

## Freedom of Religion of Muslims in Finland: Impediments in Legislative and Societal Structures

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### Abstract

Freedom of religion and the right to equality and non-discrimination are significant human and fundamental rights that are currently under-researched in the Finnish context. This article analyses how different legislative and societal structures adversely affect the realisation of positive religious freedom for Muslims in Finland by examining two case studies: freedom of religion among Muslim prisoners, and the impermissibility of headscarves as part of the police uniform. The article argues that although Finnish legislation does not directly limit freedom of religion, it contains structures that hinder the realisation of positive religious freedom for Muslims. These stem from the close relationship between the state and the Evangelical Lutheran Church, and from prejudicial attitudes that manifest together or separately. Such structures may lead to an unequal position for Muslims compared to Christians in society, and can constitute discrimination.

**Key words:** equality and non-discrimination, Finland, freedom of religion, law, Muslims, state church

## Introduction

Muslims throughout Europe, including in Finland, experience hate speech, hate crimes, discrimination, and limitations on their freedom of religion. Limitations on the religious freedom of Muslims are numerous, and include restrictions to women's clothing, religious slaughter, and the building and operation of mosques.<sup>1</sup> The situation of Muslims in Europe has given rise to an abundance of academic literature, including from a legal perspective,<sup>2</sup> and according to the Pew Research Center, limitations on freedom of religion in Europe increased between 2007 and 2017.<sup>3</sup> To date, however, there have been few studies on Finland's position in this respect.

This article uses case studies to analyse structures in Finnish legislation and society that impede the realisation of Muslims' freedom of religion and the right to non-discrimination, two significant human and fundamental rights. The first case study examines the ability of Muslim prisoners to practice their religion while incarcerated, and discusses contributing factors. The second analyses police arguments for why hijabs (i.e., headscarves that leave the face visible) and other religious attire cannot be worn as part of the police uniform. Although human rights issues faced by Muslims in Finland are broader than these examples, the case studies were chosen because they reveal the diverse nature of where, when, and why Muslims experience difficulties practicing their religion.

The article argues that although Finnish legislation does not directly limit the practice of religion, it does not always allow full realisation of religious freedom. The reasons for this can be traced back to the Finnish state church system and the strong legislative and societal position of the Evangelical Lutheran Church of Finland, and, to a slightly lesser extent, the Orthodox Church of Finland. In addition, prejudicial attitudes and understandings of Muslims and Islam adversely affect the position of Muslims in Finland in concrete ways.

After a brief explanation of freedom of religion and non-discrimination in section two, section three explains Finland's religious demographics, and analyses the position of the two main Churches in law and society, as well as the situation of minority religions. This section also discusses the culturalisation of Christianity,

1 See: Equinet European Network of Equality Bodies, *Faith in Equality: Religion and Belief in Europe* (Brussels: Equinet, 2017), pp. 30-38, 82-93, 104-107; and Stefano Allievi, *Conflicts over Mosques in Europe: Policy Issues and Trends* (London: Alliance Publishing Trust, 2009).

2 See, e.g.: Eva Brems (ed.), *The Experiences of Face Veil Wearers in Europe and the Law* (Cambridge: Cambridge University Press, 2014); Anastasia Vakulenko, *Islamic Veiling in Legal Discourse* (Oxon: Routledge, 2012); and W. Cole Durham, Jr et al. *Islam, Europe and Emerging Legal Issues* (Surrey: Ashgate Publishing Limited, 2012).

3 Pew Research Center, *A Closer Look at How Religious Restrictions Have Risen Around the World* (Pew Research Center, 2019), pp. 19-22.

and how this has manifested in Europe generally, and Finland specifically. Culturalisation occurs when symbols and customs with a religious origin are regarded as cultural and non-religious.<sup>4</sup> This usually occurs with majoritarian symbols, which has implications for minority religions and their symbols.<sup>5</sup> The concept of neutrality, which has been used in Europe to ban the use of religious attire, especially that of Muslims, will also be analysed. Certain understandings of neutrality give Christians an advantageous position at the expense of members of minority religions. The two case studies are presented in section four.

## Freedom of Religion and Non-Discrimination

States have both negative and positive obligations toward human and fundamental rights: they must refrain from unjustifiably limiting them, but must also take active measures toward their full realisation.<sup>6</sup> Religious freedom is one of the oldest human rights,<sup>7</sup> and is closely connected to autonomy and human dignity.<sup>8</sup> The list of basic rights and liberties in the current Constitution of Finland, which came into force in 2000, is inspired by international human rights conventions, and largely resembles the wording of regional and international human rights conventions, such as the European Convention on Human Rights (ECHR) and the United Nations International Convention on Civil and Political Rights (ICCPR). According to section 11 of the Constitution of Finland,

Everyone has the freedom of religion and conscience.

Freedom of religion and conscience entails the right to profess and practice religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.

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4 Teemu Taira and Lori G. Beaman, "Majoritarian Religion, Cultural Justification and Nonreligion", *Temenos - Nordic Journal of Comparative Religion*, 58:2 (2022), pp. 194-195.

5 Taira and Beaman, "Majoritarian Religion, Cultural Justification and Nonreligion", pp. 208-209.

6 On positive and negative obligations, see e.g.: Dinah Shelton and Ariel Gould, "Positive and Negative Obligations", in *The Oxford Handbook of International Human Rights Law*, Dinah Shelton (ed.) (Oxford: Oxford University Press, 2013), pp. 562-584.

7 B.P. Vermeulen, "The Freedom of Religion in Article 9 of the European Convention on Human Rights: Historical Roots and Today's Dilemmas" in *Freedom of Religion*, A. Van de BEEK, Eduardos van der Borght, and Bernardus Vermeulen, (eds.) (Leiden: Brill, 2010), pp. 9-10, 11.

8 Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford: Oxford University Press, 2001), pp. 29-32; Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, "The Right to Religious Freedom and World Public Order: The Emerging Norm of Nondiscrimination", *Michigan Law Review*, 74:5 (1976), p. 873; and United Nations General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684, 19 November 1981.

The second subsection sets out the content of religious freedom, and encompasses both its positive and negative forms. Positive religious freedom, which is the focus of this article, is defined in the first sentence, and refers to the active side of the right. Negative religious freedom includes the rights to decline to be a member of a religious community, and to not participate in the practice of religion.<sup>9</sup> The practice of religion includes performing ritual and ceremonial acts, building places of worship, wearing specific symbols and clothes, observing religious holidays and diets, and praying.<sup>10</sup> It is therefore not only personal, but also communal: some acts, such as congregational prayer, are only actualised within a community.

Religious freedom, like most human rights, is not absolute. The Finnish Constitution, unlike the ECHR and the ICCPR, does not include a limitation clause.<sup>11</sup> According to the ECHR,

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The limitation clause of Article 18 of the ICCPR is similar. Simply put, in order for the practice of religion to be limited, the limitation must pursue a legitimate aim and be 'necessary in a democratic society'.

The right to equality and non-discrimination is closely connected to freedom of religion, and limitations on religious freedom can simultaneously constitute discrimination. Discrimination can have severe effects on the enjoyment of other human rights, such as freedom of religion.<sup>12</sup> There are different forms of discrimination: direct discrimination means that "one person is treated less favourably than another" in a comparable situation based on a forbidden ground of discrimination, such as religion, race, or ethnic origin.<sup>13</sup> It "can also occur when two persons in different situations are treated in the same way".<sup>14</sup> Indirect discrimination means that seemingly "neutral laws, policies or practices *de facto*

9 For religious freedom at a general level, see, e.g.: Evans, *Freedom of Religion and the European Convention on Human Rights*; and Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge: Cambridge University Press, 2005).

10 United Nations Human Rights Committee, *General Comment No. 22 (48) on Article 18, Freedom of Thought, Conscience and Religion*, CCPR/C/21/Rev.1/Add.4, 30 July 1993.

11 This does not mean that religious freedom is unlimitable in Finland, but the doctrine for limiting fundamental rights has been developed by the Constitutional Law Committee. See: Perustuslakivaliokunta, *PeLV 25/1993 vp*, p. 5.

12 See, e.g.: United Nations General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Art. 2(2).

13 Tuomas Ojanen, "Equality and Non-discrimination in Human Rights Treaties and Nordic Constitutions", *Scandinavian Studies in Law*, 68 (2022), pp. 101-102.

14 Ojanen, "Equality and Non-discrimination in Human Rights Treaties and Nordic Constitutions", p. 102 and European Court of Human Rights, *Thlimmenos v. Greece*, no. 34369/97, 6 April 2000, para. 44.

disadvantage a person or a group sharing the same characteristics".<sup>15</sup> International human rights law also recognises intersectional and multiple discrimination, whereby a person is discriminated against on two or more grounds (such as religion and gender, as in hijab bans).<sup>16</sup>

From a legal perspective, the most complex forms of discrimination are institutional and structural. These can be defined in many ways, but in the context of this article they refer to institutional policies, rules, or practices that create obstacles to the true enjoyment of equality.<sup>17</sup> Examples include workplace dress codes that place more of a burden on members of religious minorities, or strict city planning policies that prevent religious minorities from constructing places of worship. As Makkonen points out, however, because discrimination law usually requires a specific situation involving a victim and a perpetrator (or multiple ones), there are limitations on how the law recognises structural and institutional discrimination. This approach can easily obscure instances of structural and institutional discrimination.<sup>18</sup> Both case studies discussed in this article include elements of institutional or structural discrimination that affect the Muslim community in Finland and the realisation of its religious freedom.

## Religion, State, and Church in Finland

### *Muslims in Finland*

Because religion is not a factor in Finland's census, there is no accurate data on the number of people who profess a religion. Statistics Finland (*Tilastokeskus*), however, has a database for the number of people who belong to religious communities: in 2020, 3,805,908 people belonged to mainstream Christian communities, 16,495 to the Jehovah's Witnesses; 20,876 to Islamic communities, and 1,079 to Jewish communities. A total of 1,696,899 did not belong to any community.<sup>19</sup> These figures are not comprehensive, as most Muslims, for example, do not officially belong to a religious community, but the Pew Research Center claims they number approximately

15 Ojanen, "Equality and Non-discrimination in Human Rights Treaties and Nordic Constitutions", p. 102.

16 See Ojanen, "Equality and Non-discrimination in Human Rights Treaties and Nordic Constitutions", p. 103.

17 This definition is derived from Makkonen's. See: Makkonen, *Equal in Law, Unequal in Fact: Racial and Ethnic Discrimination and the Legal Response Thereto in Europe* (Leiden: Brill, 2012), pp. 36-38. See also Fred L. Pincus, "Discrimination Comes in Many Forms: Individual, Institutional, and Structural." *American Behavioral Scientist*, 40:2 (1996), pp. 186-194.

18 Makkonen, *Equal in Law, Unequal in Fact: Racial and Ethnic Discrimination and the Legal Response Thereto in Europe*, pp. 35-36.

19 Statistics Finland, "11rx -- Belonging to a religious community by age and sex, 1990-2021", [https://pxdata.stat.fi/PxWeb/pxweb/en/StatFin/StatFin\\_vaerak/statfin\\_vaerak\\_pxt\\_11rx.px/table/tableViewLayout1](https://pxdata.stat.fi/PxWeb/pxweb/en/StatFin/StatFin_vaerak/statfin_vaerak_pxt_11rx.px/table/tableViewLayout1), accessed 25 December 2022.

70,000 in Finland.<sup>20</sup> Not all Muslims practice their religion the same way, however, so limiting the positive religious freedom of the group will affect individuals differently.

The first Muslims in Finland were the Tatars, who came from Russia to Finland at the end of the 19<sup>th</sup> century, as migrants and refugees.<sup>21</sup> The Tatars founded the first Islamic association in 1915, and the first Islamic congregation in 1925.<sup>22</sup> In 1920 there were around 200 Muslims in Finland, and by the 1970s that number had risen to approximately 2,000.<sup>23</sup> It increased further in the 1990s with a rise in immigration.<sup>24</sup> Today, Finland's Muslim population is diverse, and includes Afghans, Arabs, Bosnians, Kosovo Albanians, Kurds, Somalis, Tatars, Turks, and converts.<sup>25</sup>

International and national surveys and reports show that Muslims in Finland experience discrimination,<sup>26</sup> hate speech,<sup>27</sup> hate crimes,<sup>28</sup> and hostile or negative attitudes.<sup>29</sup> Further, according to the Pew Research Center, 62 percent of Finnish respondents agreed with the statement "Islam is fundamentally incompatible with [their country's] culture and values," which was the largest percentage among Western European countries.<sup>30</sup>

### *The Church in Legislation and Society*

Finland can be said to have a state church,<sup>31</sup> even though it is not a confessional state.<sup>32</sup> According to the Constitution of Finland, "provisions for the organisation and administration of the Evangelical Lutheran Church are laid down in the

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20 Pew Research Center, "Religious Composition by Country, 2010-2050", <https://www.pewresearch.org/religion/2015/04/02/religious-projection-table/>, accessed 23 February 2023.

21 Antero Leitzinger, "Tataarit Suomessa", in *Muslimit Suomessa*, Heikki Pesonen and Tuula Sakaranaho (eds.) (Helsinki: Yliopistopaino, 1999), pp. 27-28.

22 Leitzinger, "Tataarit Suomessa", p. 28.

23 Antero Leitzinger, "Marginalimuslimit", in *Islam Suomessa: muslimit arjessa, mediassa ja yhteiskunnassa*, Marko Juntunen, Tuomas Martikainen and Tuula Sakaranaho (eds.) (Helsinki: Suomalaisen Kirjallisuuden Seura, 2008), pp. 91, 101.

24 Tuomas Martikainen, "Muslimit suomalaisessa yhteiskunnassa", in *Islam Suomessa: muslimit arjessa, mediassa ja yhteiskunnassa*, Marko Juntunen, Tuomas Martikainen and Tuula Sakaranaho (eds.), p. 65.

25 Teemu Pauha and Martikainen Tuomas, "Finland" in *Yearbook of Muslims in Europe*, Volume 6, Jørgen S. Nielsen et al. (eds.) (Leiden: Brill, 2014), p. 218; and Teemu Pauha, "Finland" in *Yearbook of Muslims in Europe*, Volume 7, Oliver Scharbrodt et al. (eds.) (Leiden: Brill, 2016), p. 222.

26 European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey: Muslims: Selected Findings* (Luxembourg: Publications Offices of the European Union, 2017)

27 Oikeusministeriö, "Että puuttuataisiin konkreettisesti": *Seurantaselvitys vihapuheesta ja häirinnästä ja niiden vaikuttuksista eri vähemmistöryhmien*, (Helsinki: Oikeusministeriö, 2022), pp. 123-139.

28 Jenita Rauta, *Polisiin tietoon tulleet viharikollisuus Suomessa 2022* (Tampere, Poliisiammattikorkeakoulu 2023)

29 European Commission, *Special Eurobarometer 493, Discrimination in the European Union, Finland*, (European Commission, 2019), QC4.

30 Pew Research Center, *Being Christian in Western Europe* (Pew Research Center, 2018), p. 66.

31 Titus Hjelm, "One Volk, One Church? A Critique of the "Folk Church" Ideology in Finland", *Journal of Church and State*, 62:2 (2020), pp. 294-315.

32 See: Perustuslakivaliokunta, *PeVL 12/1982 vp*, p. 2 and Matti Kotiranta, "Religion and the Secular State in Finland" in *Religion and the Secular State: National Reports*, Donlu D. Thayer (ed.) (Madrid: Publishing Service of Complutense University Law School, 2015), pp. 296, 298.

Church Act".<sup>33</sup> Although technically enacted by the Finnish parliament, the Church has a monopoly over the Act's content; parliament can only approve or reject it.<sup>34</sup> The Church Act (*kirkkolaki*) defines the organisational structure and administration of the Church (chapter 2, section 1); and its confession and mission (chapter 2, section 1). There is similarly an Act on the Orthodox Church (*laki ortodoksisesta kirkosta*). Consequently, both Churches, particularly the former, have a strong relationship with the state. The two corresponding religious communities are bodies governed by public law, while other religious communities are considered private, and governed by the Act on Religious Freedom (*uskonnonvapauslaki*).<sup>35</sup> It has been argued that this creates "two classes of religious communities" in Finland: the privileged Lutheran and Orthodox Churches with their own legislation, and the rest.<sup>36</sup>

The strong position of the two Churches in Finnish society is evident in their public roles. The Evangelical Lutheran Church is responsible for many public affairs, for which it receives funding from the state.<sup>37</sup> These responsibilities include the upkeep of public cemeteries,<sup>38</sup> and tasks related to maintenance of the population register and of buildings and chattels with cultural and historical value.<sup>39</sup> The two state churches can collect taxes from their members,<sup>40</sup> while other religious groups cannot. In addition, the Orthodox Church is entitled to an annual appropriation of funds for reasonable operating costs.<sup>41</sup> Registered religious communities, on the other hand, are only entitled to discretionary government grants, which are calculated according to the number of members. The grants aim to "promote the realisation of religious freedom by improving the opportunities for registered religious communities to manifest and practice their religion".<sup>42</sup> Although an important part of the state's positive obligations in this respect, the funds are not substantial, and their membership-based distribution means that smaller communities benefit minimally. Most religious communities therefore fund their activities through donations and membership fees.

33 The Constitution of Finland (731/1999), section 76.

34 The Constitution of Finland, section 76; and *kirkkolaki* (652/2023), chapter 1, section 5.

35 Hallituksen esitys 19/2019 vp, p 5.

36 Hjelm, "One Volk, One Church? A Critique of the "Folk Church" Ideology in Finland", p. 306 and Mika Nokelainen, *Vähemmistövaltiokirkon synty: Ortodoksisen kirkkokunnan ja valtion suhteiden muotoutuminen Suomessa, 1917–1922* (Helsinki: Suomen kirkkohistoriallinen seura, 2010), pp. 242, 248.

37 Laki valtion rahoituksesta evankelis-luterilaiselle kirkolle eräisiin yhteiskunnallisiin tehtäviin (430/2015), section 1.

38 Hautaustoimilaki (457/2003), section 3.

39 *Kirkkolaki* (652/2023), chapter 5, section 9.

40 *Kirkkolaki* (652/2023), chapter 6, section 2; and: *laki ortodoksisesta kirkosta* (985/2006), section 77.

41 *Laki ortodoksisesta kirkosta*, section 119.2.

42 Opetus- ja kulttuuriministeriö "Yleisavustus rekisteröityjen uskonnollisten yhdyskuntien toimintaan", <https://okm.fi/-/rekisteroityjen-uskonnollisten-yhdyskuntien-toiminta>, accessed 7 February 2023. Author's translation.

The strong position of the Church(es) is also visible in the composition of some authorities. Employees of the Lutheran Church are usually public officials, and their chaplains work in secular institutions, such as the army, hospitals, and prisons.<sup>43</sup> Prison chaplains are paid by the Prison and Probation Service of Finland (*Rikosseuraamuslaitos*), which is responsible for the enforcement of sentences, and part-time prison deacons are paid by the Church.<sup>44</sup> Other religious groups working in prisons are liable for their own costs, and require approval from the prison managers to carry out their work.<sup>45</sup> This can have a negative impact on the ability of prisoners to practice their religion, and will be discussed in section 4.1.

The state church is not against freedom of religion *per se*, if “the state permits other religions alongside the official one and does not exercise direct or indirect coercion to join” it.<sup>46</sup> Yet it may cause issues from the perspective of non-discrimination, as its members often enjoy privileges denied to members of minority religious groups.<sup>47</sup> Similarly, freedom of religion may be at risk if there is a significant gap between the positions of the official state church and minority religions.<sup>48</sup> This seems to be the case in Finland, as will be discussed in this article.

### *Christianity as Culture, and its Implications*

The privileged status of the Lutheran Church in particular is visible not only in Finland’s legislation, but also in its societal culture. The Finnish flag features a cross, and national holidays are organised around those of the church. This privileged status can lead to culturalisation, which Taira and Beaman define as the “process by which practices, symbols, and groups that have previously been considered religious become classified as cultural or part of [a] heritage”.<sup>49</sup> This process usually favours majoritarian (Christian, in the Finnish context) symbols and practices.<sup>50</sup> This was apparent in *Lautsi v. Italy* at the European Court of

43 See Evangelical Lutheran Church of Finland, “Pastoral care of the sick”, <https://evl.fi/en/our-faith/worship-and-life-events/pastoral-care-of-the-sick/> and “Military chaplaincy”, <https://evl.fi/en/our-work/church-and-state/military-chaplaincy/>, accessed 1 February 2024.

44 Kirkkokohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä* (Helsinki: Unigrafia, 2015), p. 17.

45 Kirkkokohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 18.

46 Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N. P. Engel, 1993), p. 317; and European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights* (Council of Europe, 2022), section 160.

47 Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, p. 317. See also: United Nations Human Rights Committee, *General Comment No. 22 (48) on Article 18, Freedom of Thought, Conscience and Religion*, section 9.

48 Silvio Ferrari, “Islam and the Western European Model of Church and State Relations” in *Religious Freedom and the Neutrality of the State: The Position of Islam in the European Union*, W. A. R. Shadid and P. Sj. van Koningsveld (eds.) (Leuven: Peeters, 2002), p. 12.

49 Taira and Beaman, “Majoritarian Religion, Cultural Justification and Nonreligion”, p. 194.

50 See: Taira and Beaman, “Majoritarian Religion, Cultural Justification and Nonreligion”, pp. 208-209.

Human Rights (ECtHR), in which it was concluded that a compulsory crucifix on a classroom wall did not contravene the European Convention on Human Rights. The Court did not explicitly discuss the role of culture in the decision, but, according to Italy, a cross

[...] could be perceived not only as a religious symbol, but also as a cultural and identity-linked symbol, the symbol of the principles and values which formed the basis of democracy and western civilisation; it appeared, for instance, on the flags of a number of European countries.<sup>51</sup>

Christian buildings are also often culturalised: according to Green, church towers, for example, have been accepted as part of European secular identity.<sup>52</sup> Even though they are clearly religious constructions, and therefore not secular, they are seen as “compatible with modern secular values and ideas”.<sup>53</sup> They are “natural” and seen as part of European history and culture,<sup>54</sup> like, as Ringmar asserts, the ringing of their bells.<sup>55</sup> This is not the case for structures associated with the practice of Islam, such as mosques and minarets, which are perceived to represent a religion that is “foreign, oppressive, and inherently incapable of respecting the Western values embodied in a secular political state.”<sup>56</sup>

In Finland, Taira and Beaman have discussed culturalisation in relation to the debate surrounding the Summer Hymn (*Suvivarsi*), which contains references to God, the Lord, and Jesus Christ,<sup>57</sup> and is frequently sung at schools during end-of-year celebrations. In 2013, the Finnish Parliamentary Deputy Ombudsman (*apulaisoikeusasiames*)<sup>58</sup> put forward a resolution stating that singing the hymn did not make an event religious, as it was not a highly religious piece of music. Additionally, because the Summer Hymn is “firmly rooted in the Finnish tradition and is a traditional part of end-of-year celebrations”, its singing did not cause issues from the perspective of negative freedom of religion.<sup>59</sup>

51 European Court of Human Rights, *Lautsi and Others v. Italy* [GC], no. 30814/06, 18 March 2011, section 37.

52 Todd H. Green, “The Resistance to Minarets in Europe”, *Journal of Church and State*, 52:4 (2010), pp. 621-622, 630.

53 Green, “The Resistance to Minarets in Europe”, p. 631.

54 Green, “The Resistance to Minarets in Europe”, p. 630.

55 Erik Ringmar, “Muslim Calls to Prayer in the Swedish Welfare State”, *The Review of Faith & International Affairs*, 17:1 (2019), p. 106.

56 Green, “The Resistance to Minarets in Europe”, p. 622.

57 Suomen Ev. Lut. Kirkko, “517 Jo joutui armas aika”, <https://virskirja.fi/virsi-517-jo-joutui-armas-aika/>, accessed 24 February 2023.

58 According to section 109 of the Constitution of Finland, the Parliamentary Ombudsman (*oikeusasiames*) “shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights”.

59 Apulaisoikeusasiames, *Dnro 2488/4/13: Suvivarsi koulujen kevätjuhlassa*. Author’s translation.

Another example concerns compulsory school events in churches. In 2019, the Deputy Ombudsman concluded that because churches were designed to host religious services they had intrinsic religious significance, and holding compulsory school events in them was therefore problematic for reasons of equality, religious freedom, and state neutrality.<sup>60</sup> Two years later, the Constitutional Law Committee (*perustuslakivaliokunta*)<sup>61</sup> declared that conducting a school event in a church did not make the event religious, and was therefore not unconstitutional as such.<sup>62</sup> According to Taira and Beaman, this makes churches “sufficiently neutral cultural spaces”.<sup>63</sup> The public discussion in this case was framed around whether a church building was religious or cultural.<sup>64</sup> I argue that it can be both, like the compulsory crucifix on the wall.<sup>65</sup> Deeming a religious symbol or building ‘cultural’, however, does not remove the issues caused for (negative) freedom of religion.

These examples show how some matters related to Christianity have been made part of the national culture, and therefore become non-religious. In Finland, this applies solely to Christianity: it is unlikely that schools would hold a Christmas celebration in an Islamic prayer room, synagogue, or Sikh temple, or that these premises would be declared non-religious. According to Taira and Beaman, this type of culturalisation affects non-religious people and religious minorities, especially the former, when they wish to assert their own belonging in the majoritarian culture.<sup>66</sup> Similarly, if essentially religious practices<sup>67</sup> are reduced to culture, it may be difficult to oppose them on the basis of human rights and (negative) freedom of religion.

The church example touches on the idea of neutrality. In conjunction with secularism and gender equality, neutrality has frequently been used as an argument for banning Muslim women’s headscarves in public institutions.<sup>68</sup> In *Lautsi v. Italy*, the ECtHR concluded that, given the requirement of neutrality, a compulsory crucifix in Italian schools was essentially a “passive symbol”.<sup>69</sup> In *Dahlab v. Switzerland*, however,

60 Apulaisoikeusasiomies, *EOAK/2186/2018: Koulujen uskonnolliset juhlat ym.*, p. 7.

61 According to section 74 of the Constitution of Finland “the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties”. Its statements are treated as binding. See: Tuomas Ojanen “From Constitutional Periphery toward the Center: Transformations of Judicial Review in Finland”, *Nordic Journal of Human Rights*, 27:2 (2009), p. 196.

62 Perustuslakivaliokunta, *PeVM 16/2021 vp*, section 23.

63 Taira and Beaman, “Majoritarian Religion, Cultural Justification and Nonreligion”, p. 204.

64 Taira and Beaman, “Majoritarian Religion, Cultural Justification and Nonreligion”, pp. 203-204.

65 On the cultural significance of the crucifix, see: Susanna Mancini, “The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence”, *Cardozo Law Review*, 30:6 (2008-2009), p. 2634.

66 Taira and Beaman, “Majoritarian Religion, Cultural Justification and Nonreligion”, p. 195, 204-205, 206-210.

67 According to the Lutheran Church, hymns are prayers. See: Apulaisoikeusasiomies, *Dnro 2488/4/13: Suvivarsi koulujen kevätjuhlissa*.

68 See, e.g.: Hilal Elver, *The Headscarf Controversy: Secularism and Freedom of Religion* (Oxford: Oxford University Press, 2012) and Vakulenko, *Islamic Veiling in Legal Discourse*.

69 European Court of Human Rights, *Lautsi and Others v. Italy* [GC], sections 72 and 73.

the same court considered a headscarf worn by a teacher a “powerful symbol” with potentially indoctrinating capacity, and banning it in Swiss schools was deemed appropriate to preserve the denominational neutrality of the school.<sup>70</sup> In *Ebrahimian v. France* the Court argued that a hospital employee could be prohibited from wearing a headscarf “in order to guarantee equality of treatment” for her patients, and to ensure that those patients could not “harbour any doubts as to the impartiality of those treating them”.<sup>71</sup> This illustrates how Christian symbols are regarded as the norm, while Islamic symbols are regarded as something else. More importantly, it shows that the latter are considered to have negative effects on those who view them, such as the indoctrination of vulnerable pupils or doubts about whether a person wearing a headscarf treats others equally. As Temperman points out, however, a cross on the wall is not considered to have such an effect,<sup>72</sup> which makes the issue less about religion generally, and more about Islam and the negative connotations attached to it.

This argument is problematic from two perspectives. First, it has consequences in the lived experience of Muslim women: both Ms. Dahlab and Ms. Ebrahimian lost their jobs because they wore headscarves to work. Second, it is theoretically problematic, as will be discussed below.

Smet explains that when used to define a state’s relationship to religion, neutrality refers to, for example, the state being neutral between religions: it should “refrain from endorsing a particular religious outlook”, and thereby avoid discriminating between people.<sup>73</sup> State officials should also be neutral: they should not treat people differently.<sup>74</sup> Neutrality and secularity can, however, be conflated, resulting in the belief that if something is secular it must also be neutral;<sup>75</sup> i.e., if religion is removed, what remains is necessarily neutral. This, however, just makes the space irreligious. Even though religion is not neutral,<sup>76</sup>

70 European Court of Human Rights, *Dahlab v. Switzerland* (dec.), no. 42393/98, 15 February 2001.

71 European Court of Human Rights, *Ebrahimian v France*, no. 64846/11, 26 November 2015, section 64.

72 Jeroen Temperman, “Religious Symbols in the Public School Classroom”, in *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*, Jeroen Temperman (ed.) (Leiden/Boston: BRILL/Martinus Nijhoff, 2012), p. 154.

73 Stijn Smet, “Freedom of Religion v. Freedom from Religion: HYPERLINK “<https://brill.com/display/book/edcoll/9789004222519/B9789004222519-s007.xml>” Putting Religious Dictates of Conscience (Back) on the Map”, in *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*, Jeroen Temperman (ed.) (Leiden: Martinus Nijhoff Publishers, 2012), pp. 117-118; and Martha Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (New York: Basic Books, 2008), p. 20.

74 Smet, “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, p. 130.

75 Smet “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, p. 127; and Wouter de Been, “The Quest for Neutrality and the Stench of History”, in *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*, Jeroen Temperman (ed.), p. 182.

76 Hana M.A.E. van Ooijen, *Religious Symbols in Public Functions: Unveiling State Neutrality. A Comparative Analysis of Dutch, English and French Justifications for Limiting the Freedom of Public Officials to Display Religious Symbols*, Dissertation (Utrecht: Utrecht University, 2012), p. 83.

neither is irreligiousness. Going back to the Finnish example, a church is a religious building by default, and can never be secular. Even if a church or hymn is considered part of (in this case Finnish) culture, its religious dimension is not removed; similarly, holding a non-religious event in a church does not make the space neutral or secular. Similarly, not allowing a police officer to follow a religious dress code, which will be discussed in section 4.2, does not make the police officer any more neutral than one following a religious dress code.

Pierik and van der Burk distinguish between exclusive and inclusive neutrality. In the former, “the state should be completely blind to religious and cultural differences” and all related expressions “should be excluded from the public sphere”.<sup>77</sup> Smet calls this closed neutrality, and it targets, or even penalises, minority religious symbols,<sup>78</sup> especially those related to Islam and Muslims because they are more visible than Christian symbols, such as a crucifix pendant on a necklace for example.<sup>79</sup> Inclusive neutrality is closer to the general understanding of neutrality outlined above: Pierik and van der Burk understand it to mean that “the state should not unfairly privilege or discriminate against some religions or views of life”, and that religious differences should be accommodated.<sup>80</sup> Smet argues that this type of open neutrality is based on equality.<sup>81</sup>

Smet further explains that state officials are required to be neutral in the sense that they should not discriminate between people, and because “clothes cannot discriminate”, attention should be paid to their actual behaviour.<sup>82</sup> Arguing that a civil servant cannot treat others equally because of a headscarf, or that if worn by a teacher a headscarf will in some way affect pupils, attaches deeply prejudicial meanings to an article of clothing. As the headscarf itself cannot discriminate, its removal should not have any effect on the person interacting with the civil servant. The issue is therefore more about discriminatory assumptions attached to the headscarf and the person wearing it, and such attitudes on the part of those interacting with civil servants

<sup>77</sup> Roland Pierik and Wibren van der Burg, “The Neutral State and the Mandatory Crucifix”, *Religion & Human Rights*, 6:3 (2011), p. 268.

<sup>78</sup> Using the term ‘religious symbol’ to describe a religious dress code (like the headscarf) is problematic, because the symbolism is often created by outside viewers. See: Jogchum Vrielink, “Symptomatic Symbolism: Banning the Face Veil ‘As a Symbol’”, in *The Experiences of Face Veil Wearers in Europe and the Law*, Eva Brems (ed.) (Cambridge: Cambridge University Press, 2014), p. 190. The same applies to the term ‘insignia’. Because ‘religious symbol’ is often used in academic and other literature to describe headscarves and other forms of clothing related to religion, however, I use the term when analysing such literature. In other cases, I use ‘religious dress code’.

<sup>79</sup> Smet, “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, pp. 127-129. See also Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality*, pp. 118-119.

<sup>80</sup> Pierik and van der Burg, “The Neutral State and the Mandatory Crucifix”, p. 268.

<sup>81</sup> Smet, “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, p. 134.

<sup>82</sup> Smet, “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, p. 130.

should not be a valid reason to limit an individual's human and fundamental rights. Furthermore, there is a right in international human rights law, in principle, to wear religious symbols, but there is no right *not* to see them.

As states are obliged not only to not breach human rights, but also to actively promote them, they should endorse an understanding of neutrality that aims for the fullest realisation of individual human rights. The model of neutrality that best supports this is inclusive or open neutrality. The strong position of Christianity in Finnish legislation and society makes it necessary to pay extra attention to the rights of people belonging to minority religious groups.

## Structures that Affect Freedom of Religion of Muslims in Finland

### *Religious Freedom among Muslim Prisoners*

The religious freedom of Muslim prisoners in Finland has not been researched as such, nor has it attracted much scholarly or societal attention, with a few exceptions that will be discussed in the following text. Surveys or research that included Muslim prisoners were largely conducted in the context of violent extremism and radicalisation.<sup>83</sup>

Issues related to the practice of religion are regulated by the Finnish Imprisonment Act, which states that religious events

“shall be arranged in a prison in accordance with the prisoners’ needs. Prisoners shall be given a possibility to meet a pastoral counsellor or another representative of their own religion. Prisons shall have premises suitable for the practice of religion”.<sup>84</sup>

Because the fundamental and human rights of prisoners are already severely restricted, states have a heightened positive obligation to guarantee them.

As mentioned, Finnish prisons typically have an Evangelical Lutheran prison chaplain paid by the state, but other religious representatives generally work voluntarily.<sup>85</sup> This puts other religious groups in prisons at a disadvantage,

<sup>83</sup> See: Leena Malkki and Juha Saarinen, *Jihadistinen liikehdintä Suomessa* (Helsinki: Sisäministeriö, 2019), Ministry of the Interior, *National Action Plan for the Prevention of Violent Radicalisation and Extremism 2019–2023. Government Resolution 19 December 2019* (Helsinki: Ministry of the Interior, 2020); Rikosseuraamuslaitos, *Etelä-Suomen rikosseuraamusalueen projektin väkivaltaisen ekstremismin ja radikalisoitumisen tunnistamiseksi* (Rikosseuraamuslaitos, 2017); and Markus Himanen and Karin Creutz, “Turvattomuuden tuotanto? Muslimit ekstremismin torjunnan ja valikoivan kontrollin kohteina”, in *Suomalaiset muslimit*, Teemu Pauha and Johanna Konttori (eds.) (Tallinna: Gaudeamus, 2022).

<sup>84</sup> The Imprisonment Act (767/2005) chapter 11, section 3.

<sup>85</sup> Kirkkokohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 71.

because if an imam (for example) has a day job, he might not be able to visit the prison during office hours.<sup>86</sup> It can also be burdensome for the communities in question: imams are unlikely to be paid for their work, as most Islamic prayer rooms rely on donations and possible government grants. It is problematic that the realisation of a legal obligation, especially when it concerns prisoners who cannot influence their current circumstances, is left to volunteers when it concerns minority religions.

In 2015, the National Church Council (*Kirkkohallitus*) published a report on practicing religion in Finnish prisons, which highlights the challenges Muslim prisoners face in this respect. First, it found that Muslim prisoners had difficulty accessing imams. Most Muslim respondents considered visits by Islamic representatives important, and in those prisons where the prisoners actively practiced their religion, the lack of visiting imams affected communal practice of religion.<sup>87</sup> The report further concluded that at that time there were not enough opportunities for communal religious practice (such as Friday prayer), and that the practice of religion was largely private.<sup>88</sup> In some prisons, the potential for communal practice was limited by the small number of Muslim prisoners.<sup>89</sup> Although this report was conducted in 2015, the situation has not improved, and the 2020 Ministry of the Interior report on violent extremism noted that Muslim prisoners faced problems with the realisation of their freedom of religion.<sup>90</sup>

There is a general tendency to discuss the religious freedom of Muslim prisoners in a framework of radicalisation and violent extremism. According to the Prison and Probation Service of Finland's interim report on violent extremism and radicalisation, imams who visit prisons must be regular visitors, and "familiar" with the Prison and Probation Service.<sup>91</sup> According to the Ministry of the Interior, "[t]he challenge is to ensure that the imams visiting prisons are mainstream Muslims and do not spread an interpretation urging violence".<sup>92</sup> It is, however, essential that the authorities are careful not to treat Muslim prisoners and imams as a threat because

<sup>86</sup> Kirkkohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 71.

<sup>87</sup> Kirkkohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 54.

<sup>88</sup> Kirkkohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 55.

<sup>89</sup> Kirkkohallitus, *Uskonniharjoittaminen vankiloissa. Selvitys uskonniharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 54.

<sup>90</sup> Ministry of the Interior, *National Action Plan for the Prevention of Violent Radicalisation and Extremism 2019–2023. Government Resolution 19 December 2019*, p. 62.

<sup>91</sup> Rikosseuraamuslaitos, *Etelä-Suomen rikosseuraamusalueen projektin väkivaltaisen ekstremismiin ja radikalisoitumisen tunnistamiseksi*, p. 7.

<sup>92</sup> Ministry of the Interior, *National Action Plan for the Prevention of Violent Radicalisation and Extremism 2019–2023. Government Resolution 19 December 2019*, p. 62.

of their religion; nor should the authorities impose prohibitive criteria for prison imams, or select only those who they themselves prefer.

Discussing Muslim prisoners mainly from the perspective of radicalisation and violent extremism can lead to a discourse of securitisation, which has been discussed in the Finnish context by Himanen and Creutz. In research done by Creutz, Muslim prisoners were interviewed about their experiences of radicalization prevention in prisons.<sup>93</sup> The interviews reveal problems in the realisation of religious freedom. Some prisoners downplayed their religiosity or even knew prisoners who had changed their religion to avoid negative repercussions.<sup>94</sup> This is worrying, and suggests a tendency for Muslims to self-restrict their religious freedom for fear of the consequences. This is in line with a recent survey on hate speech in Finland, where 30 percent of respondents said that it affected their practice of religion.<sup>95</sup> The interviews also imply that prisoners have experienced religious discrimination: all respondents considered that “the visible practice of religion” had (negative) implications for their time in prison.<sup>96</sup>

These experiences are often the result of negative stereotypes about Muslims and Islamic practices. Particularly since 9/11, Islam has been associated with violence and terrorism,<sup>97</sup> and the ‘war on terror’ has led to surveillance of the Muslim community.<sup>98</sup> It has also given rise to stereotypes about Muslims, in which the more they practice their faith, the more dangerous and potentially terrorist they become.<sup>99</sup> This was the case for the Muslim prisoners in Creutz’s study, who stated that having a long beard and partaking in congregational prayer, standard Islamic practices, “could be interpreted as signs of radicalization”.<sup>100</sup> The (devout) practice of religion is not in itself an indicator of violent tendencies, but the negative consequences of it can constitute discrimination.

Although research into freedom of religion among Muslim prisoners in Finland is limited, it is apparent that this right is not fully realised. In contrast,

93 Although the study by Karin Creutz, *Vankila-ajan haasteet ja mahdollisuudet: Muslimitaustaisten vankien kokemuksia Suomen vankiloista* (Helsinki: Svenska social- och kommunalhögskolan vid Helsingfors universitet) is yet to be published, some of its findings are discussed in: Himanen and Creutz, “Turvattomuuden tuotantoa? Muslimit ekstremismin torjunnan ja valikoivan kontrollin kohteina”.

94 Himanen and Creutz, “Turvattomuuden tuotantoa? Muslimit ekstremismin torjunnan ja valikoivan kontrollin kohteina”, p. 169.

95 Oikeusministeriö, “Että puuttuuttaisiin konkreettisesti”: *Seurantaselvitys vihapuheesta ja häirinnästä ja niiden vaikutuksista eri vähemmistöryhmien*, p. 137.

96 Himanen and Creutz, “Turvattomuuden tuotantoa? Muslimit ekstremismin torjunnan ja valikoivan kontrollin kohteina”, p. 169. Author’s translation.

97 Paul Hedges, *Religious Hatred: Prejudice, Islamophobia and Antisemitism in Global Context* (London: Bloomsbury Academic, 2021), pp. 47, 133.

98 Hedges, *Religious Hatred: Prejudice, Islamophobia and Antisemitism in Global Context*, p. 137; and Todd H. Green, *The Fear of Islam: An Introduction to Islamophobia in the West* (Minneapolis: Fortress Press, 2015), pp. 268-279.

99 Green, *The Fear of Islam: An Introduction to Islamophobia in the West*, p. 274.

100 Himanen and Creutz, “Turvattomuuden tuotantoa? Muslimit ekstremismin torjunnan ja valikoivan kontrollin kohteina”, p. 169. Author’s translation.

Christian prisoners usually have ample opportunity to practice their religion.<sup>101</sup> As explained in section 3.2, the state church is not against freedom of religion, but may in certain cases constitute discrimination if the positions of majority and minority religious groups are too disparate. This seems to be the case for Muslim prisoners: the strong position of the Evangelical Lutheran Church with no concessions for other denominations or religions puts non-Lutheran prisoners at a disadvantage. The solution need not involve dismantling the Finland's state church system, but rather creating more structures that support minority religions.

These structures should include compensation for imams and representatives of other religious minorities who visit prisons, as the state pays the salaries of prison chaplains and reimburses costs incurred in the implementation of the church's public duties. Public authorities should *de facto* enable visits by imams, because the state has a duty to ensure the realisation of freedom of religion for all its prisoners. Guaranteeing this would require positive action from prisons as well. Prisoners should have real opportunities to attend weekly Friday prayers at their discretion, and imams should be able to visit them without undue burden.

Lastly, as also argued by Himanen and Creutz,<sup>102</sup> measures to prevent radicalization and violent extremism in prisons should be carefully considered from a human and fundamental rights perspective. To guarantee the religious freedom of Muslim prisoners and avoid religious discrimination, prisons should be made aware of the importance and concrete scope of these rights and, perhaps even more importantly, of the religious practices of Muslims.

### *Impartial and Equal? The Impermissibility of Headscarves with the Police Uniform*

Unlike many European countries,<sup>103</sup> Finland does not have any legislative or general bans on wearing religious insignia or clothing, but prohibition can be justified in an individual situation, e.g., to satisfy the requirements of occupational safety. The police force and the army are an exception, in that they do not allow the wearing of any religious insignia or clothing with the official police or army uniform.<sup>104</sup>

<sup>101</sup> Kirkkokohallitus, *Uskonnonharjoittaminen vankiloissa. Selvitys uskonnonharjoittamiseen vankiloissa liittyvistä kysymyksistä*, p. 34 and Ministry of the Interior, *National Action Plan for the Prevention of Violent Radicalisation and Extremism 2019–2023. Government Resolution 19 December 2019*, p. 62.

<sup>102</sup> Himanen and Creutz, "Turvattomuuden tuotantoa? Muslimit ekstremismiin torjunnan ja valikoivan kontrollin kohteina", p. 176.

<sup>103</sup> See: Open Society Justice Initiative, *Restrictions on Muslim Women's Dress in the 27 EU Member States and the United Kingdom Current Law. Recent Legal Developments, and the State of Play* (Open Society Foundations, 2022).

<sup>104</sup> Police uniforms are regulated in the Ministry of the Interior's Regulation on Police Uniforms (1106/2013),

The possibility of allowing religious head coverings to be worn as part of the police uniform has been discussed in Finland for years, mainly in relation to the hijab. In 2013, at the request of the Police University College, the National Police Board (*Poliisihallitus*) wrote a proposal on the use of religious headwear with the police uniform, and concluded that it was not permissible.<sup>105</sup> Although the proposal concerns religious headwear and insignia in general, it mainly focuses on the headscarf.

The proposal raises terminological issues that have wider repercussions in the understanding of why people follow a religious dress code, and the impact of corresponding bans. Although its title mentions only “religious headwear”, the text later states that it is not permissible to use insignias that indicate “personal conviction, or ideological or other similar orientation”.<sup>106</sup> Although headscarves can be worn for many reasons,<sup>107</sup> many Muslim women who wear them see them not so much as insignia that broadcast their personal beliefs, but as concrete adherence to a compulsory religious act<sup>108</sup> (the same applies to many Jewish men who wear a kippah, and Sikh men who wear a turban). For these women, not wearing a headscarf is a breach of God’s law. Similarly, calling adherence to a religious dress code a “public profession of religion”<sup>109</sup> might be accurate in legal terms, but is not necessarily true from the perspective of the wearer. The proposal further juxtaposes religious dress codes with non-religious insignia, but the two are not equivalent: a conscientious objector, for example, does not *have to* wear a peace symbol to follow his convictions.<sup>110</sup>

The proposal justifies the ban on numerous grounds, such as safety issues (scarves, turbans, or jewellery could pose safety risks) and the fact that they might provoke members of the public.<sup>111</sup> A more curious justification is found under the heading “Conflicts of Interest.” In this section, the National Police Board argues that because ideological differences between religions have caused conflict (the proposal does not specify where or what kind), police officers of different

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section 3, which lists clothes and accessories included in the uniform. Those not included are not permissible. In the army, it is not permissible to use any head covering other than military headgear. See: Puolustusvoimat, *Yleinen palvelusohjesääntö* (Juvenes Print Oy: Pääesikunta, 2016), section 87.

105 Poliisihallitus, *Uskonnollisten päähineiden käyttö poliisin virkapuvun kanssa*. 2020/2013/2377, 20 October 2013. All quotations were translated by the author.

106 Poliisihallitus, *Uskonnollisten päähineiden käyttö poliisin virkapuvun kanssa*, pp. 3-4.

107 See, e.g.: Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical & Modern Stereotypes* (London: The International Institute of Islamic Thought, 2007), pp. 87-117.

108 This is the case for Dutch women who wear a face veil. See: Annelies Moors, “Face veiling in the Netherlands: public debates and women’s narratives”, in *The Experiences of Face Veil Wearers in Europe and the Law*, Eva Brems (ed.) (Cambridge: Cambridge University Press, 2014), p. 30.

109 Poliisihallitus, *Uskonnollisten päähineiden käyttö poliisin virkapuvun kanssa*, p. 4.

110 Similarly, because wearing a crucifix is usually not considered a compulsory in Christianity, it is problematic to equate it with a headscarf.

111 Poliisihallitus, *Uskonnollisten päähineiden käyttö poliisin virkapuvun kanssa*, p. 4.

religions might not be able to cooperate effectively.<sup>112</sup> Although the proposal does not explicitly mention neutrality, it states that the use of any “outer or other insignia” must not call into question the impartiality of the police, and their ability to treat members of the public equally.<sup>113</sup> In a 2020 interview, the director of the Police Union stated that the police uniform conveyed neutrality, which was an important element of impartiality.<sup>114</sup> The argument used in both of these justifications is similar to that in section 3.3, whereby the act of wearing a headscarf is purported to cause a person to act in a discriminatory manner, as though a religious garment will influence her behaviour. If this argument is correct, and religion is a potential source of conflict or the catalyst for specific actions, it is still true if it is not visible: a Muslim woman who does not wear a headscarf is still a Muslim woman. Religion can also be assumed from one’s name, and issues can arise between police officers for reasons unrelated to religion. Further, the police’s argument confirms that the idea of closed or exclusive neutrality is more appropriate for Christians who, for example, wear a small crucifix pendant for religious reasons.

The proposal also justifies the ban on the grounds of gender equality. Although the following quotation does not mention Muslims explicitly, its intentions are clear, because gender equality is rarely raised in connection with the Jewish kippah or the Sikh turban, both worn by men.

There are religions where the notion of gender equality as it exists in Western democracy does not apply. In Finland, the police treat everyone equally, regardless of religious or other beliefs, and the position of women is protected in the Constitution. In addition, the goal of the National Police Board in Finland is to increase the number of women in supervisory positions. The conflict between these interests would make working difficult for a police officer who publicly professes a religion where the different sexes are not on an equal footing. In addition, it would tend to weaken the police organization from the inside, and the operation of the police organization would not look good from the outside.<sup>115</sup>

This argument implies that Islam considers women unequal to men, and that because of this, Muslim women who wear a headscarf should not be allowed to work for the police. It also suggests that these women would have a negative impact on the police organisation and its image. Muslim women who wear a

<sup>112</sup> Poliisihallitus, *Uskonnollisten pääbineiden käyttö poliisin virkapuvun kanssa*, p. 5.

<sup>113</sup> Poliisihallitus, *Uskonnollisten pääbineiden käyttö poliisin virkapuvun kanssa*, p. 5.

<sup>114</sup> Julia Saario, “Sisäministeriö selvittää: Pitäisikö huivi sallia osaksi poliisin virka-asua? ‘Ruotsissa poliisi on saanut käyttää jo vuosia’”, MTV3, <https://www.mtvuutiset.fi/artikkeli/sisaministerio-selvittaa-pitaisiko-huivi-sallia-osaksi-poliisin-virka-asua-ruotsissa-poliisi-on-saanut-kayttaa-jo-vuosia/7870460>, accessed 7 February 2023.

<sup>115</sup> Poliisihallitus, *Uskonnollisten pääbineiden käyttö poliisin virkapuvun kanssa*, pp. 5-6.

headscarf are therefore punished for Islam's perceived gender inequality by being excluded from the police force. If Muslim women are indeed in an unequal position, this does not improve their situation. On the contrary, surely a female police officer who visibly belongs to a minority would improve the equality of (Muslim) women, and would be a role model for other women and girls who aspire to the same goals. According to the Police Board, however, gender inequality should be tackled by banning women from working in certain places, at least until they undress a bit.

The overall implication is that the National Police Force is prejudiced against Islam. Its reasoning on the grounds of gender equality, and the idea that a person who visibly belongs to a religion perceived as unequal would weaken the police organisation, combines an often-used line of argumentation concerning headscarf bans: Muslim women are simultaneously perceived as both passive victims of a patriarchal culture and religion, and an active threat to Western modernity and freedom.<sup>116</sup> Islam in the West is often seen as "politically dangerous and personally oppressive",<sup>117</sup> and its practices regarding women in particular have long been seen in Western eyes as a sign of the "otherness and inferiority of Islam".<sup>118</sup> The headscarf (or veil) has long been the focus of attention: even during colonialism, Islam was seen as "oppressing to women", and "the veil [...] epitomized that oppression".<sup>119</sup> These views do not necessarily reflect Muslim women's own perceptions. During the struggle for Algerian independence, women wore the veil, for example, to protest French rule,<sup>120</sup> and Göle argues that for some Muslim women, wearing a headscarf is empowering.<sup>121</sup> If some Islamic practices are considered problematic from the perspective of equality, banning Muslim women from working based on this is counterintuitive. Further, as Temperman and Vrielink explain, the state and authorities should generally refrain from attaching (negative) symbolic meanings to religious practices and making interpretations based on them, as this is not part of their expertise.<sup>122</sup>

<sup>116</sup> For examples of this argumentation in the ECtHR context, see: Carolyn Evans (2006) "The 'Islamic Scarf' in the European Court of Human Rights", *Melbourne Journal of International Law*, 7:1 (2006) pp. 71-72. For a discussion on the headscarf ban in French public schools, see: Joan Wallach Scott, *The Politics of the Veil* (Princeton: Princeton University Press, 2007), pp. 133, 148.

<sup>117</sup> Scott, *The Politics of the Veil*, p. 127.

<sup>118</sup> Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), p. 149.

<sup>119</sup> Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, pp. 151-152. See also: Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical & Modern Stereotypes*, pp. 1-2. In a discussion that led to a headscarf ban in public schools in France, the headscarf was seen as oppressive and humiliating. See Scott: *The Politics of the Veil*, p. 153.

<sup>120</sup> Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical & Modern Stereotypes*, pp. 88-89; and Scott, *The Politics of the Veil*, p. 64.

<sup>121</sup> Nilüfer Göle, "The Voluntary Adoption of Islamic Stigma Symbols", *Social Research* 70:3 (2003), pp. 810-11, 817, 820-23.

<sup>122</sup> Jeroen Temperman, "Religious Symbols in the Public School Classroom", p. 156; Jochum Vrielink,

The Police Board's reasoning also raises the question of whether the police, despite their assurances, treat everyone equally in practice. Finnish police have been accused of committing illegal ethnic profiling,<sup>123</sup> and in 2017 many police officers were revealed to be members of a secret Facebook group, in which racist language was used about foreigners, Muslims, and ethnic minorities.<sup>124</sup> There is therefore hard evidence of police officers discriminating against Muslims, but there is no evidence of Muslim police officers acting in a discriminatory way toward others. Despite this, Muslims are not able to work as police officers if they adhere to a religious dress code. Even though it is often argued (see section 3.3) that the visibility of a religion is not neutral, the example just cited proves the opposite: the discriminatory behaviour of some non-Muslim police officers betrays *their* lack of neutrality, and not that of Muslim officers.

Restrictions on religious dress codes as part of the police uniform are an example of indirect institutional or structural discrimination, where Muslim women who wear a headscarf (or members of other religious communities who follow religious dress codes) are prevented from working in certain professions. This puts them in an unequal position compared with those who do not wear such apparel for religious reasons, and limits their religious freedom. The police policy is ostensibly neutral in the sense that it treats everyone the same, but its consequences in the Finnish context are largely felt by Muslim women. Although freedom of religion and the right to non-discrimination are not absolute, the National Police Board's reasons for limiting rights in this context do not hold water, and are based on prejudicial views about Muslims.<sup>125</sup> Instead of imposing restrictions that limit the right to equality, the National Police Force should allow religious dress codes as part of the police uniform, be it a headscarf or something else, in order to guarantee the religious freedom of all aspiring officers.

## Conclusion

Finland has legislative and societal structures that adversely affect the religious freedom and equality of Muslims. Manifestations of this can be found in Finnish

<sup>123</sup> "Symptomatic Symbolism: Banning the Face Veil 'As a Symbol'", pp. 190-191.

<sup>124</sup> See: Suvi Keskinen et al., *The Stopped: Ethnic Profiling in Finland* (Helsinki: University of Helsinki 2018). In 2022, the Supreme Administrative Court ruled that the Helsinki Police Department was guilty of ethnic profiling. See: Yle, "Supreme Admin Court rules against Helsinki police in ethnic profiling case", <https://yle.fi/a/3-12615347>, accessed 27 February 2023.

<sup>125</sup> Yle, "Officials to probe racist posts in police Facebook group", <https://yle.fi/a/3-9649097>, accessed 7 February 2023.

<sup>126</sup> Issues related to workplace health and safety can be resolved by, for example, looking at experiences drawn from countries where headscarves, turbans, and *kippahs* are allowed.

prisons, where Muslim prisoners have problems in the realisation of their freedom of religion, and in the policy of the Finnish Police, which does not allow religious clothing to be worn with the police uniform.

The reasons for this can be traced back to the position of the Lutheran and Orthodox Churches, both of which receive funding from the state and are governed by separate legislation enacted by the Finnish Parliament. The Lutheran Church has ministers in otherwise secular institutions, such as hospitals, the army, and prisons. Those in the latter two institutions are civil servants, paid by the state, while other religious groups that work in prisons do so on a voluntary basis. As the research presented here shows, few imams visit prisons, and Muslim prisoners do not have sufficient opportunities to practice their religion. Consequently, Muslims do not enjoy freedom of religion on an equal footing with Christian prisoners.

Islamophobic prejudice is common in Europe generally, and evident in Finland specifically, and can be seen in both case studies analysed. Since 9/11, there has been a general tendency to associate the devout practice of Islam with terrorism. As a result, anti-radicalisation measures in Finnish prisons have caused some Muslim prisoners to self-limit their freedom of religion, and to experience negative consequences if they do not.

Prejudice is also present in the reasoning of the National Police Board, which justifies its ban on religious headwear and insignia as part of the police uniform by citing the unfortunately common European understanding that garments associated with Islam have negative consequences for the perceiver. In this understanding, Muslims adhering to a certain dress code are not seen as neutral, but as potentially discriminatory in their actions. As rightly pointed out by Smet, however, “because clothes cannot discriminate, the focus should herein lie on civil servants’ behaviour”.<sup>126</sup> This means it is not the clothing but the actual observed behaviour of police officers that should be taken into account, and based on the proven use of racist language among some (non-Muslim) officers, this certainly requires attention. Gender equality is also used as an argument to prevent Muslim women from working in their chosen profession, even though logic dictates that the opposite conclusion be reached.

The two case studies presented are selected examples of the issues Muslims in Finland experience regarding their equality and freedom of religion, and do not represent the entire spectrum of problems. This does not, however, mean the situation cannot be improved. Although a state church is not against human rights as such, its position should be critically reviewed in cases where it affects the equality and freedom of religion of Muslims and other minorities. This need

<sup>126</sup> Smet, “Freedom of Religion v. Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map”, p. 130.

not involve a complete rethinking of the role of the churches, but, for example, imams (and other religious leaders and counsellors) should be remunerated for the work they do in prisons. There should also be an awareness within prisons about the content and implications of religious freedom and equality, and about the ways in which Muslims practice their religion. Finally, the ban on religious dress codes as part of the police uniform is based on a prejudicial understanding of Islam and Muslims. A simple solution would be to allow police officers to wear headscarves and other religion-based headwear, and thereby to support the realisation of equality and religious freedom.

The human and fundamental rights in question are not abstract; they are significant in the lives of individuals. How Muslim prisoners can, or dare to, practice their religion in prison, and how Muslim women pursue their professional dreams while dressed according to their beliefs have concrete implications. States have an obligation to take positive measures that contribute to the fullest realisation of these human rights.

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# Sloboda religije muslimana u Finskoj: prepreke u zakonodavnim i društvenim strukturama

## Sažetak

Sloboda religije i pravo na jednakost i nediskriminaciju su važna ljudska i temeljna prava koja u kontekstu Finske nisu dovoljno istražena. U ovom članku se analizira kako različite zakonodavne i društvene strukture štetno djeluju na ostvarivanje pozitivne religijske slobode za muslimane u Finskoj, ispitivanjem dvaju studija slučaja: slobode religije među muslimanskim zatvorenicima i nedopuštenosti nošenja marama kao dijela policijske uniforme. U članku se tvrdi da finsko zakonodavstvo, iako slobodu religije ne ograničava direktno, sadrži strukture koje sprčavaju ostvarivanje pozitivnih religijskih sloboda za muslimane. Ovo proističe iz bliske veze između države i Evangelističke luteranske crkve te iz predrasuda koje one manifestiraju zajedno ili odvojeno. Takve strukture mogu dovesti do stvaranja nejednakosti muslimana u društvu u odnosu na kršćane i mogu uspostavljati diskriminaciju.

**Ključne riječi:** jednakost i nediskriminacija, Finska, sloboda religije, zakon, muslimani, državna crkva