

Hijab & France: What's Going On?

By Dr Alan Riley, Liberal Democrat Candidate for the European Parliament.

Q: Why have the French Banned the Hijab?

A: Hold on! They've not banned it yet, and if they do, the Hijab will be banned inside but not outside Schools.

The current state of play is that on 10th February by an overwhelming majority the French National Assembly voted to ban the Hijab, along with other obvious religious symbols, such as skull caps and crosses from school pupils when inside French state schools. A similar overwhelming vote in favour of the ban followed in the Senate on 3rd March. However, this is not the end of the affair. The vote was on first reading, there will be further debate and votes and it has to be ultimately approved and signed into law by President Chirac..

Q: So the ban may not be approved?

A: Don't get your hopes up. The French political establishment, left and right supports the ban so it is very likely that President Chirac will sign the ban into law.

Q: What have we ever done to the French? I don't understand why they would want to ban the Hijab. What harm can it do?

A: This is a lot more complicated than it first appears. First the non-cynical view: Like most political problems in Europe this goes back to 1789 and the French Revolution. The Revolution established the principle of separation of Church and State. This has been a very powerful influence on French politics ever since and has led to regular attacks on the Catholic Church culminating in the banning of church schools at the end of the 19th Century and the expulsion of orders of monks and nuns from France by the Jaures government. Incidentally, we have a local example of the impact of French secularism: The monastery Mount St Bernard just outside Leicester was founded by expelled French monks in the early years of the 20th Century. So the French are very sensitive to any religious expression, and in particular when it occurs in the public arena, such as in state schools.

Q: And the cynical view?

A: Ah the cynical view! This is to do with M. Le Pen and the right wing, anti-immigrant National Front. The Chirac government is coming under heavy fire from the far right for being soft on immigrants. The 'moderate right' is also suffering from what we could politely call a credibility problem. The No.2 on the right Alan Juppe has just been convicted of fraud by the French courts. This has reinforced the National Front's argument 'throw them out they are all corrupt'. Banning the Hijab in schools is a way of distracting attention from the corruption stories and hopefully they think it will also reduce support for the National Front.

Q: Surely banning the Hijab would be illegal, even in France?

A: Hmm, Ok this is even more complicated. Sit tight-and here we go:-If the draft legislation is finally adopted it will apply from when the schools re-open next September. At that point it can be legally challenged. Probably the challenge will be through the French system of administrative tribunals to the Conseil D'Etat, the French Supreme Administrative Court. One of the principal arguments is likely to be that the ban is discriminatory. It applies to 'obvious' religion symbols. This could be interpreted by the French authorities to permit small symbols like small crosses and stars of David worn round the neck but not 'large' symbols like the Hijab or the Turban. The legal basis for challenge would Article 9 of the European Convention on Human Rights, which protects freedom of religion and Article 14 which forbids discrimination. The French government is likely to be subject to significant pressure to justify such an interpretation of the law that permits some symbols but not others.

Q: So are there any other arguments that could be used against the ban.

A: Yes, there is another strong discrimination point The French government argues that it needs to ban religious symbols on the grounds of maintaining the principle of secularism. The difficulty with this principle it is one more honoured in the breach than the observance. For example, the French state funds many Catholic Schools albeit indirectly (which incidentally many Hijab wearing Muslims girls attend). Another example is the schools in Alsace because they were part of Germany when the Jaures secularist reforms were introduced at the beginning of the 20th century. The removal of church influence on the schools never took place.

Q: Ok, so are there are any other arguments we can use to protect the Hijab?

A: Yes, through new EU anti-discrimination law. There is a new raft of anti-discrimination laws introduced by the EU. One of the most powerful new anti-discrimination rules relates to the prohibition of race and ethnic discrimination. As it is new legislation it is unclear how it will apply. However, there is strong British and German case law to suggest that race and ethnic origin discrimination rules can protect religious observance, For example, in *Mandla v. Lee*, a school which banned a Sikh from wearing a Turban was found to have infringed discrimination legislation.

Q: So the French are going to get sued a lot and the Hijab is safe in Britain.

A: Yes. And any Hijab ban here would be likely to be illegal under British race relations law.

Further Information on the Legality of the Hijab Ban is available from
Dr Alan Riley on 0115 947 5329 or by e-mail at ajriley@onetel.net.uk