Headscarf and Veiling
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On the Contemporary Debate About the Headscarf in Austria

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Abstract The aim of this paper is to trace the debates around the Muslim headscarf in Austria and the related political measures. Looking back over a period of 30 years, the changes in public opinion and in political attitudes concerning the Muslim headscarf are analysed in greater detail. The headscarf functioned as a projection screen for extremely diverse questions and attitudes and the resulting narratives are a barometer of public opinion within the majority society regarding issues like migration, women rights or Islam. At the same time, they show the need for self-assurance about personal identity in a multioptional society and the tension between secularism and the traditional Austrian cooperation model on religious matters. The paper touches on the question of equal opportunities for men and women and on the relationship between the inner-Muslim discourse and the external perspective.

Keywords Headscarf debate. Austria. Islamic headscarf. Burqa ban. Political Islam. Islamophobia.

1 Introduction

Whether the woman wearing it is conscious of it or not, the Muslim headscarf is an object that, in its visibility, lends itself to being symbolically charged. In this, a piece of cloth is turned into a potential transmitter of messages, often including ideological connotations. The wearer herself is confronted with the

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reality that her head covering is associated with a variety of meanings that she may not have intended at all.

What are these associations? When confronted with the term 'Islamic headscarf', some people may think of pictures of women wearing headscarves shown from behind, wrapped in dark, flowing garments, or photographs of *burqa* wearing women under the Taliban regime, perhaps also in the context of right-wing populism. These associations make it easy to take the mental step towards thinking of the 'oppression of women, coercion, and the patriarchy'. There are other representations as well, such as young, stylishly clothed women bearing a friendly smile on their faces. They are increasingly a part of advertising campaigns as well, be it as a consumer (from female hygiene products to sport headscarves released by large corporations) or as an employee. This leads to different associations like 'diversity has become the new norm', or 'modern Muslimahs[1] participate in all areas of life'. Naturally, this display of normality causes reactions as well. When a woman wearing a headscarf was added as an emoji, it led to public debates. Should a woman in a headscarf be displayed as 'normal' at all? Does doing so not act in support of the oppression of women?

A headscarf seems to predefine the woman wearing it to an external observer. Due to this, it is quite difficult to maintain a neutral perspective on this garment. This also poses a challenge for an impartial government. Between the principles of freedom of religion, secularity, and values such as gender equality, debates can get very heated and emotionally charged. Behind the debates stands the question of identity in an increasingly pluralistic society. The headscarf itself is effectively turned into a sort of canvas that reveals much about those who paint it with their opinions. The internal and external perception of – particularly headscarf wearing – Muslimahs are often wildly divergent.

The following article aims to illustrate the debate about the headscarf over the course of the past three decades. The topic received a varying degree of attention with narratives surrounding the headscarf developing and evolving, which in turn sometimes amplified each other while at other times being contradictory. Therefore, exemplary moments with regard to an increasing public debate on the topic will be presented. The interaction between public opinion and politics will be discussed as well. Even though an in-depth analysis of this discourse would go beyond the means of this article, particular characteristics of the debates will be pointed out in order to allow further contemplation of the topic.

1 The term 'Muslimahs' refers to Muslim women.

2 Austria's Long and Laid-back Relationship with the Headscarf

In comparison with the rest of Europe, Austria's initial stance on its Muslim population is historically unique. With the occupation and subsequent annexation of Bosnia and Herzegovina during the 19th century, around 600,000 men and women of Muslim faith became citizens of the Habsburg monarchy. This circumstance required the constitutional inclusion of the Islamic religion, which happened with the *Islamgesetz* (Islam Law) of 1912. Since that time, Islam has been an established religion in Austria, with all the consequences implied thereby. It was on the basis of this law that the Islamic Religious Community in Austria (*Islamische Glaubensgemeinschaft in Österreich*, subsequently referred to as IGGÖ) could be established as the official representative for the concerns of Muslim men and women in Austria. In this, the Austrian state has a contact organisation to engage in official dialogue. This model was proudly presented by the Austrian state to other nations, for instance through members of the IGGÖ who participated in international summits as a part of Austrian delegations.

Against this backdrop, it comes as no surprise that debates about the headscarf, like the ones occurring during the migration movements in some European states at the end of the 1980s, ended up having little to no relevance for the internal Austrian discourse on the subject, even though they were occasionally addressed. In 1999, for example, the teacher Fereshta Ludin made headlines in Germany for her attempt to reach a court ruling that would allow her to wear a headscarf while teaching in school, something that she had been prohibited from doing earlier. In 2003, France passed a general ban on headscarves in public schools. Both events were discussed in Austria as well.

3 Headscarf Decrees by the Ministry of Education

The approach by the Austrian ministry of education on the topic bore much more significance by comparison, as the following decree illustrates:

> The wearing of headscarves, which Muslim girls (as well as women) are obligated to, falls under the religiously established dress codes under article 14 (1) StGG [*Staatsgrundgesetz*, Basic Law]. By contrast, there are no regulations in laws aimed at maintaining order during school operations that could be interpreted as a dress code. Church-external offices bear no authority over matters regarding religious commandments. This pertains to other re-

> ligious communities as well. Gymnastics, swimming, and domestic economy lessons are to be conducted with respect to the rules established by the Islamic faith for its members (e.g. regarding dietary rules).[2]

This decree illustrates the self-perception of the Austrian state: unlike in France, an awareness of secularity is present, not in a laical sense, but in the sense of secular cooperation. Church-external offices bear no authority over matters regarding religious commandments, as the above-quoted decree clearly states. For religious communities, secularity in this sense includes a right to internal autonomy regarding the interpretation of their religion. The obligation of Muslim girls (and, only in parenthesis, Muslim women) to wear a headscarf is stated as a matter of fact in the above-mentioned decree without judgement of any kind. Schools are furthermore reminded that specific lessons are to be conducted "with respect to the rules established by the Islamic faith for its members".[3]

4 Protection Against Discrimination in the Workplace since 2004

In 2004, the Austrian parliament passed the necessary adaptations to the equality laws based on EU guidelines which demanded a higher degree of protection against discrimination, including, among other things, the subject of 'religious discrimination'. Since then, it has been illegal to deny employment to a woman because of her wearing a headscarf. The Ombud for Equal Treatment, situated in the Austrian chancellery, published educational material in an attempt to sensitise on this issue. For example, the information text *Kopftuch am Arbeitsplatz* (Headscarves in the Workplace), which is still accessible online. It elaborates on the comprehensive protections from discrim-

2 "Das Tragen von Kopftüchern, zu dem muslimische Mädchen (bzw. Frauen) verpflichtet sind, fällt als religiös begründete Bekleidungsvorschrift unter Art. 14 Satz 1 StGG. Demgegenüber kennt das die innere Ordnung des Schulbetriebs regelnde Schulunterrichtsgesetz keine als Bekleidungsvorschrift bestimmte Art zu verstehende Norm. Die definitive Aussage betreffend religiöser Gebote steht außerkirchlichen Stellen nicht zu. Dies bezieht sich auch auf Religionsgemeinschaften. Der Turn-, schwimm- und hauswirtschaftliche Unterricht ist unter Respektierung der vom islamischen Glauben für seine Angehörigen aufgestellten Regeln (etwa bzgl. Speisevorschriften) abzuhalten". Decree issued by the ministry of education from 16 July 1992; a similar statement was released in 2004 under then minister of education Elisabeth Gehrer. The present paper has been translated from German by Florian Ksugas. The original German quotes from relevant documents are repeated in the footnotes for clarity.

3 See `https://www.ots.at/presseaussendung/OTS_20040517_OTS0224/utl-kopftuch-konstruktives-gespraech-zwischen-gehrer-und-schakfeh`.

ination while also addressing the aspect of a 'neutral' appearance which some employers expect. It goes on to point out that demanding from a woman to doff her headscarf due to an expectation that consumers might react poorly to it would be illegal. In 2005, the first cases of Muslimahs who were discriminated against were picked up by the Ombud for Equal Treatment, which went on to report on them.[4]

Around the same time, the city of Vienna hired the first woman to wear a headscarf as a tram driver, which garnered a certain degree of attention in the media but was generally seen as a sign of diversity and reported on with a wholly positive connotation.[5]

This kind of legal protection makes it abundantly clear how important symbolisms of this kind can be. On the other hand, it is clear that protective measures are severely limited if the public is unable to comprehend their purpose and therefore does not support them.

5 First Topicalisations of Headscarf Bans in Austria

In a 2005 interview, then minister of the interior Liese Prokop stated that women have "no rights" in Islam and concluded that teachers should therefore be barred from wearing a headscarf. After a clarifying conversation with then president of the IGGÖ, Anas Schakfeh, Prokop revised her opinion. Both parties emphasised "the importance of the Austrian culture of seeking a dialogue, which is integral to the facilitation of a harmonious coexistence and mutual understanding and respect".[6]

During Christmas time of 2008, France's considerations of a *burqa* ban led to a brief debate on the issue in Austria as well. Then minister of women's affairs, Gabriele Heinisch Hosek, publicly mused on whether a similar measure might be appropriate in Austria too.[7] What followed was a debate during which the IGGÖ voiced its opinions and viewpoints as well.[8]

The position was taken that, while there was no sympathy for the garment, an outright ban would be problematic all on its own since it

4 See https://www.gleichbehandlungsanwaltschaft.gv.at/aktuelles-und-services/aktuelle-informationen/das-kopftuch-als-hindernis-fur-die-begrundung-eines-arbeitsverhaltnisses.html.

5 See https://www.derstandard.at/story/1227289105406/nachlese-wien-erste-strassenbahnfahrerin-mit-kopftuch.

6 "In Österreich übliche Dialogkultur, die wichtig sei, um das gute Zusammenleben zu fördern und gegenseitiges Verständnis und Respekt weiter aufzubauen". See http://religionv1.orf.at/projekt02/news/0503/ne050310_kopftuch_fr.htm.

7 See https://newsv1.orf.at/100118-47002/?href=https%3A%2F%2Fnewsv1.orf.at%2F100118-47002%2F47015txt_story.html.

8 See http://religionv1.orf.at/projekt03/news/1001/ne100108_burka.htm.

would just be another authoritarian measure. Even more so, it could easily have adverse effects for women, such as an increased difficulty to participate in public life.

Ultimately, a consensus was reached by emphasising the right to self-determination for women. When the Austrian Freedom Party (*Freiheitliche Partei Österreich*, subsequently referred to as FPÖ) demanded a *burqa* ban in 2014, the minister argued strongly against the attempt, yet, at the same time, criticised the *burqa* as a "symbol of oppression".[9]

During those years, the Austrian People's Party (*Österreichische Volkspartei*, subsequently referred to as ÖVP) was still against restrictions on the wearing of headscarves as well. Then state secretary of integration, Sebastian Kurz, promoted measures for the empowerment of Muslim women through his department, particularly in terms of self-empowerment. He impressed participants during an advanced training course by taking more than an hour of his time for an exchange of ideas. Under the slogan "Integration durch Leistung" (Integration through Performance), women were encouraged to participate in society – the headscarf was supposed to be no obstacle. This approach can be seen in a statement by Sebastian Kurz during an interview with Armin Wolf on *Zeit im Bild* in 2011:

> The question isn't always headscarf, yes, no, minaret, yes, no, or *burqa*, yes, no. These are populist topics that undoubtedly motivate people. I, however, believe that to be the wrong approach to move things forward in this matter.[10]

6 Dialogforum Islam

In 2012, during his time as secretary of state, Sebastian Kurz initiated the *Dialogforum Islam*. Its final report and the individual position papers of its task forces are still accessible online. Susanne Raab acted as head of the task force on gender issues. The papers are still written in the same spirit of cooperation and openness for dialogue that had been a hallmark of the approach of Austria's politics towards Islam for so many years. Challenges are pointed out but engaged as differentiated as possible, without the need for essentialist simplifications such as 'Islam' being generally at fault or responsible for a particular phenomenon. The chapter for value-related questions reads:

9 See https://religion.orf.at/v3/stories/2655643.

10 "Es geht nicht immer um die Frage, Kopftuch, ja, nein, Minarett, ja, nein, oder Burka, ja, nein. Das sind populistische Themen, die zweifelsohne Menschen bewegen. Ich glaube aber, dass das nicht der Zugang ist, bei dem man in der Sache was weiterbringen kann". See https://www.sueddeutsche.de/politik/kolumne-des-kanzlers-wandlung-1.4761246.

> It was established during extensive debates on a select choice of constitutional principles and societal values that – from a fundamental political-philosophical standpoint – there are no categorically insurmountable contradictions between the values of Islam and the Austrian constitutional principles, nor between societal values and individual virtues.[11]

The statement by the task force includes an unequivocal commitment to the visibility of religion:

> It is, in fact, far more essential for religion, which is undeniably active in public, to be present and visible in the public space, that it can, in a way, 'make itself seen', which constitutes not 'only' a core aspect of religious liberty but ultimately a 'measure to build trust' in the sense of transparency and the hermeneutical perception of religious presence in the public space as well.[12]

The following passage on the wearing of a headscarf is included in the chapter about gender roles.

> The practice of wearing a headscarf is legally protected in Austria under the established laws securing religious liberty. The anti-discrimination law prohibits discrimination against women seeking employment or in the workplace who cover their head for religious purposes. From a formal legal standpoint, this question is therefore clearly answered. However, in everyday life, the Muslim headscarf, its symbolism, and the question about its compatibility with the fundamental values of equality between the sexes are hotly debated.[13]

11 "In ausführlichen Diskussionen zu ausgewählten Verfassungsprinzipien und gesellschaftlichen Wertorientierungen wurde einhellig festgehalten, dass – aus politisch-philosophischer Grundlagenbetrachtung heraus – keine prinzipiell unüberwindlichen Wertewidersprüche zwischen islamischen Normen und den in Österreich vorherrschenden Verfassungsprinzipien, gesellschaftlichen Werten und individuellen Tugenden festzustellen sind". Final report *Dialogforum Islam*, `https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Publikationen/DFI_Bericht_Web.pdf`, 20.

12 "Es ist vielmehr jedenfalls essentiell, dass Religion, die ja fraglos öffentlich wirksam ist, im öffentlichen Raum auch entsprechend sichtbar und zugegen ist, sich somit „sehen lassen kann", was nicht „nur" eine zentrale Dimension von Religionsfreiheit ist, sondern letztlich auch eine gleichsam „vertrauensbildende Maßnahme" im Sinne von Transparenz und der damit verbundenen notwendigen hermeneutischen Erfassung der religiösen Dimension im öffentlichen Raum darstellt". Final report *Dialogforum Islam*, `https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Publikationen/DFI_Bericht_Web.pdf`, 22.

13 "Rechtlich schützt in Österreich die gesetzlich verankerte Religionsfreiheit die Glaubenspraxis, ein Kopftuch zu tragen. Die Antidiskriminierungsgesetzgebung ver-

Here, a certain degree of unease becomes visible. In a way, it foreshadows the lines of argument that will subsequently be used to reject the headscarf as incompatible with values such as equality and consequently restrict its use. On the other hand, there is a clear reference to the legal protection of the religious practice of wearing a headscarf.

7 2015. The Breaking Point in Austria's Islam Policy?

In 2015, a new *Islamgesetz* replaced the previous one from 1912. Originally a request from Muslims to modernise the original law, which provided too little legal security in some practical regards, the way in which people negotiated over it gradually shifted with time. During the decisive negotiation phase in the autumn of 2014, headlines were dominated by acts of terrorism committed by *Daesh* (The Islamic State). The *Islamgesetz*, originally intended to formalise rights such as spiritual welfare within the military, suddenly turned primarily into a security concern. The fact that lawmakers deemed it necessary to emphasise the priority of state rights over religious ones, whereas the same thing was considered a constitutional matter of fact for other religions, did not sit well with Muslims. It was interpreted as an expression of the worsening attitude and increasing distrust towards Muslims, resulting from the aforementioned terrorist attacks.

On top of this factor stood the high number of refugees during summer of 2015 and the fears resulting from it. Both circumstances shifted the public perception of Muslims to the negative. Right-wing populism became increasingly mainstream.

8 *Burqa* Ban

In 2017, under intense public interest, an *Anti-Gesichtsverhüllungsgesetz* (Law against the concealment of the face) was passed. This happened during the coalition government between the Austrian Social Democrat Party (*Sozialdemokratische Partei Österreich*, subsequently referred to as SPÖ) and the ÖVP. It was part of an integration law. 'Soft' measures, favoured by the SPÖ, received the support

bietet es, Frauen, die ihren Kopf aus religiösen Gründen bedecken, beim Zugang zum Arbeitsmarkt und im Beruf zu diskriminieren. Formalrechtlich ist die Frage also in weiten Bereichen geklärt. In der Lebenswelt wird das muslimische Kopftuch, seine Zeichenhaftigkeit und die Frage seiner Kompatibilität mit den grundlegenden Werten der Gleichberechtigung und Gleichstellung der Geschlechter jedoch kontrovers diskutiert". Final report *Dialogforum Islam*, 31.

of the ÖVP. In turn, the SPÖ supported the law which became subsequently known as the "*burqa* ban".

> Whoever covers or conceals his or her facial features with clothing or other objects in public places or in public buildings in a manner so that these features can no longer be recognised, commits an administrative offence and must be fined €150.[14]

The term which became traditionally associated with the law – "*burqa* ban" – is clearly informative of the intention of the law. A *burqa*, i.e. the garment most commonly associated with Afghanistan where it was forced upon women by the Taliban, is in some ways reminiscent of a 'wearable prison' due to its cage-like web concealing the face, while the rest of the body is covered in such a complete way that even physical features become indistinguishable. Many Muslims view it in a negative light as well. Women wearing a *burqa* were and are non-existent in the streets of Austria. Muslimahs who cover their face beneath their eyes use a *niqab*, like the ones found in the Gulf States. In fact, most women wearing a face veil were tourists from these countries. Therefore, it comes as no surprise that the law's date of entry into force was postponed from June to October in order not to endanger the tourist season.

The term *burqa* provides an opportunity to convey the ban as a measure for the 'liberation of women', even though, in practice, there are no *burqa*-wearing women living in Austria. The law was repeatedly referred to as a 'token law' due to its relatively obvious intention of sending a signal to parts of the population who demanded a more determined approach against Islamic terrorism on the part of the government. In this, authority could be displayed, and the message conveyed: 'We are the masters in our own home'. The obvious populism involved in the matter became secondary, not least because virtually no one feels sympathy towards women wearing a face veil.

Before the law came into effect, the headscarf in general was the subject of public debate as well. The ban ultimately affected 'only' the face veil, however women wearing headscarves felt a general increase in the societal pressure imposed upon them. Even the Federal President addressed the issue:

14 "Wer an öffentlichen Orten oder in öffentlichen Gebäuden seine Gesichtszüge durch Kleidung oder andere Gegenstände in einer Weise verhüllt oder verbirgt, dass sie nicht mehr erkennbar sind, begeht eine Verwaltungsübertretung und ist mit einer Geldstrafe bis zu 150 Euro zu bestrafen". See https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00290/imfname_614755.pdf. For the English version see https://ris.bka.gv.at/Dokumente/Erv/ERV_2017_1_68/ERV_2017_1_68.pdf.

> And if things continue like this, what with all this actually spreading Islamophobia, we will see the day where we have to ask every woman to wear a headscarf. Everyone, in solidarity with those, who do so for religious purposes.[15]

Alexander van der Bellen expressed these words during a youth event. The exaggerated wording drew a lot of criticism. In the context of his speech, it was obvious that he was deliberately exaggerating, naturally in solidarity with headscarf-wearing women.

This is not the place to attempt a detailed analysis of the various contributions to the debate at the time. Women from the feminist community were often unable to identify with the loud calls for a headscarf ban, as can be illustrated in a statement by Elfriede Hammerl in the weekly newspaper *Profil* from 27 May 2017:

> Those who protest the loudest against the headscarf have less to do with women's rights than a traditional Saudi sheikh. They scream and swear both against the strive for equality, which they call gender madness, and against migrant women, whose fault they don't perceive in their attitude towards women's politics but simply in that they are migrants. They use women's rights as a pretext to live out their xenophobia.[16]

The law was, likewise, often associated with symbol politics.

The European Court of Human Rights has been quite clear in its judicature. A restriction of religious liberties is permissible to ensure the principles of 'living together', as can be read in a judgement from July 2017, which confirmed an earlier ruling that reached the same conclusion in 2014.[17] It goes on to elaborate that the acceptance of a full-body veil was a decision up to society and that individual nations could make situational decisions according to their evaluation. This begs the question, which was asked in the commentaries at the time as well, whether the ECHR awards less significance to religious rights and liberty than to other interests, such as social in-

15 "Und wenn das so weitergeht, bei dieser tatsächlich um sich greifenden Islamophobie, wird noch der Tag kommen, wo wir alle Frauen bitten müssen, ein Kopftuch zu tragen. Alle, als Solidarität gegenüber jenen, die es aus religiösen Gründen tun".

16 "Diejenigen, die am lautesten gegen die Verschleierung protestieren, haben mit Frauenrechten weniger am Hut als ein gestandener saudischer Scheich. Sie stänkern und pöbeln einerseits gegen Gleichstellungsbestrebungen, die sie Genderwahnsinn nennen, und andererseits gegen Migrantinnen, an denen sie nicht deren eventuelle frauenpolitische Positionierung stört, sondern nur, dass sie Migrantinnen sind. Sie schieben die Frauenrechte vor, um ihre Fremdenfeindlichkeit auszuleben". See https://www.profil.at/meinung/elfriede-hammerl-kopftuch-8165642.

17 See https://www.sueddeutsche.de/panorama/urteil-in-strassburg-vollverschleierung-ist-kein-menschenrecht-1.3582881.

tegration. Whether the interests in this matter are actually contradictory – particularly with regard to the headscarf and not the face veil – is essentially not addressed at all. However, this is likely the core of the problem: the headscarf is vilified from an external standpoint and declared as a symbol of the conscious rejection of gender equality. According to this logic, a woman without a headscarf is 'integrated' while one with a headscarf has trouble with social integration. From the perspective of women who do wear headscarves, it is the other way around. They view themselves as fully capable of integration and perceive the pressure to doff the headscarf not as 'social integration' but as discrimination.

9 Ban on Headscarves at a Kindergarten Age

On 18 December 2017, the coalition government between the ÖVP and the FPÖ was sworn in under chancellor Sebastian Kurz. It was to be expected that, under an FPÖ minister of the interior, populist demands such as "Stopp der Islamisierung" (stop Islamisation) would become factual measures. The ÖVP for its part had repeatedly issued opinion polls, for example in conjunction with the parliamentary survey on the subject of *Leitkultur* (dominant culture) in November 2016. In doing so, the party determined which things the public would demand from immigrants based on the debate on values which had been instigated by the ÖVP itself. Muslim men and women were the object of particular attention here as well.

Vague terms like 'Islamisation' are well suited to stir underlying fears of *Überfremdung* (domination by foreign influences) – to quote yet another term from the FPÖ playbook – and to mobilise all those who feel that 'Islam does not belong to Austria'. In its vagueness, however, there is naturally no clear line as to where the border of simply practicing what is after all an officially recognised religion in Austria and a perceived encroachment on the identity – or at least supposed identity – of the state of Austria lies, nor when such a matter should be persecuted as an attack on the state or its constitution. Already in 2005, the FPÖ put up billboards reading "Freie Frauen statt Kopftuchzwang" (free women instead of compulsory headscarves), indicating that the blond, blue-eyed women displayed on the billboards were free and 'genuine Austrian women', whereas every woman wearing a headscarf was automatically oppressed. Since then, this view has been repeated so many times that it has been able to take an increasingly unopposed hold of people's opinions. Incidentally, the personal culture and religion of the followers of this ideology are elevated to a higher status in the process as well. The headscarf was, once again, abused as a projection surface for various messages with the intention to agitate and mobi-

lise. The ÖVP, for its part, had already established through surveys that a ban on headscarves would find approval among its voters.

Before this background, it comes as no surprise that, following the initial establishment of a ban, more measures aimed at the headscarf were to follow. In November 2018, a ban on headscarves in kindergarten was passed according to a 15a[18] agreement regarding preschool and kindergarten education between the state and its federal provinces. The core issue was a lot of money for the federal provinces, with the headscarf ban playing only a minor role. As such, it was voted for by the opposition parties as well, although naturally not without critical notes.[19]

During the evaluation procedure, multiple organisations came out against a headscarf ban. Repeatedly, the argument was made that the measure constituted an unlawful interference into fundamental rights and that, in doing so, a political debate on integration was fought out on the backs of small children. The IGGÖ issued two statements. One aimed mostly at the judicial aspect of the matter, while the women's representatives were mostly concerned with education and the societal consequences of the measure.[20] From a Muslim perspective, the discriminatory nature of the measure was a particular object of criticism. The headscarf itself, so ran the argument, was put under suspicion, implying that children needed protection from their own parents in order not to be forced to wear it.

None of these statements were taken into account. When a law banning the wearing of headscarves in primary schools was initiated a few months later, no chance for statements during an evaluation procedure took place, nor was any opportunity for the issuing of statements provided at all.

10 Headscarf Ban in Primary Schools

Unsurprisingly, efforts for an extension of the ban on headscarves in kindergarten to include schools, initially primary schools, followed immediately in the wake of its passing. While a ban on headscarves in kindergarten affected essentially no one, since a headscarf during those ages has no relevance from an Islamic standpoint and is

18 A 15a agreement is a treaty between the federal government and the provinces.

19 See https://www.parlament.gv.at/PAKT/PR/JAHR_2018/PK1311.

20 See the commentaries of the IGGÖ: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_02483/imfname_714110.pdf and of the department for women's affairs of the IGGÖ: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_02564/imfname_714402.pdf.

not worn as such, a ban in the case of primary school age children was far more complex.

In general, the headscarf from a theological standpoint only becomes a question for religious women of age. However, it is not unknown for younger girls to wish to wear the garment out of their own accord, especially during the transitional period between primary school and middle school. This topic had been engaged and debated within Muslim communities for decades. These processes had contributed to the critical dissection of standpoints that welcomed the early wearing of a headscarf as 'habituation' if the desire to wear the garment originated from the girl herself. The rejection of coercion had already been the established mainstream opinion. At the same time it was discussed in an awareness-raising way, that a girl who had begun to wear a headscarf but did not end up comfortable with her decision – for instance due to discrimination – was entitled to unequivocal support in her decision to doff the garment again. These viewpoints were intended as a rebuke to attitudes within the Muslim community that effectively equated the wearing of the headscarf with a profession of faith and the doffing of it with a rejection of the faith itself.

This internal Muslim debate is mentioned, among other things, to illustrate that the legislative ban utterly ignored these positive strategies to safeguard the interests of young girls within Muslim communities. As with the ban on headscarves in kindergarten, the lawmakers conveyed the message that Muslim parents needed a law to 'teach' them how to appropriately raise their children with regard to Islamic garments. The majority of the population, in turn, can interpret such political measures as a way to preserve the Austrian identity and aiming at 'the others'.

The governing parties voted for a ban on headscarves until the age of ten in primary schools on 16 May 2019, a few weeks before the implosion of the ÖVP-FPÖ coalition in the wake of the Ibiza scandal. The opposition parties voted against the measure, pointing out the need for real integration measures instead. No broad parliamentary debate had taken place. A procedure before the educational committee had been postponed several times. When a hearing finally did take place, no representatives of the IGGÖ and/or headscarf-wearing Muslimahs, who could have at least spoken from the viewpoint of those affected by the law, were invited. The official representation of Muslims was ignored just like the general Muslim population. Only people who supported the viewpoint of the governing parties and a ban were invited. Zana Ramadani is quoted here as an example:

> It [the *hijab*] likewise represents an inhuman ideology, it stands for gender apartheid and therefore for sexism and the fundamentalist, political, conservative Islam.[21]

This one statement encapsulates virtually every common attribution to and prejudice against the headscarf.

The *Schulunterrichtsgesetz* (School Education Act) was amended with the following passage, which states a ban on headscarves in the following way:

> The School Education Act, BGBl. Nr. 472/1986, at the last time amended by Federal Law BGBl. I Nr. 35/2018, is amended as follows:
>
> 1. After article 43, article 43a is added:
> § 43a.
> (1) To ensure the best possible development and growth for all pupils, they are prohibited from wearing any kind of garment bearing ideological or religious connotations that involves the veiling of the head until the age of 10. This serves the social integration of children according to local customs and practices, the preservation of constitutional values and the educational goals of the federal constitution, as well as the equality between man and woman.
> (2) In case of a violation of the law according to section 1, the school principal has to inform the appropriate department of education immediately. The department has to summon the legal guardians to a mandatory dialogue immediately, within 4 school days at the latest. During this dialogue, the reasons for the violation are to be discussed. As a prevention of further violations, the legal guardians are to be informed of their responsibilities; this is to be recorded in written form and the school principal is to be made aware of the procedure.
> (3) Another violation according to section 1 following this dialogue, or failure by the legal guardians to comply with the mandatory summoning after a second call, represent an administrative offence by the legal guardians, punishable by the district administrative authority with a fine of up to €440 or, in the case of an impossibility of collection, two weeks of imprisonment as an alternative.[22]

21 "Er [der *Hidschab*] steht ebenfalls für eine menschenverachtende Ideologie, für Geschlechterapartheid und damit auch für Sexismus sowie fundamentalistischen, politischen, konservativen Islam".

22 "Das Schulunterrichtsgesetz, BGBl. Nr. 472/1986, zuletzt geändert durch das Bundesgesetz BGBl. I Nr. 35/2018, wird wie folgt geändert:
1. Nach § 43 wird folgender § 43a angefügt:
§ 43a.

A circular by the ministry of education (full name: *Bundesministerium für Bildung, Wissenschaft und Forschung*) subsequently informed of practical aspects, picking up wordings that had already been found in the draft law.

> This regulation aims at the way a garment is perceived by an objective observer. The personal intentions of the wearer are irrelevant in this regard. What matters is the perception of a third party. Therefore, the individual reasoning of the wearer or her parents in case of a violation are irrelevant. Only the offence, i.e. the "veiling of the head", is of relevance.[23]

The wearing of a headscarf becomes an "offence". Any kind of dialogue about it is unwelcome. The intentions of "the wearer" (interestingly, the German text utilises the masculine gender in this case) is irrelevant before the 'perception of third parties', who are viewed as 'objective observers'. In this, outside observers are granted the authority to judge the innermost motivations of a religious practitioner, effectively a disenfranchisement of the affected individuals. One could argue that the matter revolves around minors. However, the *UN Convention on the Rights of the Child*, which has been ratified in Austria, clearly states in article 12 that children are to be heard and

(1) Um die bestmögliche Entwicklung und Entfaltung aller Schülerinnen und Schüler sicherzustellen, ist diesen bis zum Ende des Schuljahres, in welchem sie das 10. Lebensjahr vollenden, das Tragen weltanschaulich oder religiös geprägter Bekleidung, mit der eine Verhüllung des Hauptes verbunden ist, untersagt. Dies dient der sozialen Integration von Kindern gemäß den lokalen Gebräuchen und Sitten, der Wahrung der verfassungsrechtlichen Grundwerte und Bildungsziele der Bundesverfassung sowie der Gleichstellung von Mann und Frau.
(2) Bei Verstoß gegen das Verbot gemäß Abs. 1 hat die Schulleiterin bzw. der Schulleiter unverzüglich die jeweils zuständige Bildungsdirektion zu verständigen. Diese hat die Erziehungsberechtigten unverzüglich, jedenfalls innerhalb von 4 Schultagen, zu einem verpflichtenden Gespräch zu laden. In dem Gespräch sind die Gründe für den Verstoß zu erörtern. Zur Vermeidung weiterer Verstöße sind die Erziehungsberechtigten über ihre Verantwortung aufzuklären; dies ist schriftlich festzuhalten und der Schulleiterin bzw. dem Schulleiter zur Kenntnis zu bringen.
(3) Findet nach dem Gespräch ein weiterer Verstoß gegen das Verbot gemäß Abs. 1 statt, oder kommen die Erziehungsberechtigten der verpflichtenden Ladung nach nochmaliger Aufforderung nicht nach, so stellt dieser eine Verwaltungsübertretung durch die Erziehungsberechtigten dar und ist von der Bezirksverwaltungsbehörde mit einer Geldstrafe bis zu 440 €, im Fall der Uneinbringlichkeit mit Ersatzfreiheitsstrafe bis zu zwei Wochen zu bestrafen".

23 "Die Regelung stellt darauf ab, wie eine Bekleidung von einem objektiven Betrachter wahrgenommen wird. Es kommt dabei nicht auf die persönliche Absicht des Trägers an. Entscheidend ist, wie diese von Dritten rezipiert wird. Im Fall von Verstößen ist daher eine individuelle Begründung der Trägerin oder der Eltern unerheblich. Es kommt ausschließlich auf die Erfüllung des Tatbestandes der 'Verhüllung des Hauptes' an". From circular Nr. 17/2019 for the implementation of article 43 SchUG "Kopftuchverbot" (headscarf ban).

allowed to express their views freely in all matters affecting them.[24] Parents are entirely ignored as well. The contradiction between the section declaring the goal of the Austrian school system and the explicit demand for an education aimed towards 'maturity' also bears mentioning since it is precisely these goals that are expressed in the educational aims of the federal constitution, even though this can easily be interpreted as a blatant contradiction.[25]

The entire argument hinges on the attempt to create a contradiction between the headscarf and Austrian values. A resolution proposal by the ÖVP during autumn of 2019 illustrates this point further:

> A further step shall implement a headscarf ban for girls until the age of 15 (tied to the reaching of religious maturity). The reasoning for this is that the headscarf is not simply a religious symbol, but a political symbol particularly associated with the oppression of women and girls.[26]

The choice of words referring to the headscarf as a "political symbol" is remarkable. This wording falls in line with the ÖVP's advances against "political Islam", without defining the term further – similar to what the FPÖ had already attempted with the term "Islamisation". "Political Islam" seems to provide the advantage of any measures against it being primarily political in nature, instead of blanket measures against an entire religious community. The goal, so the reasoning, is simply to counter abusive tendencies that could carry elements potentially in violation of the constitution. Yet, again, everything remains vague enough that even simple religious practices and particularly the visibility of them can be interpreted as conspicuous. A headscarf ban was, once again, considered an appropriate measure to show determination in the "fight against political Islam". Susanne Raab, minister for integration and women's affairs, announced the intention to implement an extension to the headscarf ban during the first one hundred days of the new government at the beginning of 2020.

24 See the UN Convention on the Rights of the Child, § 12, `https://unicef.at/fileadmin/media/Kinderrechte/crcger.pdf`.

25 Magdalena Hubert's work *Der Wertewandel in der österreichischen Gesellschaft im Kontext der Schulgesetzgebung* shall be specifically mentioned in this context: `https://rdb.manz.at/document/rdb.tso.LIsundr20130204`.

26 "In einem weiteren Schritt soll die Umsetzung eines Kopftuchverbots für Mädchen bis zum vollendeten 14.Lebensjahr (geknüpft an das Erreichen der Religionsmündigkeit) erfolgen. Der Grund dafür ist, dass das Kopftuch nicht nur ein religiöses Symbol ist, sondern vor allem auch ein politisches Symbol, das insbesondere die Unterdrückung von Frauen und Mädchen zum Ausdruck bringt".

11 Muslim Attempts to Participate in and Influence the Debate

Apart from numerous contributions over the course of the debate in the media, two quite different approaches to influence the debate about, and perhaps prevent a ban on headscarves, shall be illustrated.

During the presidency of Ibrahim Olgun from June 2016 to December 2018, the superior council of the IGGÖ debated the possibility of calling a *fatwa* on the wearing of the headscarf. The underlying logic was to unequivocally establish the wearing of a headscarf as such an integral part of religious practice that any attempt to prohibit it would have constituted an interference with internal matters of the religion and therefore a violation of religious liberty. What was overlooked in this approach was the fact that, within Muslim self-conception, a *fatwa* is always intended as a clarification of a question regarding religious practices posited by Muslim men and women, in a way an expert opinion, which the faithful can choose to abide by or not. This *fatwa*, however, was primarily intended for the non-Muslim public. Even the theological debate of a *fatwa* may be hard to grasp for outsiders. Ultimately, the authors of the *fatwa* also made the mistake of speaking of a 'commandment' to wear a headscarf, believing that, in doing so, they would empower Muslim women in their rights. Even though the right to self-determination was never questioned, there was always the peril of creating the impression that Muslim women should be forced to wear a headscarf – particularly by selectively quoting the report. This, of course, would have reinforced the exact arguments postulated by opponents of the headscarf, namely that it is never done out of a woman's own volition. The actual intention to save women the indignity of having to justify themselves and to turn the wearing of a headscarf into an inconspicuous part of religious practice would not have been accomplished in this way.

While the text itself was written, it was only published on the IGGÖ's website. However, it was only a matter of time until the media would find it and spin a story out of it. This happened in February 2017, drawing some very heated reactions. Both then minister of integration, Sebastian Kurz, and state secretary for religion, Muna Duzdar, publicly rejected the *fatwa*.[27]

The IGGÖ's speaker for women's affairs took International Women's Day as an opportunity to publicly question the *fatwa*'s usefulness.[28] By now, the text has been removed from the IGGÖ's website.

27 See https://religion.orf.at/v3/stories/2829312.

28 See https://www.diepresse.com/5179731/islam-interner-konflikt-um-kopftuchgebot.

After a year, the issue of the headscarf was still present in the public, with bans being actively planned. In response, the IGGÖ's advisory council was summoned to consider measures that might cause politicians to reconsider their position. Eventually, and concurrently with a declaration by several imams against terrorism and violence, which had received incredibly positive public feedback, the idea to initiate a women's declaration arose. The task was entrusted to the IGGÖ's women's representative and Zaynep Elibol, director of the *Islamische Fachschule für soziale Bildung* (Islamic College for Social Education) who had many years of experience in community work and inter-religious dialogue.

A broad dialogue was initiated among Muslim women with the goal of formulating a text that would be able to represent the views and positions of Muslimahs in all their variety truthfully and authentically. A whole series of meetings was scheduled to achieve as much participation as possible and to gather all views presented. Ultimately, a three-part declaration that focused on the right to self-determination of women, regardless of whether they wore a headscarf or not, was formulated. Initially, demands aimed at the Muslim community itself are stated, such as the expectation of the realisation of resolutions of the imam conferences that revolve around equality and the full participation of women. Women shall communicate about the headscarf themselves. Another part analyses common attributions to and prejudices against the headscarf and attempts to deconstruct them. It was also of importance to the women to reflect on the understanding of their own role within important social positions and to transmit a form of self-description. The theological background of the headscarf was not addressed. This decision was made to avoid the appearance of trying to justify the wearing or not-wearing of the headscarf and instead put the emphasis on the right to self-determination.

Potential signatories were deliberately sought out through personal contact instead of social media or a webpage. Through this, a dynamic that elevated Muslim women to active participants was achieved. Thousands of women from all kinds of backgrounds, of different ages, and various levels of education participated. Ultimately, this also meant a revival of the internal Muslim dialogue and an affirmation against external labels, as well as an expression of solidarity between women in all their diversity. The presentation took place on 12 March 2019 under the slogan *Musliminnen am Wort* (Muslimahs having the word).[29]

The declaration received attention in the media and was sent to mandataries of political parties as well. This led to some productive

29 See http://www.forum-muslimische-frauen.at/index.php?page=deklaration-muslimischer-frauen.

conversations, albeit not on the part of the governing parties, who ignored the declaration. The *Österreichische Liga für Menschenrechte* (Austrian League of Human Rights) addressed the topic in its annual report.[30]

Already during the gathering of signatures, it was important to convey a realistic assessment of the situation to allow for the setting of achievable goals. Within the frame of the current debate, breaking certain narratives surrounding Muslim women appears to be particularly difficult. Therefore, there was no intention to succumb to the illusion that the declaration would have any chance of stopping the prohibitionist policies. That is, ultimately, also a question of power. Due to this, a complex debate about the headscarf would be excellently suited for a study inspired by the works of Michel Foucault. Naturally, the driving forces for the women were their own dignity and their understanding of themselves. Even the act of rising to speak conveys a form of personal empowerment. Displays of solidarity by others, among them quite well-known opinion leaders, felt reassuring and vindicating. Coming to understand certain facts may very well help to facilitate patience, especially the realisation that bans on headscarves revolve around a whole plethora of interests, yet least of all around an honest interest in those affected by them.

During the process of establishing their declaration, the Muslimahs involved also reflected on the issue that the headscarf is not simply a source of friction for "external" sources. Muslim people react at least as emotional when confronted with the issue which does, after all, revolve around a visible piece of identity. Even more than that, it must be honestly admitted that, from an internal Muslim perspective, the headscarf is often seen and utilised as a sign of identity (particularly by men). Here, the evolution of ideological restrictions, that have the potential to yet again limit women in their self-determined appearance by predefining their choices, are a distinct possibility as well. If the mentality could be reinforced within Muslim communities, that a simple equation like 'the headscarf equals pure and pious' is not admissible, and that the act of not wearing a headscarf does not imply the opposite either, it would already represent a significant victory.

Last but not least, the debate also proves to be as difficult as it is because the arguments of the proponents of a headscarf ban cannot be simply dismissed as completely unfounded. Wherever girls or women are forced to wear a headscarf, a determined intervention for their right to self-determination is absolutely necessary. Just as an ostensibly positive attribution to the headscarf may ultimately miss what the wearer herself associates with it. The visibility of the headscarf is part of its nature. What should not be are the ideologi-

30 See http://www.liga.or.at/site/assets/files/2198/liga_befund_2019_web.pdf.

cal attributions associated with it – whether demonised as a 'symbol of oppression' or elevated to *the* 'symbol of a decent woman' and the various negative implications directed at women without it.

12 Outlook

A lawsuit filed by the IGGÖ on behalf of two families, one Sunni and one Shiite, before the Constitutional Court of Austria at the beginning of 2020 has yet to be decided at the time of this writing.[31] The decision has already been adjourned multiple times. This may be taken as an indication that even the constitutional judges are having some trouble with the topic. The European Council expressed criticism in June 2020 and demanded a revision of the headscarf ban, which will likely be taken into consideration as well. The European Council had quite clear words:

> There are high levels of Islamophobia and the public discourse has become increasingly xenophobic. Political speech has taken on highly divisive and antagonistic overtones particularly targeting Muslims and refugees.[32]

While headscarf bans had already been legally challenged in other European nations over the past years, Austrian Muslims have now reached a point where they feel the need to reach a constitutional conclusion as well. On the one hand, this can be regarded as a positive sign for the proper functioning of the democratic processes in a constitutional state. On the other hand, there are several problems tied to this approach as well. An attempt to lift the ban on headscarves in primary schools would have to be argued on the basis of the parents' right to educate their children. However, there is no intention whatsoever to inadvertently establish the authority for parents to force their daughters to wear a headscarf either. Since no one intends to reach a judgement that would be detrimental to Sikhs or Jewish people by potentially extending the ban on their head coverings as well, the argument that a specific ban of the Muslim headscarf is in violation of the principle of equality is similarly problematic.

In Germany, the Federal Constitutional Court has already decided in 2015 that a general ban on headscarves for teachers in schools is

31 In December 2020 the Constitutional Court struck down the law. See https://www.bbc.com/news/world-europe-55277840.

32 "Es gibt einen hohen Grad an Islamophobie, und der öffentliche Diskurs ist immer fremdenfeindlicher geworden. Politische Reden haben äußerst spaltende und antagonistische Grundtöne angenommen, insbesondere in Bezug auf Muslime und Flüchtlinge". See https://orf.at/stories/3167962. For the English version see https://rm.coe.int/report-on-austria-6th-monitoring-cycle-/16809e826f.

unconstitutional. Its line of argument is of particular interest against the backdrop of the Austrian emphasis on an "objective observer" within the legal framing of the headscarf ban, which supposedly makes listening to the wearer herself unnecessary:

> If it were established that "the wearing of a headscarf could be objectively understood as a sign of support for the unequal treatment of man and woman, including from a legal standpoint, and that the wearer of the headscarf would therefore need to be questioned in her eligibility to an educational profession", then this would, according to the court, constitute a generalised suspicion and would not be sufficient for a restriction of religious liberties.[33]

Austria used to have a long-standing tradition of resolving matters pertaining to a harmonic coexistence through dialogue. Issues such as the headscarf are a form of placeholder for various issues that need to be resolved. Often, personal experiences will lead to generalisations about Muslims that are not always accurate. If the headscarf is viewed, from an external standpoint, as a symbol of patriarchal oppression while also keeping in mind that the achievement of many women's rights in Austria is recent enough to justify fears of losing them again, especially since true equality has not even been reached yet, then the emotions tied to the headscarf on the Muslim side become much more relatable. At the same time, the fact that Muslim women are often forced to justify themselves regularly stifles a meaningful debate between equals. This is not only tiring for Muslimahs who are forced to repeatedly prove their trustworthiness and earn people's respect. Those who feel that they can only keep the company of a Muslim woman once she has satisfactorily elaborated her view on her headscarf likewise limit their chances of making new acquaintances.

It is far more expedient, as examples from inter-religious and inter-feminist dialogues demonstrate, to tackle issues like gender equality together. Then, it also becomes possible to overcome certain framings, i.e. prejudices that lead us to label each other based on assumptions, and to become more open for and attentive to each other. This should be the point from which one should set out on the way back to beneficial and fact-based debates.

33 "Wenn vereinzelt geltend gemacht werde, 'im Tragen eines islamischen Kopftuchs sei vom objektiven Betrachungshorizont her ein Zeichen für die Befürwortung einer umfassenden, auch rechtlichen Ungleichbehandlung von Mann und Frau zu sehen und deshalb stelle es auch die Eignung der Trägerin für pädagogische Berufe in Frage', dann sei dies, so der Senat, ein Pauschalverdacht und für die Einschränkung der Glaubensfreiheit nicht hinreichend". See https://www.faz.net/aktuell/feuilleton/karlsruher-beschluss-kopftuch-na-und-13481717.html.