earlier led to violent civil war and regime change. In today's France, religion – whether Catholicism, Judaism, Islam or any new religious movement – is viewed as an extremely private matter for which there is no room inside public institutions.

Opposition to the Muslim headscarf in France can therefore clearly be viewed as part of a long tradition of secularism; there is nothing revolutionary or surprising in the fact that the French authorities wish to prohibit the scarf as a religious symbol in schools. School is part of the public domain, which must be secular. At the same time, the authorities are also considering including an introduction to cultural aspects of religious traditions as part of teacher training for state schools, because it is seen as important general knowledge.

Also in 2003, the first elections were held for the "Muslim Council", a forum for dialogue between the authorities and the Muslim communities in France. The Council was set up on the initiative of the authorities, who also administer the election process. These recent developments might indicate that the country is in the middle of a period of transition over the traditional split between state and religion – perhaps the authorities are recognising that the constantly growing Muslim minority can no longer be overlooked?

The Stasi commission (with its mandate from President Chirac) worked hard to shed light on the future of "l'État laïque" (the secular or lay state), and the December 2003 report aroused great interest, not only in France but also in other countries where the use of the headscarf is a topical issue. The Stasi Report's recommendations are remarkable: it not only proposed the promulgation of a new law to forbid totally all use of any "prominent" religious symbols in schools, but also proposed establishing one Muslim and one Jewish state holiday along the lines of the existing Catholic and national ones. For the time being the second proposal has been ignored. The law on the prohibition of religious symbols, on the other hand, is set to come into force towards the end of 2004.

The law will also ban the wearing in schools of, amongst other symbols, Christian crosses, Jewish skull-caps (kippas) and Sikh turbans, but the law appears in its drafter's minds to have mainly been aimed against the headscarves of Muslim girls. The effects of the law on non-Muslim religious communities appear not to have been considered by the Stasi commission. This is in itself a sign of the commission's thinking about religion and the right to express religious beliefs in France.

Developments in a European country with traditionally strong church/state relations are a shift in the opposite direction. In Sweden, a more than four hundred year long alliance between the Lutheran Church and the state came to an end in 1995, fully effective from 2000, after decades of debate over the nature of the church/state establishment. Like the rest of Europe, Sweden has in recent decades experienced a wave of immigration, and in this highly egalitarian society unequal support of religious communities could not be supported. The core arguments for the Swedish and the French governments are thus very similar, as they both wish to secure a more equal standing of different religious communities. The difference is that the Swedish solution consists of giving religious communities equal benefits, while in France the new law will further disadvantage religious adherents, especially those belonging to religions where traditional clothing constitutes an important part of their religious identity, like Muslims and Sikhs.

Even as the proposed new laws are debated in the German state assemblies and the French national assembly, there is still one significant respect in which the hijab differs from the Jewish kippa and the Christian cross around the neck. Christianity and to some extent Judaism are well-established religions which can claim to have long played a major role in the development of Europe and its population, both positive and negative, and have thereby established themselves as important and to some extent even implicit components of European religious, social and cultural identity. This is clearly finding expression in parts of the German argument, but also in the continuing debate about the framing of the European Union (EU) constitution, in which many would like to see an explicit reference to Christianity as part of Europe's cultural heritage. (How Christian values alone, excluding the legacy of Enlightenment philosophers, have shaped European identity is another question.)

But this picture of Europe may be about to change, not just as a consequence of Europe's continually shifting cultural image, but also as the EU expands. Turkey is indeed a secular state, where the ban on wearing the headscarf was part of Kemal Atatürk's modernisation of the country in the 1920s. Yet in its religious heritage, Turkey is very different from the other European states in that the large majority of its population is Muslim. It is a delusion to believe that the differences are to be found only in religious doctrines; the cultural and social values that separate ever greater sections of Europe's population will probably play a far more decisive role.

Most opposition to the Muslim headscarf in Western Europe is based on two main arguments: the principle of the secular state and the scarf's repressive role in relation to women's rights in society and their right to choose. Can one be sure that Muslim women are expressing themselves freely when they claim they are wearing the headscarf as an expression of their religious convictions, or when they say that they see the scarf as liberating rather than oppressive?

No, of course, there are no guarantees, and discriminatory and extremist attitudes do exist within Islam – there are women who are being coerced into wearing the hijab, burka or niqab against their will. There are women who are unable to uphold their rights, and women who are simply not aware of their rights as women not to be oppressed and abused by men. Nevertheless, this is not a

problem unique to Islam, but an issue that should be addressed within all religions and cultures.

But this is not only a question of women's rights to choose or refrain from wearing the hijab. The controversy over the hijab has been reduced to a question of colliding cultural values. The hijab, for decades regarded by the Western world as a symbol of the repressive nature of Islam, is for many Muslim women much more than a symbol, it's an expression of their faith and personality, and a cultural or religious obligation which they choose to follow. If a Muslim woman finds it demeaning to be forced to remove her hijab in school or at work, how does this promote human rights?

Of course there are discriminatory and extremist attitudes within Islam; they also exist within other religions and cultures. Yet nothing will be gained by taking a heavy-handed, didactic position towards Islam. Rights are perceived differently in dissimilar cultures, and in a multicultural society it is important to find a pragmatic "golden mean". Wearing a headscarf no more makes a person a fundamentalist than does wearing a cross.

The main challenge lies in the integration policy of European countries – to what degree should immigrant cultures be accommodated, and how will second and third generation immigrants adapt into French, German or Swedish society? Should hijabs be banned from the public space? Should Muslims be allowed to refuse medical treatment from medical personnel of the opposite sex? Should there be 'women only' days at public pools? Should religious practice have a say in whether you can go to school or apply for a job? Some of these questions are easy to answer, some require more reflection, and they will continue to pose difficult challenges to Europe in the years to come.

Which approaches will European societies choose in the aftermath of the Madrid bombings? Will Europeans recognise that wearing a headscarf no more makes a person a fundamentalist than does wearing a cross, a skull-cap or a turban? Will European countries give equal benefits to all religious communities like Sweden, or discriminate against all religious communities like France? Many outside and inside Europe will judge the reality of Europe's commitment to human rights for all on the answers European countries give to these questions.

A printer-friendly map of Europe is available at

<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe>

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