Minister Donner as Mufti: New developments in the Dutch ‘burqa debates’

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Following in the footsteps of France and Belgium, on Friday 16 September the Dutch Council of Ministers agreed to prohibit covering the face in public space. Although the headlines already consider it a run race, the draft Bill still needs to be sent to the Council of State, the government’s legal advisory body, before parliament will vote on it. One of the questions the Council of State needs to answer is its compatibility with the Constitution.

This is not the first time an attempt is made to implement a ban on face-veiling in the Netherlands. In December 2005, the Netherlands was the first country in Europe where a parliamentary majority voted in favour of a resolution to ban the burqa (and the niqab) from all public space. Geert Wilders, who tabled the resolution, specifically targeted Muslim women, by proposing a ban of ‘the burqa’ rather than of face-coverings more generally.¹ His main argument was that the burqa is a sign of Muslim women’s oppression and an obstacle to their emancipation. As it turned out, it was not easy to implement such a ban. A commission installed by the then Minister for Integration stated that a general ban of the burqa would be an infringement of the freedom of religion, whereas a general ban of face-coverings would only be possible for reasons of security. However, the police, public transport, and the security sector all stated that face-veiling was not a security issue. The next Center-Left coalition government no longer aimed for a general ban, but instead worked towards a number of functional bans (in education, health, public transport and for civil servants) using the argument of the need for open communication to maintain the rule of law. It only succeeded in implementing the ban for civil servants.

The recent attempts to ‘ban the burqa’ do not come as a surprise. The new Center-Right minority government has concluded an agreement of support with Geert Wilders’ Party for Freedom (PVV). A general ban on face-coverings was not only included in the coalition agreement, but the issue was also taken up in the Memorandum on Integration presented by the Minister of the Interior, Piet Hein Donner, a few months ago. This document officially declared the end of Dutch multicultural society. It considers Dutch society as a community of citizens with a shared language, values and beliefs, that is grounded in a fundamental continuity of values, beliefs, institutions, and habits, which shape ‘the leading culture’, and to which those who settle in the Netherlands need to adapt. Government needs to ‘confront citizens with behaviour that is contrary to notions of cohesion and citizenship’, if necessary through legal obligations. The document then explicitly mentions face-veiling as a cause of discomfort and hence an issue where the legislature needs to act normatively. The intention is to prohibit covering the face in public from 1 January 2013 as a matter of public order.

Commenting on the decision of the Council of Ministers to move forward with the ban, Minister Donner underlined that face-veiling is contrary to the character and customs of public life in the Netherland where we should be able to recognize each others’ faces. This rather ambiguous formulation seems to hint both at the need to be identifiable and to participate in open communication. This raises the question on

¹ The term burqa is highly problematic. It refers to the Afghani style of full covering (with a grid in front of the eyes), which evokes the Taliban regime and women’s oppression. The women who face-veil in the Netherlands usually wear the Arab style niqab, a thin, mostly black piece of cloth that covers the face, but often leaves the eyes uncovered.
which legal grounds this can be demanded from citizens who simply step outside their
door. Moreover, if one were to take this seriously, there is a far wider range of forms
of public presence that could be taken into account, such as wearing sunglasses
(especially reflecting ones that make it impossible to ‘look each other into the eye’) and
the use of iPods, cellphones and similar ‘obstacles to open communication’.
Perhaps Donner was referring to the sense of discomfort or intimidation people may
experience when confronted with someone who wears a face-veil. However, the
actual chance to find oneself in such a situation is rather slim, as, on average, less than
3 in 100,000 people wear a face-veil (100-400 persons in the whole country). And
again, there is a host of other dressing styles and accompanying behaviour that may
cause fear or discomfort. Men in army boots and bomber jackets as well as men in
expensively tailored suits and other forms of power dressing can be quite intimidating
to particular publics. Whereas legislating against such styles of dress, worn by far
larger numbers, would be considered ridiculous (as well as an infringement of the
freedom of expression), women wearing face-veils, an extremely small minority, are
an easy target.

Donner also used two more specific arguments to legitimize a ban of face-
veiling. First, he argues that face-veiling can be considered as contrary to the principle
of equality between men and women as only women are required to don a face-veil.
The intention here seems to be to protect women against gender discrimination.
Resonating strongly with Wilders’ earlier 2005 resolution to ban ‘the burqa’ as a sign
of women’s oppression and an obstacle to their emancipation, this reference to gender
discrimination implies that wearing a face-veil is considered as a form of gender
oppression. However, the women concerned – a considerable number of whom are
Dutch converts - underline that they do so by choice, often to the dismay of their
families. What then are the grounds to consider face-veiling as a form of gender
discrimination the state needs to legislate against? And if it were the case that these
women are pressured to wear a face-veil, on what ethical grounds should the state
then exclude them - the victims – from education, health care, public transport and
public space? It makes, in fact, more sense to consider the ban itself, which
disproportionately affects women, as an infringement of the equality of men and
women. Moreover, if we are to take Donner’s line of argumentation seriously, this
also raises the more general issue of gender difference in dress. Amongst strictly
orthodox Protestants some object to women wearing pants. Does this then mean that
wearing skirts, as a sartorial practice only affecting women, is also an infringement of
the equality of men and women? Should this then also be banned? And what about
secular gendered styles of dress, such as wearing high heels, a potential health and
safety risk, which also mainly women engage in?

But the most remarkable is Donner’s second argument. Whereas Geert
Wilders considers the prohibition of ‘the burqa’ important to stop ‘the Islamization of
Europe’, according to Donner face-veiling is a cultural or regional style of dress,
rather than one related to Islam. Here he follows the French president Sarkozy who in
his speech to parliament in 2009, stated that the burqa is ‘not a sign of religion, it is a
sign of subservience’. Obviously, when face-veiling is only considered as a regional
style, rather than an Islamic practice, banning face-veils can no longer be considered
as an infringement of the constitutional right of the freedom of religion. Whereas it is
true that some Muslims who oppose face-veiling follow a similar line of
argumentation – it is not really an Islamic practice -, there are also Islamic scholars
who support face-veiling. In any case, the face-veiling women themselves strongly
underline that they do so for religious reasons. What matters here is that Donner – a
practicing Protestant – does not simply express his personal opinion about what is Islamic and what is not, but that he does so in the function of Minister of the Interior. Such a form of direct state interference in the substance of a religion goes against the grain of Dutch secularism. It is ironic that a Minister who strongly underlines the importance of the continuity of Dutch values and institutions, produces such a fundamental break with Dutch ways of organizing the relation between the state and religion. In essence, he proposes that the state acts as theologian. A discussion whether face-veiling is or is not an Islamic practice is an internal Muslim affair and should not be a Dutch governmental concern. It is helpful here to go back to 1985 when the municipal council of Alphen aan de Rijn attempted to ban headscarves in public schools using the argument that wearing a headscarf is not a Quranic obligation. In response to parliamentary questions, the then Minister of Education, also a Christian Democrat, stated that it is not up to public authorities to decide about the correct interpretation of the Quran, and the ban was withdrawn. In a similar vein, it also is not the task of the Minister of the Interior to judge whether face-veiling is Islamic or not, unless he wants to claim the position of ‘state mufti’. In that case, it is, however, unlikely that his views will be considered authoritative in the circles of the women concerned.