

The Washington Times

Wednesday, January 30, 2008

Balancing rights and burqas

Angela Wu

The Netherlands, seeking to address concerns about security and cultural integration, is in the final stages of banning the face-covering burqa in schools and government offices, with a fine of up to 3,350 euros or 12 days in jail. The parliament has passed the ban, which will be discussed at Friday's Cabinet meeting.

What are the implications for religious freedom and the Netherland's human-rights obligations, and how do those concerns line up against other public interests?

The Dutch Cabinet has already rejected a proposal by former Immigration Minister Rita Verdonk and decided that a general public ban on burqas would violate freedom of religion. The Netherlands is bound under international law as a signatory to the International Covenant on Civil and Political Rights (ICCPR) by Article 18's protection of the freedom of thought, conscience and religion. General Comment No. 22 explicating the meaning of Article 18 explicitly states that the "freedom to manifest religion or belief" encompasses the "wearing of distinctive clothing or headcoverings." It is silent on the question of full face-coverings such as the burqa or niqab. A limited ban in schools and government offices would also, of course, impede the ability of the about 50 women who currently wear burqas in the Netherlands to express their religious faith.

In principle, a government has no business telling religious believers what they can and cannot wear solely on the basis of the religious nature of their dress. Telling Muslims, Jews, Sikhs or anybody else who wears a religious head covering that they cannot do so in public spaces is often to dictate their conscience and the acceptability of who they are in the public square.

A reasonable accommodation by government of religious exercise is good for everyone in a free society, and protects religious expression just like other forms of expression. At the same time, just because dress or an action is religious in nature does not offer it complete protection under the law.

Fundamental freedoms and public interests are not absolute, and need to be balanced against one another. General Comment No. 22 recognizes that Article 18.3 "permits restrictions on the freedom to manifest religion or belief only if limitations are... necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others." How that balancing act is accomplished will mean the difference between the ban being seen as addressing legitimate public interests or as mere pretext for discrimination against Muslims.

The banning of religious wear in several states has become a lightning rod issue for the growing Muslim minority in Europe, and the Netherlands need only look at bans in neighboring countries to see how effective legislating this issue will be. The BBC reported that

the police in Belgium "are not too happy with the [burqa] ban," which carries penalties of 150 euros, or eventually, jail. "They say it has made relations with the Moroccan community worse and gives young people a reason to resent society." This sort of resentment — a dissimilation from the larger culture — is exactly what the bans are meant to avoid.

In passing any law that would limit a fundamental freedom, states should take a two-pronged approach. States should ask whether a compelling public interest has been affected, and whether that interest is really in fact threatened. A second question would be whether there are other ways to accomplish the same compelling public interests that would be less burdensome to the fundamental freedoms.

Consistency in enforcement will be key. In 2004, subsequent to a ban on religious symbols in public schools in France, a Strasbourg high school refused to allow Muslim student Cennet Doganay, who traditionally wore a Muslim headscarf, to wear even a baseball cap or bandanna allowed to other students because her use of the cap or bandanna would be for a religious purpose. Miss Doganay eventually shaved her head rather than expose her hair, and was then made to sit alone without instruction in a classroom for months before finally transferring to a school in London.

The school expressed that shaving her head for a medical reason would have been acceptable, but not for the purpose of religious expression. If the ban is selectively enforced only upon people with religious intent, it is not surprising that religious believers would feel marginalized. The school's enforcement of its rules went beyond

forms of public expression and forbade not only the behavior it deemed disruptive but the very conscience behind her actions.

The burqa or naqib is distinguishable from the Muslim headscarf, which only covers a woman's hair and does not present the same security issue as the covering of the face. However, the same analysis in both situations can apply. In schools and government offices, will the Netherlands also ban wearing hats and winter scarves covering the nose and mouth?

The Netherlands stands at an important crossroads as it wrestles with its own identity crisis — a country known for its liberalism and tolerance now faced with how to balance delicate rights in a society increasingly divided. The process of how it does so will matter as much as the resulting legislation.

Angela C. Wu is international legal director at the Becket Fund for Religious Liberty.