

# 1. Introduction

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This is a book about European laws that, in any way, restrict the wearing of various forms of Islamic head and face coverings and, in particular, about the motivations behind such laws. My enquiry is threefold. First, I seek critically to analyse the merits of the arguments both from national governments and in popular rhetoric as to why the wearing of such garments in particular contexts should be legally prohibited. Secondly, I assess whether, in fact, there is a disconnect between what I term the ‘real motivations’ behind such laws and the official rationales on which these laws are based (rationales that tend to reflect the arguments that appear in media commentary and popular rhetoric on the subject). Finally, I consider whether laws that are enacted to secure the various objectives considered in this book represent legitimate interferences with the rights of those women, who, for a variety of reasons, all of which connect to religious obligations, choose to wear a particular kind of veil.

## 1. DEFINITIONS

At the outset, it is important to clarify what I mean by two terms that are used throughout this book.

### 1.1 ‘Islamic Veil’

The first is the term ‘Islamic veil’. There are, of course, multiple kinds of head and face scarf worn by Muslim women. The *hijab* is a simple head covering (albeit that, as is discussed in Chapter 2, the *Qur’anic* references to *hijab* mean something quite different). The *niqab* is a garment that covers the face but not the eyes of the wearer. The *burqa* covers the entire body including the face, with a cloth grille that allows the wearer to see out, but prevents other people from seeing her eyes. Many such coverings are worn in conjunction with other Islamic outer garments and cloaks such as the *chador*, the *jilbab*, and the *abaya*. The clothes in question are often the product of local cultural conventions – in other words they will be common in some Islamic countries but not others. Different Islamic schools of thought will take different views on the question of whether particular kinds of garment should or must be worn. So for example (as is discussed in Chapter 4) the fact that it is exclusively the highly conservative *Salafist* school of thought that requires the wearing of face

covering veils is one of the reasons why the wearing of the *niqab* and *burqa* is of such concern to a number of European states. More generally, the various different kinds of garment will generate diverse societal concerns as far as some European countries are concerned. Finally, even the Arabic terms to which I have referred may be alien to people living in the Islamic world, who may use different terms altogether to refer to these various types of clothing.

Referring to *all* of these different garments under the broad heading of ‘veiling’ quite rightly attracts criticism. For many, a veil is, by definition, a face covering, and a headscarf is something entirely different. Furthermore, for many, the face veil will present societal concerns and generate negative reactions that a headscarf does not. Indeed, it has been suggested that this was why the French authorities, in 2004, and in the context of a legislative move to prohibit any display of religious symbols in public schools – but with a particular focus on Islamic headscarves – stopped referring to *le foulard* (the scarf), and referred instead to *la voile* (the veil).<sup>1</sup>

Nonetheless, the reality is that the vast majority of laws under consideration *do* deal with face veils. Both for this reason and, more importantly, for convenience, I will, throughout this book, use the term *Islamic veil* to denote all headscarves and face veils that are worn because the wearer believes that this is required by the law of God. I will, however, refer specifically to the type of ‘veil’ that is at issue where this is appropriate, and especially where what is being dealt with is *not* a face-covering veil.

## 1.2 ‘Anti-veiling Laws’

Secondly, as shall become clear, the various laws throughout Europe that deal with ‘Islamic veiling’ do different things and have different impacts. Some only deal with veiling in particular settings – schools, universities, public buildings, contexts of heightened security or in relation to the provision of public services – whereas an increasing number deal with face veiling in *all* public places. Some of these laws target *all* veils (that is, headscarves and face coverings) whereas most only target face veils. Furthermore, the ‘laws’ under discussion in this book come in the form, variously, of ministerial regulations, terms and conditions of employment, school rules or Acts of Parliament. In other words, we are dealing with a plethora of different kinds of laws that do different kinds of thing – with the single unifying factor being that they restrict the wearing of what I am terming the ‘Islamic veil’ in particular contexts.

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<sup>1</sup> See Joan W Scott, ‘Symptomatic Politics: The Banning of Islamic Headscarves in French Public Schools’ (2005) 23(3) *French Politics, Culture & Society* 106.

Equally, and again for convenience, I am going to use the term ‘anti-veiling law’ to cover *all* such laws and regulations – albeit that, again, where appropriate, I seek to provide greater detail in relation to the kind of rule under discussion. My focus is on the nature of, and especially the justifications that have been offered for, those laws. Primarily I am concerned with the various laws that have been enacted over the last 15 years in western Europe, albeit that, especially in Chapter 6, I also assess the approach to veiling in Turkey.

## 2. EUROPEAN ANTI-VEILING LAWS

The majority of the laws in Europe (that have been enacted or have come into force since 2010) focus exclusively on face-covering veils. France (2010), Belgium (2011), Austria (2017) and Denmark (2018) all ban face veiling in all public places. In 2016 the Latvian Parliament adopted a similar law but, at the time of writing, this has not come into effect. In late December 2018 it was reported that Georgia’s Parliament would consider a proposal to enact an equivalent law. In Switzerland, following a national petition that collected over 100,000 votes in 2017, there were plans to hold a national referendum on whether to ban face veils in public, albeit that, at the time of writing, the Swiss government appears to be seeking an alternative arrangement whereby the issue would, in the first instance, be left up to individual cantons but national law would create offences of forcing someone to wear a veil or refusing to reveal one’s face when dealing with a public official.<sup>2</sup> There are also similar local bans in the Swiss Cantons of Ticino (2016) and St Gallen (2018) and the Catalan city of Reus (2014).

Other laws ban face veiling in specific contexts. In 2018 the Dutch upper house of Parliament finally adopted a ban on veiling in government buildings, schools, hospitals and on public transport. Similarly, in 2016 Bulgaria banned face veiling in government offices, schools, cultural institutions and places of public recreation. In 2017 the German province of Bavaria banned face veils in schools, universities, polling stations and government offices. In 2018 Norway enacted a law banning face veils in schools and universities. In April 2018 the Austrian government announced plans to ban the wearing of headscarves in elementary schools and kindergartens. Finally, since 2004 France has prohibited the display of any visible religious symbols (which, of course, includes

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<sup>2</sup> <https://www.reuters.com/article/us-swiss-burqa/swiss-government-rejects-proposed-burqa-ban-idUSKBN1JN1H3>, accessed 11.12.18.

any form of Islamic veil) in schools and there has been a suggestion that it may move to legislate against the wearing even of headscarves in universities.<sup>3</sup>

Beyond western Europe, in 2016 Bosnia's High Judicial and Prosecutorial Council, which oversees the judiciary, upheld an earlier ruling that its employees should not be permitted to wear the *hijab* in courtrooms. Kosovo has prohibited the wearing of headscarves in schools and universities since 2009, as has Azerbaijan since 2011. A similar ban was considered, but eventually discarded, in Albania in 2011. In Russia the wearing of the *hijab* was prohibited in state-run schools in Stavropol in 2012 in order to deal with tensions between ethnic Russians and Muslims. Finally, Turkey has a long history of prohibiting the wearing of headscarves in multiple contexts – universities, schools, the armed forces for example – in the name of its state-sponsored secularism, albeit that, at the time of writing and in the context of a government that is avowedly anti-secularist, many of these policies are being significantly relaxed.

Many of the laws that prohibit face veiling in public are, as we shall see, putatively, neutral – that is to say, they prohibit *all* face coverings in public rather than the Islamic veil specifically. This is clearly to ward off the concern that these laws are religiously discriminatory. Having said that, there can be little doubt but that the laws *were* aimed at and were enacted because of the Islamic veil,<sup>4</sup> and none of the justifications for these laws considered in subsequent chapters (save, to an extent, that which focuses on national security) make any sense unless it is accepted that the laws are specifically focused on Islamic veiling.<sup>5</sup>

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<sup>3</sup> Angelique Chrisafis, 'French PM Calls for Ban on Islamic Headscarves at Universities' *The Guardian* 13 April 2016, available at <https://www.theguardian.com/world/2016/apr/13/french-pm-ban-islamic-headscarves-universities-manuel-valls>, accessed 11.12.18.

<sup>4</sup> The United Nations Human Rights Committee appeared to imply that this was the case in its 2018 decisions in two cases taken by applicants who argued that the French law banning face veiling in public violated their rights. See CCPR/C/123/D/2807/2016 at para 7.2 and CCPR/C/123/D/2747/2016 at para 8.2.

<sup>5</sup> Thus, for example, during the Belgian parliamentary debates on what would become of its 2011 law banning face veiling in public, there were calls for the law to be renamed 'Law Forbidding the Wearing of the Burqa or Niqab'. See Sally Pei, 'Unveiling Inequality: Burqa Bans and Non-Discrimination Jurisprudence at the European Court of Human Rights' (2013) 122 *Yale Law Journal* 1089 at 1090; Generally see Gerhard van der Schyff and Adriaan Overbeeke, 'Exercising Religious Freedom in the Public Space: A Comparative and European Convention Analysis of General Burqa Bans' (2003) 7 *European Constitutional Law Review* 424.

### 3. ANTI-VEILING LAWS AND THE RISE OF POPULISM IN EUROPE

A consistent factor that links all of the recent laws in Europe banning face veiling in public is that there were strong political motivations for their enactment, that had nothing to do with the official justifications offered for them. All of these motivations speak to a political need symbolically to target the veil and to ‘other’ its wearer, as a gesture of support for what might be termed traditional, national values, both generally and in the specific context of Europe’s post-2015 immigration crisis. This links to the rise of populism in Europe,<sup>6</sup> which has either seen the election of European governments that have right wing, anti-immigration agendas, or has seen more moderate political parties needing to make hard-hitting statements about immigration and/or national values (which inevitably tend to focus on curtailing political Islam), to appeal to their electorates. The Islamic veil is regularly the focus of such statements.

So, for example, in Denmark the government itself is centre right in leanings but has an alliance with the Danish People’s Party, which was the most vociferous supporter of the 2018 law.<sup>7</sup> Likewise the Norwegian government that, in 2018, banned veiling in schools and universities was a grand coalition of the Conservative and Liberal Parties accompanied by the strongly anti-immigration Progress Party.<sup>8</sup> The 2016 Bulgarian law prohibiting veiling in public places, while ultimately enacted by a government led by the centre right GERB Party, which formed the majority of the ruling coalition government, was actually proposed by the right wing VMRO Party (part of the Patriotic Front) – GERB’s coalition partner.<sup>9</sup> In January 2018 the Council of the Northern Italian region of Liguria approved a law prohibiting people from entering public buildings, including hospitals and kindergartens, while veiled, on foot of a proposal from the far-right Northern League party.<sup>10</sup> In

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<sup>6</sup> See Mikuláš Dzurinda, ‘The Resistible Rise of Populism in Europe’ (December 2016) 15(2) *European View* 171.

<sup>7</sup> See Eleanor Rose, ‘Denmark Burka Ban: Country Poised to Ban Islamic Face Veils in Crackdown on “Masking”’ *Evening Standard* 9 October 2017, available at <https://www.standard.co.uk/news/world/denmark-to-ban-burkas-as-lawmakers-crack-down-on-masking-a3653526.html>, accessed 11.12.18.

<sup>8</sup> See John Sharman, ‘Norway’s Parliament Votes to Ban Burqa in Schools and Universities’ *Independent* 7 June 2018, available at <https://www.independent.co.uk/news/world/europe/norway-burqa-ban-schools-universities-parliament-vote-niqab-latest-a8387826.html>, accessed 11.12.18.

<sup>9</sup> Mariya Petkova, ‘Why Is Bulgaria making a Big Fuss about the Niqab?’ available at <http://www.bbc.com/news/world-europe-36360764>, accessed 11.12.18.

<sup>10</sup> [http://www.ansa.it/liguria/notizie/2018/01/26/mozione-anti-burqa-in-consiglio-genova\\_a2c9d9e0-d87c-42ba-9dab-cb3884e1ef14.html](http://www.ansa.it/liguria/notizie/2018/01/26/mozione-anti-burqa-in-consiglio-genova_a2c9d9e0-d87c-42ba-9dab-cb3884e1ef14.html), accessed 11.12.18.

addition, the work of activists who collected in excess of 100,000 signatures on a petition leading to a decision to hold a referendum in Switzerland in relation to banning Islamic veils was championed by far right groups and also by representatives of the ruling, anti-immigration Swiss People's Party.<sup>11</sup> Italy's Northern League Party has, most recently, called for a national ban on mothers wearing face-veils when picking up their children from schools. Finally the proposal to ban the *burqa* and *niqab* in public places reportedly to be considered by the Georgian Parliament in 2019 came from the far-right Alliance of Patriots political party.<sup>12</sup>

Furthermore, as is discussed in Chapter 6, France's approach to veiling since 2004 (and especially since 2009) reflects a view of secularism (*laïcité*) that is manifestly more combative than had previously been the case. It has been conjectured that this owes a good deal to the rise in popularity of Jean Marie le Pen and his right wing national front, and the desire of more centrist political parties to appeal to his supporters.<sup>13</sup> Moreover, the Belgian law was passed by the lower house of Parliament only eight days after the collapse of the government (the fifth such collapse in three years) arising out of a language dispute between the Flemish- and the French-speaking government parties. The suggestion was that opposition to radical Islam was the consensus issue that united political voices in a country that was, otherwise, politically divided.

Finally, a number of these laws were enacted in the immediate context of imminent political elections, in which a right wing political grouping appeared to be attracting significant support. The decision, in November 2016, by the lower house of the Dutch Parliament to legislate for a partial ban on Islamic veils was taken approximately four months before the scheduled general elections in the country and at a time when the Freedom Party (PVV) of Geert Wilders – known for its virulently anti-Muslim rhetoric – was topping opinion polls.<sup>14</sup> Similarly, Austria's 2017 law was enacted shortly before the legislative election of that year, but had clearly been proposed by the ruling Social

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<sup>11</sup> See Jeff Farrell 'Switzerland to hold Referendum on Whether to Ban Burqa after Successful Far-Right Petition' *Independent* 15 October 2017, available at <http://www.independent.co.uk/news/world/europe/switzerland-burqa-referendum-vote-ban-muslim-veils-far-right-petition-a8001591.html>, accessed 11.12.18.

<sup>12</sup> <https://dfwatch.net/georgias-parliament-to-consider-a-ban-on-wearing-burqa-and-niqab-in-public-52732>, accessed 11.12.18.

<sup>13</sup> See Dominic McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (Hart Publishing, 2006) at 295–6; Christian Joppke, *Veil: Mirror of Identity* (Polity Press, 2009) at 46.

<sup>14</sup> See Harriet Angerholm, 'Dutch Parliament Approves Partial Burqa Ban in Public Places', *Independent* 29 November 2016, available at <https://www.independent.co.uk/news/world/europe/dutch-burqa-veil-ban-holland-votes-for-partial-restrictions-some-public-places-a7445656.html>, accessed 11.12.18.

Democratic party (SPÖ) and the centre right Austrian People's party (ÖVP) in order to tackle the surge in popularity for the right wing Freedom Party (FPÖ).<sup>15</sup> Indeed it is notable that the ÖVP and FPÖ, both of which had strong anti-immigration policies and were avowedly committed to dealing with what they termed 'political Islam' would, eventually form the next Austrian government.<sup>16</sup>

#### 4. VEILING STATISTICS

Many of the various justifications for anti-veiling laws considered in this book are based on an overarching proposition that the practice of face veiling represents some kind of imminent threat to the values and security of the society in question. This claim is, however, significantly undercut by the fact that a miniscule number of women in the countries in question actually wear the *burqa* or *niqab*.

Assessment of the number of women who wear face veils in Europe tends to be based on best-guess estimates rather than official figures on the topic. In the defence of its 2010 law banning veiling in public before the European Court of Human Rights,<sup>17</sup> France suggested that there were roughly 1,900 women who wore a face veil in its territories (of whom 270 lived in overseas territories). There is some suggestion that this is, in fact, a significantly over-inflated figure and that the number is under 400,<sup>18</sup> but even if the official figure is correct, this is a tiny percentage of France's population of nearly 67 million people. Similarly (and again in the absence of official statistics), the number of women wearing a face veil in Belgium is reputedly tiny. In the Netherlands it is estimated that between 100 and 500 women wear a face veil. In Austria the number is roughly 150 as it is in Denmark.<sup>19</sup> In Germany, there are no nation-

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<sup>15</sup> Generally see Nick Robins Early, 'Austria Will Ban Full Face Veil in Public Places' *Huffington Post* 31 January 2017, available at [https://www.huffingtonpost.com/entry/austria-face-veil-ban\\_us\\_5890c8cee4b0c90eff006675](https://www.huffingtonpost.com/entry/austria-face-veil-ban_us_5890c8cee4b0c90eff006675), accessed 11.12.18.

<sup>16</sup> See Farid Hafez, 'Austria the Champion of Institutionalized Islamophobia' available at <https://www.dailysabah.com/op-ed/2018/11/23/austria-the-champion-of-institutionalized-islamophobia>, accessed 11.12.18.

<sup>17</sup> *SAS v. France* [2014] ECHR 695.

<sup>18</sup> <https://www.channel4.com/news/factcheck/britains-niqab-unveiling-facts-factcheck>, accessed 11.12.18.

<sup>19</sup> See Nilufar Ahmed, 'So Few Muslim Women Wear the Burqa in Europe that Banning It Is a Waste of Time', available at <http://theconversation.com/so-few-muslim-women-wear-the-burqa-in-europe-that-banning-it-is-a-waste-of-time-82957>, accessed 11.12.18; Aamna Modhin, 'Austria Just Slapped a Burqa Ban on the 150 Women who Dare to Wear One' at <https://qz.com/1090885/austria-just-slapped-a-burqa-ban-on-the-150-women-who-dare-to-wear-one/>, accessed 11.12.18.

ally available statistics, but experts suggest that somewhere between zero and, at maximum, 300 women might wear a face veil (with no evidence of anyone wearing a *burqa*).<sup>20</sup> In Bulgaria the *burqa* and *niqab* are believed only to be worn by members of the *Salafist* Roma community in Pazardjik, and, there, by fewer than 25 women. Finally, and most memorably as far as the international media was concerned, Latvia's proposed ban on Islamic face veils in 2016 was enacted in the face of statistics that suggest that, at most, three women in the country wear the garment.<sup>21</sup>

Of course these statistics are not determinative of the issue; if something is entirely unacceptable in Europe (something like, for example, the Nazi swastika), then it is legitimate that there would be zero tolerance for it. My point is simply that the proposition that veiling *threatens* society is difficult to sustain given how few women wear the veil. Put in reverse, a strong society should have no difficulty in defending itself against such a minority practice.

## 5. THE HUMAN RIGHTS RESPONSE IN EUROPE

A good deal of the analysis in this book operates by reference to the jurisprudence of the European Court of Human Rights in this area. As is discussed, the Court has tended to defer to state policy on veiling and can be criticised for so doing. For now, however, it will be helpful very briefly to introduce the key cases in this area (some of which do not involve veiling at all) and outline both the facts and the holdings of the Court. These cases are discussed regularly throughout this book.

### 5.1 Veiling in Context of Heightened National Security

The Court has routinely rejected claims from people who argued that their rights were interfered with when they were required to remove religious gar-

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<sup>20</sup> See Adam Taylor 'Germany's potential burqa ban has a problem: where are the Burqas?' *Washington Post*, December 6, 2016 [https://www.washingtonpost.com/news/worldviews/wp/2016/08/19/germanys-potential-burqa-ban-has-a-problem-where-are-the-burqas/?utm\\_term=.c35496374959](https://www.washingtonpost.com/news/worldviews/wp/2016/08/19/germanys-potential-burqa-ban-has-a-problem-where-are-the-burqas/?utm_term=.c35496374959) orldviews/wp/2016/08/19/germanys-potential-1-burqa-ban-has-a-problem-where-are-the-burqas/?utm\_term=.c35496374959, accessed 13.12.18

<sup>21</sup> See Richard Martyn-Hemphill, 'Latvia Wants To Ban Face Veils for All 3 Women Who Wear Them' *New York Times* 19 April 2016, available at <https://www.nytimes.com/2016/04/20/world/europe/latvia-face-veils-muslims-immigration.html>, accessed 11.12.18; Nick Gutteridge, 'Latvia Bans the Burka – despite only THREE women wearing it in the Entire Country' *Express* 20 April 2016, available at <https://www.express.co.uk/news/world/662723/Latvia-bans-burka-Cameron-Britain-UK-fail-act-security-culture>, accessed 11.12.18.

ments in contexts that generate a heightened national security focus. Indeed, in these cases – *Mann Singh v. France*<sup>22</sup> (refusal to remove turban for an identity photograph on a driving licence); *Phull v. France*<sup>23</sup> (refusal to remove turban while going through airport security); and *El Morsli v. France*<sup>24</sup> (woman denied visa when she refused to remove her headscarf in front of a male staff member in the French consulate in Marrakesh) – the Court has deemed the claims to be manifestly unfounded and thus inadmissible and neither has it remotely queried a state’s argument that the law in question is justified.

## 5.2 Veiling, Education and Public Services

The European Court has heard and rejected a number of claims against laws prohibiting the wearing even of headscarves by public servants and those involved in both the provision and receipt of public education.

Most famously, in *Leyla Şahin v. Turkey*,<sup>25</sup> the Court rejected a claim by a young Turkish medical student who was effectively expelled from university for refusing to remove her headscarf. In *Dahlab v. Switzerland*,<sup>26</sup> the Court dismissed a claim from a school teacher who had been prohibited from wearing a headscarf in the classroom, reasoning that, while her rights were being limited, this was justifiable in the interests of ensuring an ideologically neutral environment where very young children would not be impacted by the sight of their teacher wearing such a garment. Finally, in *Dogru v. France*,<sup>27</sup> *Kose & Others v. Turkey*<sup>28</sup> and the joint cases of *Aktas v. France*,<sup>29</sup> *Bayrak v. France*,<sup>30</sup> *Gamaleddyn v. France*,<sup>31</sup> *Ghazal v. France*,<sup>32</sup> *J. Singh v. France*<sup>33</sup> and *R. Singh v. France*<sup>34</sup> the Court found that there had been no violation of the Convention, arising out of the expulsion of children who refused to comply

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<sup>22</sup> *Mann Singh v. France* [2008] ECHR 1906.

<sup>23</sup> *Phull v. France* 35753/03, CEDH 2005-I, 11 January 2005.

<sup>24</sup> *El Morsli v. France* (4 March 2008) 15585/06.

<sup>25</sup> *Leyla Şahin v. Turkey* [2005] ECHR 819, [2006] ELR 73, (2007) 44 EHRR 5 (Grand Chamber).

<sup>26</sup> *Dahlab v. Switzerland* [2001] ECHR 899.

<sup>27</sup> *Dogru v. France* [2008] ECHR 1579.

<sup>28</sup> *Kose & Others v. Turkey* [2006] ECHR 1175, albeit that the Court was also concerned with the possibility of disturbances in the school as a result of protests connected with the controversy.

<sup>29</sup> *Aktas v. France*, Application No. 43563/08.

<sup>30</sup> *Bayrak v. France*, Application No. 14308/08.

<sup>31</sup> *Gamaleddyn v. France*, Application No. 18527/08.

<sup>32</sup> *Ghazal v. France*, Application No. 29134/08.

<sup>33</sup> *J. Singh v. France*, Application No. 25463/08.

<sup>34</sup> *R. Singh v. France*, Application No. 27561/08.

with school uniform policies that prohibited either veiling specifically or the display of religious symbols generally.

More recently, in *Kurtulmus v. Turkey*<sup>35</sup> the Court rejected a claim brought by a university professor who had been dismissed from her job for refusing to comply with public sector dress rules that prohibited veiling and, in *Ebrahimian v. France*,<sup>36</sup> it rejected a claim by a psychiatric social worker dismissed from her job for the same reason.

### 5.3 Veiling in Public

As far as claims against laws banning veiling in *public* are concerned, the one outlying case (though strictly speaking, it is not a ‘veiling case’) is *Ahmet Arslan v. Turkey*,<sup>37</sup> in which the Court upheld the claim of a minority Turkish religious group that the convictions of its members for wearing traditional religious garb (including turbans) in public represented a breach of their right to religious freedom.<sup>38</sup> This was an unusual case, however, both in that Turkey had offered virtually no justification for its law and also because the clothing that was involved in this case was worn by men and, especially, did not carry the political and religious baggage that accompanies the Islamic veil.

Most significantly, in *SAS v. France*<sup>39</sup> the Court, for various reasons, upheld France’s wide-ranging law prohibiting face veiling in public<sup>40</sup> and, in *Belcacemi & Oussar v. Belgium*<sup>41</sup> and *Dakir v. Belgium*<sup>42</sup> it relied on the decision in *SAS* to uphold the equivalent Belgian law.

### 5.4 Other Relevant Cases

Finally there are four cases, which, whereas they do not involve Islamic veiling, are, nonetheless, so relevant to the matters under discussion that they are considered regularly throughout the book.

<sup>35</sup> *Kurtulmus v. Turkey* [2006] ECHR 1169.

<sup>36</sup> *Ebrahimian v. France* [2015] ECHR 1041.

<sup>37</sup> *Ahmet Arslan v. Turkey* [2010] ECHR 2261.

<sup>38</sup> For analysis see Francoise Tulkens, ‘Freedom of Religion under the European Convention on Human Rights: A Precious Asset’ (2014) 3 *Brigham Young Law Review* 509 at 516.

<sup>39</sup> *SAS v. France* [2014] ECHR 695.

<sup>40</sup> Generally see Susan SM Edwards, ‘Case Commentary: No Burqas We’re French! The Wide Margin of Appreciation and the ECtHR Burqa Ruling; *SAS v. France* (application no 43835/11) Unreported, July 1, 2014 (ECtHR) Grand Chamber’ (2014) 26 *Denning Law Journal* 246.

<sup>41</sup> *Belcacemi & Oussar v. Belgium* [2017] ECHR 655.

<sup>42</sup> *Dakir v. Belgium* [2017] ECHR 656.

In *Refah Partisi (Prosperity Party) & Others v. Turkey*<sup>43</sup> the Court rejected the applicants' claim that their rights under the Convention were violated by reason of the dissolution of an increasingly popular Turkish political party. The party had been dissolved on the grounds that its Islamist leanings represented a threat to Turkish secularism, and the Court held that, on this basis, any interference with rights that might have occurred were justified.

In the joined cases *Eweida & Others v. United Kingdom*,<sup>44</sup> the Court rejected three claims by public sector workers who argued that their dismissal for refusing to act in a way that contravened their religious beliefs was in breach of their Convention rights. Significantly, however, it upheld the equivalent claim by a British Airways worker who had been dismissed for refusing to comply with a uniform policy by wearing a large crucifix.

In *Vajnai v. Hungary*,<sup>45</sup> the Court found a violation of the Convention following the criminal conviction of the Vice President of the Workers' Party in Hungary for wearing the 'red star' – the symbol of the international workers' movement but also the symbol of the totalitarian regime that had ruled Hungary for decades (and, in the view of the government the symbol of totalitarian practices generally).<sup>46</sup> Two conclusions of the Court are especially relevant for this book. First, it held that where a symbol had more than one meaning (one of which was pejorative), a government could not proceed on the basis that it *inherently* carried the pejorative meaning. Secondly, it held that other people in society did not have any right not to be unsettled by the sight of something that they did not like.

Finally, in *Lautsi v. Italy*,<sup>47</sup> the Grand Chamber of the Court controversially upheld Italian laws demanding that there be a crucifix in all public school classrooms (in the face of a claim from a parent in the school that this interfered with her rights to have her child educated in a secular environment). The Court held that whereas neutrality was a Convention value, secularism – which was a distinct ideological vision rather than a neutral mid-point between competing religions – was not.

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<sup>43</sup> *Refah Partisi (Prosperity Party) & Others v. Turkey* [2001] ECHR 495.

<sup>44</sup> *Eweida & Others v. United Kingdom* [2013] ECHR 37.

<sup>45</sup> *Vajnai v. Hungary*, Application No. 33629/06 (8 October 2008). For discussion see <https://www.hrlc.org.au/human-rights-case-summaries/vajnai-v-hungary-2008-echr-3362906-8-july-2008>, accessed 11.12.18. A similar conclusion was reached by the Council of State of the Netherlands in an opinion in relation to anti-veiling laws on 28 November 2011. For discussion see *SAS v. France* [2014] ECHR 695 at paras 49–52.

<sup>46</sup> *Vajnai v. Hungary*, Application No. 33629/06 at para 22.

<sup>47</sup> *Lautsi v. Italy* [2011] ECHR 2412 (Grand Chamber).

What all of this means is that there has not been a single challenge to a law regulating the practice of Islamic veiling (a practice that was not at issue in *Ahmet Arslan*) that has been upheld by the European Court and, in Chapter 3, I consider the likely reasons why this should be the case.

## 6. CONSISTENTLY RECURRING THEMES

There are three consistently recurring themes that emerge in all chapters of this book. One – the fact that the claim that anti-veiling laws are necessary is undermined by how few women wear the veil – has been considered above. The other two, both of which also raise serious concerns about the various justifications that are offered for anti-veiling laws, are as follows.

First, as we shall see, in many cases anti-veiling laws are justified on the basis of supposed societal concerns arising out of the wearing of the Islamic veil, yet the countries that justify their veiling laws on this basis do not target *other* things that generate the same concerns. So, for example, some countries that ban the wearing of face veils do so on the basis that either national security or the minimum requirements of an open society demand that the face and especially the eyes should be publicly visible. On the other hand, the same countries do not ban, for example, sunglasses, which, of course, also obscure the eyes. There are, as we shall see, myriad examples of this. I argue that this implies that the focus of the relevant government is not on the broad societal concern that it references (for example that the eyes should always be visible in public, that symbols of the oppression of women are intolerable, or that offensive garments should be prohibited) but, far more specifically, on the manner in which this concern is raised, exclusively, by the Islamic veil.

Secondly, all of the various arguments in support of anti-veiling laws that are considered in this book proceed on the assumption that the veil, irrespective of the mind-set of its wearer or the context in which it is worn, *inherently* means a particular thing or things. Furthermore, these meanings are, invariably, pejorative; it is a badge of *jihadism*; it is a symbol of gender oppression; its wearer rejects civic society; and so on. A recurring argument that I make in this book, however, is that the attribution of such negative ‘inherent meanings’ to the veil is only possible if one ignores the evidence from its wearers as to why, in fact, they choose to veil. They are, in other words, the meanings that the Islamic veil would bear if it were worn by a twenty-first-century, secular, European woman. Indeed it is one of the hallmarks of those governments that legislate against veiling that they neither consult in any systematically meaningful way with women who *do* veil, nor are they influenced by what little empirical evidence there is on this topic.

Most importantly, however, the proposition that any kind of Islamic veil carries various inherent meanings is a fallacy. The only possible uniform

messages conveyed by the *voluntary* act of Islamic veiling are (a) that the wearer submits to what she believes is the law of God and possibly (b) that the wearer endorses the dress code of one or other Islamic school of thought. No other *inherent* meanings can be found. This is a hugely important point and the reason why the starting point of my analysis (Chapter 2) involves an assessment of the multiple and often highly nuanced reasons why some women choose to wear a particular kind of Islamic veil.

## 7. STRUCTURE OF THE BOOK

This book comprises three distinct sections. In the first (Chapters 2 and 3) I deal with two important and background issues, namely the dominant motivations for wearing an Islamic veil, and, relatedly, the rights that are engaged when a woman who wishes to wear a veil is prohibited from doing so. I also assess the jurisprudence of the European Court of Human Rights on the topic. In the second (Chapters 4 and 5) I deal with two justifications for anti-veiling laws that speak to primary societal concerns with the Islamic veil (that it represents some kind of a terrorist threat or is an inherent symbol of the oppression of women). In the third (Chapters 6 and 7) I assess how these alleged concerns fuel other supposed justifications for anti-veiling laws, namely that the veil undermines foundational societal values or interferes with the rights of other people. Finally, in Chapter 8, I offer some speculative suggestions as to what I believe are the real reasons why states enact laws of this kind, and as to what this means insofar as the balance between majoritarianism and liberalism in various European states is concerned.