

OTHER COUNTRIES AND REGIONS MONITORED: WESTERN EUROPE

RESTRICTIONS ON RELIGIOUS DRESS, PRACTICES, AND PLACES OF WORSHIP

During the past few years there have been increasing restrictions on, and efforts to restrict, various forms of religious expression in Western Europe, particularly religious dress and visible symbols, ritual slaughter, religious circumcision, and the construction of mosques and minarets. These, along with limits on freedom of conscience and hate speech laws, are creating a growing atmosphere of intimidation against certain forms of religious activity in Western Europe. These restrictions also seriously limit social integration and educational and employment opportunities for the individuals affected.

The International Covenant on Civil and Political Rights (ICCPR) and other international documents guarantee to every individual not only the right to believe, but also the right to manifest one's beliefs, individually or in community with others, in public or in private, through worship, observance, practice and teaching.¹ This encompasses a broad range of acts, including building places of worship, displaying symbols, observing dietary restrictions, wearing distinctive clothing or headcoverings, and participating in rituals associated with certain stages of life.² Any limitations on these freedoms must meet several requirements: be prescribed by a narrowly-drawn law; not discriminatory; not destructive of guaranteed rights; not based solely on a single tradition; and necessary to protect an interest specifically enumerated in ICCPR Article 18. The five interests enumerated in Article 18 are public safety, public order, public health, public morals, or the fundamental rights and freedoms of others.

Religious Dress

In 2011, national laws banning the wearing of full-face veils anywhere in public came into force in France and Belgium. Since then, Muslim women in both countries who wear such veils have been stopped by police, questioned, and fined for violating these laws. In early 2012, the Netherlands also was moving forward on enacting a full-face veil ban. This effort came to a halt when the Dutch coalition government fell in April 2012. French and Belgian courts have rejected constitutional and human rights challenges to the bans (most recently, the Belgian Constitutional Court in a December 2012 decision). A case concerning the French law is currently pending in the European Court of Human Rights (ECtHR).

Covering one's face in public presents legitimate issues, including in certain circumstances the necessity of facial identification. These limited circumstances may justify narrowly-tailored governmental restrictions. Under international religious freedom standards, a justifiable limit on religious expression, including dress, must be narrowly tailored to achieve a specified permitted ground—public safety, public order, public health, public morals, or the rights and freedoms of others—and it must be non-discriminatory. The 2011 French and Belgian laws appear to ban all face-covering garments in a neutral way. However, the public debate surrounding their enactment, their legislative history, their many exceptions—for garments required by law or regulation, or worn for health, safety, professional, or athletic reasons, or for festivals—and their enforcement make clear that they are directed at religiously-motivated face coverings worn by some Muslim women, specifically the Islamic *burqa* and *niqab*. This raises discrimination concerns. The French law also penalizes, with imprisonment or very large fines, anyone who coerces a woman or a minor to wear a full-face veil “by threat, violence, force, or abuse of power or authority.” While seeking to address concerns about coercion, if too broadly applied this provision may raise questions of parental rights and freedom of choice. To date no charges have been brought under this section.

¹ ICCPR, Article 18(1).

² Hum. Rts. Comm., gen. cmt. 22, art. 18, para. 2 (forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1994).

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The 2011 French full-face veil law followed legislation enacted in that country in 2004 that bans the wearing in all public schools of “conspicuous” religious symbols. This law was drafted to target the Islamic headscarf, but also prohibits the Jewish yarmulke, the Sikh turban, and large Christian crosses. In 2008, the UN Human Rights Committee requested France to reconsider the 2004 law,³ but it remains in force. In Belgium, the Flemish region prohibits the wearing of visible religious symbols in its public schools, as does the municipality of Brussels. These restrictions limit educational opportunities for Muslim girls who wear headscarves and other affected students, and limit their ability to integrate and advance in society.

In a recent case relating to religious dress, the ECtHR held in January 2013 that the wearing of visible religious symbols in the workplace is a protected manifestation of religion or belief that employers may limit only under certain circumstances.⁴ The case involved two women who wanted to wear cross necklaces at work, and the court found that a business’ desire to project a certain corporate image did not justify restriction but a hospital’s need to protect health and safety on a medical ward did. As the court noted, most European states do not regulate the wearing of religious dress or symbols at work, particularly in private workplaces, but rather leave it up to individual employers.

Under its strict interpretation of secularism, the French government does not permit any government employees to wear visible religious symbols or religious dress at work. After the end of the reporting period, President François Hollande and other high-ranking government officials publicly called for legislation extending this ban to at least some private workplaces. These calls came after the country’s highest appeals court, the Court of Cassation, ruled that a daycare center discriminated against a Muslim employee by dismissing her for refusing to remove her headscarf at work. The court stressed that the daycare center was a private institution whose staff did not provide a public service.

In Belgium, some public authorities do not permit employees, particularly those who interact with the public, to wear religious symbols or dress at work. For example, teachers in the Flemish public schools may not wear religious dress, nor may employees of the city of Antwerp who have direct public contact. Many private employers in Belgium have similar policies. These restrictions limit employment and economic opportunities, particularly for Muslim women who wear headscarves.

Religious Practices

A 2009 European Union directive generally requires stunning before slaughter but allows countries to exempt religious slaughter. Nevertheless, EU members Luxembourg and Sweden and non-EU members Switzerland, Norway, and Iceland continue to ban all slaughter without stunning, including ritual slaughter. In 2011, the lower house of the Dutch parliament passed such a ban, proposed by an animal-rights party, but the resulting outcry by Muslim and Jewish groups led to a compromise to allow religious slaughter to continue, as long as a veterinarian is present to anesthetize the animal if it is not unconscious within 40 seconds. In November 2012, the Polish Constitutional Court ruled ritual slaughter unconstitutional, but the government has since put forward in parliament a bill to amend the animal

³ Hum. Rts. Comm., Concluding Observations on France, para. 23, UN Doc. CCPR/C/FRA/CO/4 (2008) (noting that “respect for a public culture of secularism would not seem to require forbidding wearing such common religious symbols” and recommending re-examination of the law “in light of the guarantees of article 18 of the Covenant concerning freedom of conscience and religion, including the right to manifest one’s religion in public as well as private, as well as the guarantee of equality under article 26.”).

⁴ *Eweida and others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, chamber judgment (January 15, 2013).

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protection law to allow the practice to continue. The bill remained pending at the end of the reporting period.

In June 2012, a regional appeals court in Cologne, Germany ruled that doctors could be criminally prosecuted for performing religious circumcisions of male children. Muslim and Jewish groups condemned the decision as violating their religious freedom rights, and in December the German parliament passed a law making clear that religious circumcision of male infants is permitted. The Norwegian ombudsman for children—an independent governmental body— has suggested that Muslims and Jews should adopt “a symbolic, non-surgical ritual” instead of infant male circumcision.

Places of Worship

In 2009, Swiss voters and cantons approved a popular initiative to amend the Swiss federal constitution to ban the future construction of minarets. The amendment added a new sub-article to the constitution’s article on church and state, which provides that “[t]he building of minarets is prohibited.” The Swiss government had opposed the ban as irreconcilable with human rights guarantees in the European Convention on Human Rights, the ICCPR, and the Swiss constitution, but voters passed it anyway. A number of cases concerning the minaret ban have been filed at the ECtHR; one was found inadmissible in 2011 and others remain pending.

No other European country has a constitutional provision or national law banning minarets, but in various countries generally-applicable zoning and other laws have been applied in a discriminatory manner to Muslim places of worship. According to the Council of Europe’s Commissioner for Human Rights, “[l]ocal authorities in many European cities regularly find reasons to delay building permits for mosques, but not for other houses of worship.” In some places, existing Muslim worship facilities are insufficient, particularly for Friday prayers, leading worshippers to have to pray outside. In Greece, there continues to be no official mosque in Athens, making it the only EU capital without such a place of worship, despite the Greek parliament approving construction in 2011.

HATE SPEECH LAWS

Almost all European states have “incitement to hatred” laws, also referred to as “hate speech” laws, which reach beyond incitement to violence and therefore can be used to restrict and punish peaceful expression deemed offensive, including the expression of religious beliefs.⁵ These laws differ from “hate crimes” laws, which many countries also have, under which a criminal act committed with evident religious or other bias may be subject to enhanced penalties.

The peaceful public sharing of one’s religious beliefs—including beliefs that others may view as controversial or intolerant—is both an integral part of religious freedom and also protected by freedom of expression. This includes making religious truth or superiority claims, questioning or criticizing a religion or religious tenet, and seeking to convince another individual to change his or her religious beliefs or affiliation voluntarily, even though other individuals may find these forms of expression

⁵ For example, articles 137c, d, and e of the Dutch Penal Code criminalize, subject to up to one year in prison and a fine, “giv[ing] intentional public expression to views insulting to a group of persons on account of their race, religion or convictions, their heterosexual or homosexual preferences or physical, mental or intellectual disability;” “publicly incit[ing] hatred against or discriminating of other persons or violence against the person or the property of others on account of” these grounds; or “for reasons other than the provision of factual information ... mak[ing] public an utterance which [the speaker] knows or can reasonably be expected to know is insulting to a group of persons on account of” these grounds.

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offensive or insulting. It also includes the expression of religious beliefs that may be controversial in society, such as views on homosexuality or abortion. Overbroad laws against “incitement to hatred” pose a risk of chilling protected expression, and if used against the peaceful expression of beliefs can result in violations of the freedoms of speech and religion.

UN resolutions have recognized that under international human rights standards, governments should address intolerant speech through counter-speech and positive measures, including education and outreach; criminalization is only appropriate for speech that constitutes incitement to imminent violence.⁶ The UN Special Rapporteur on Freedom of Religion or Belief likewise has noted that the international provision relating to laws against incitement, ICCPR Article 20(2), sets a high threshold under which “expressions should only be prohibited...if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group,” and that lowering this threshold “would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself.”⁷ The Parliamentary Assembly of the Council of Europe also has said that “national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.”⁸

Despite this, most countries in Europe criminalize expression that does not amount to incitement to violence. For example, the United Kingdom’s 1986 Public Order Act, which applies in England and Wales, makes it an offense to use threatening, abusive or insulting words or behavior, or to publish, distribute, display, or broadcast any threatening, abusive, or insulting material, if the defendant does so with intent to stir up racial hatred or if in the circumstances racial hatred is likely to be stirred up. In 2006, the law was amended to add a similar provision on incitement to religious hatred. In an effort to limit the intrusion on protected speech, this provision requires that the words, behavior or material must be threatening (not just abusive or insulting), must be intended to stir up religious hatred (not just likely to do so), and must not merely express criticism or dislike of a religion or religious belief.⁹ Also, no prosecution under the incitement to religious hatred provision can be instituted without the consent of the Attorney-General. Nevertheless, the law still goes beyond incitement to violence and its breadth and vagueness places individuals at risk, at a minimum, of threats of prosecution for protected expression. This is illustrated by a September 2011 incident in which police in Blackpool, England warned a coffeehouse owner to stop showing Bible verses on a TV screen in the shop, or face Public Order Act

⁶ Human Rights Council, “Resolution 16/18: Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or belief,” UN Doc. A/HRC/RES/16/18 (2011); General Assembly, “Resolution 66/167: Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,” UN Doc. A/RES/66/167 (2011); Human Rights Council, “Resolution 19/25 : Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or belief,” UN Doc. A/HRC/RES/19/25 (2012); General Assembly, “Resolution 67/178: Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,” UN Doc. A/RES/67/178 (2012). See also Leo, Gaer, and Cassidy, “Protecting Religions from ‘Defamation’: A Threat to Universal Human Rights Standards,” 34 Harv. J. Law & Pub. Pol. 769 (2011).

⁷ UN Document A/HRC/2/3, paras 47, 50 (2006).

⁸ Parliamentary Assembly of the Council of Europe, Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion, adopted June 29, 2007.

⁹ The 2006 amendments adding the religious incitement offence include the following provision: “Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

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charges, after a customer complained the verses were homophobic. The police later apologized for “misinterpreting” the Act.

ACCOMMODATION OF RELIGIOUS OBJECTIONS

There also have been issues in various European countries concerning the accommodation of religious objections to generally-applicable laws, government policies, or employer requirements. The ECtHR recently addressed two such cases in the combined case of *Eweida et al. v United Kingdom*. The decision did not establish a uniform approach for all cases, but rather gave great deference—in the court’s terminology “a wide margin of appreciation”—to national authorities to decide how to strike the balance in each particular case.

The cases involved a local registrar of births, deaths and marriages who objected to registering same-sex partnerships and a counselor who objected to providing psycho-sexual therapy to same-sex couples; both were disciplined and ultimately lost their jobs. The court recognized that objecting to homosexuality was a protected manifestation of religious belief under the European Convention, and that these individuals were severely impacted by their employers’ refusal to accommodate their beliefs. The court also rejected the argument that there was no violation of their rights because the individuals could find other jobs; instead, it said national courts should “weigh that possibility [finding another job] in the overall balance when considering whether the restriction was proportionate.”

In both cases, the court found that the employers were seeking to “to secure the rights of others which also were protected under the Convention” and concluded that it could not say that the lower courts had erred in balancing the competing rights. However, two judges dissented with respect to the registrar, on the grounds that she had held the job since before civil partnerships existed and should have been permitted to opt out of performing them based on her conscientious objections, as other local authorities had allowed.

Another example of individuals objecting to government policies that limit their ability to practice elements of their faith concerns homeschooling in Germany. Public school attendance is required by law in Germany with very few exceptions that do not include religious objections. This has implications regarding the right of parents to educate their children consistent with their own beliefs, which is protected by ICCPR Article 18. In recent years, German parents who want to home school their children for religious reasons have been fined and at least one family has sought asylum in the United States.¹⁰

GOVERNMENTAL MONITORING OF DISFAVORED RELIGIOUS GROUPS

Since the 1990s, the governments of several European countries—particularly France, but also Austria, Belgium, and Germany—have taken measures against religious groups pejoratively characterized as “cults” or “sects.” These efforts have included the publication of official reports or lists identifying certain groups as harmful or dangerous “cults” or “sects;” the use or creation of government agencies to monitor these groups; the application of registration, immigration, tax or other generally-applicable laws

¹⁰ An Immigration Judge in Tennessee granted asylum to Uwe and Hannelore Romeike and their children in 2010. The government appealed, and a Board of Immigration Appeals reversed. The Romeikes appealed to the U.S. Circuit Court of Appeals for the Sixth Circuit, where the case is now pending.

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in ways that restrict these groups' rights;¹¹ and in the case of France, the passage of a specific law "to reinforce the prevention and repression of sects which infringe human rights and fundamental freedoms."¹²

The most extensive "anti-cult" efforts have been in France. Since 1998, the French government has had a governmental entity specifically tasked with collecting and disseminating official information on groups deemed to be "cults" and coordinating government efforts to oppose such groups. The organization in its current form is called the "Inter-ministerial Mission for Vigilance and to Combat Sectarian Aberrations," or MIVILUDES (its acronym in French).¹³ Various French government reports on and lists of "cult" groups have included Jehovah's Witnesses, Scientologists, the French Federation of Krishna Consciousness, a Baptist Bible college, several Evangelical Christian churches, and many more small, non-traditional, and/or new religious communities. Groups that are on these lists or that have been addressed in MIVILUDES' or its predecessor's work say that this system creates a climate of intolerance and has led to both official and private discrimination against them.

In December 2012, French President Hollande announced the establishment of a new government agency, the National Observatory of Secularism, about which a number of religious groups have expressed concerns. The observatory's mandate is to observe and promote secularism in the country, including by recommending how to promote secular values in French schools. According to press reports, the Minister of Education described the effort as seeking to counter religious extremism. When asked to provide examples of religious extremist groups, he cited creationists, radical Islamists, traditionalist Catholics, and ultra-Orthodox Jews, without making any reference to the use or advocacy of violence.

SOCIETAL INTOLERANCE, DISCRIMINATION, AND VIOLENCE BASED ON RELIGION OR BELIEF

Governmental restrictions on religious freedom both arise from and encourage a societal atmosphere of intolerance against the targeted religious groups. This increasingly hostile climate, in turn, can result in instances of private discrimination, and sometimes even violence, against members of these groups.

Some supporters of the restrictive measures previously discussed have displayed and sought to exacerbate religious bigotry. For example, in Switzerland, the minaret ban's main proponents, the Swiss People's Party (SVP), argued that minarets were a symbol of domination and deployed campaign posters with an illustration of a fully-veiled woman in front of a Swiss flag pierced by numerous minarets shaped like missiles. In Belgium, an official of the political party Vlaams Belang offered publicly in June 2012 to pay a 250 euro reward to anyone who reports a fully-veiled woman to police.

¹¹ For example, a long-running tax case against the Jehovah's Witnesses – in which the French government assessed high taxes and penalties on members' donations to the church – finally concluded in 2011 with the European Court of Human Rights ordering France to reimburse the Witnesses more than 4.6 million Euros.

¹² This 2001 French law, often referred to as the "About-Picard Law," created the vaguely-defined crime of "the abuse of ignorance or of weakness" (subject to a five-year prison term and substantial fine) and authorized the government to legally dissolve religious associations on account of offenses committed by its leaders, including the new offense. Although criticized by the Council of Europe, the law remains in force. The new crime provision apparently has been used only once, against the leader of a group called "New Lighthouse," who claimed he was Christ and predicted the imminent apocalypse, leading one follower to commit suicide and two others to attempt it. He was convicted and sentenced to three years in prison in 2004.

¹³ The agency was originally called the "Inter-ministerial Mission for the Fight against Cults," or MILS, and its mandate included traveling abroad to discuss fighting "cults" with other countries (which MILS officials did, including to other European countries, as well as to China and Russia). MIVILUDES, which replaced MILS in 2002, does not appear to have this international component.

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Anecdotal evidence suggests that hostility towards Muslim women who wear full-face veils has increased in France since the 2011 ban. For example, in a 2012 report, *Choice and Prejudice: Discrimination against Muslims in Europe*, the NGO Amnesty International interviewed a 20-year-old, *niqab*-wearing French woman who said that police had stopped and rudely questioned her multiple times, and on one occasion pushed her into a police car, bruising her arm; she also reported increased societal harassment, saying that she was often verbally assaulted on the street, and sometimes even spat at.¹⁴

In recent years, the atmosphere of religious intolerance across Europe appears to be rising. In its 2012 report *Rising Tide of Restrictions on Religion*, the Pew Forum on Religion and Public Life found an overall rise in the median level of social hostilities based on religion throughout Europe, and significant increases in a number of individual countries, including Croatia, France, Germany, Greece, and the United Kingdom.¹⁵ Its 2011 report had found substantial increases in social hostilities based on religion in 5 European countries: Bulgaria, Denmark, Russia, Sweden, and the U.K., as compared to its baseline 2009 report.¹⁶ According to Pew, “[m]uch of the tension in Europe focused on the region’s rapidly growing Muslim population, but in some cases it also reflected rising anti-Semitism and antagonism toward Christian minorities, such as Jehovah’s Witnesses.”¹⁷ In addition, polling in early 2012 in 10 countries (Austria, France, Germany, Hungary, Italy, the Netherlands, Norway, Poland, Spain and the U.K.) found that significant percentages of those surveyed believed some of the most pernicious anti-Semitic stereotypes, and that anti-Semitic attitudes had increased in all but one of the countries since a similar 2009 survey, with the most dramatic increases in Hungary, Spain, and the U.K.¹⁸

¹⁴ Amnesty International, *Choice and Prejudice: Discrimination against Muslims in Europe*, p. 94 (2012).

¹⁵ Pew Forum on Religion & Public Life, *Rising Tide of Restrictions on Religion* (2012).

¹⁶ Pew Forum on Religion & Public Life, *Rising Restrictions on Religion*, p. 45 (2011).

¹⁷ *Id.*

¹⁸ Anti-Defamation League, *Attitudes toward Jews in Ten European Countries* (prepared by First International Resources, LLC 2012).