

Contents

<i>Acknowledgments</i>	vii
<i>Table of Cases</i>	xv
<i>Introduction</i>	i
I Human Rights and Religion: the Challenge of the Islamic Headscarf-Hijab	4
<i>Introduction</i>	4
<i>The Headscarf-Hijab: Language, Meaning and Significance</i>	4
<i>The Headscarf-Hijab as a Religious Obligation?</i>	8
<i>The Real Debates Behind the Debates on the Headscarf-Hijab</i>	12
<i>The Headscarf-Hijab as an Instrument of Oppression of Women</i>	13
<i>The Headscarf-Hijab and Religious Extremism</i>	15
<i>The Headscarf-Hijab as a Political Symbol</i>	17
<i>The Headscarf-Hijab as Evidence of the Failed Integration of Immigrants</i>	17
<i>The Headscarf-Hijab and Terrorism</i>	20
<i>Human Rights Perspectives on the Headscarf-Hijab</i>	22
<i>Religion and Human Rights</i>	24
<i>The Human Right to Freedom of Religion</i>	25
<i>Article 18 of the International Covenant on Civil and Political Rights</i>	26
<i>Article 9 of the European Convention on Human Rights</i>	27
<i>The National Assessment and the Margin of Appreciation</i>	28
<i>Parents and Children</i>	29
<i>European Union Standards</i>	30
<i>The Role of Human Rights Thinking</i>	31
2 The Islamic Headscarf Debate in France	34
<i>Introduction</i>	34
<i>The Church and State in France</i>	34
<i>The Law of 1905</i>	36
<i>Laïcité and Secularism</i>	38

<i>The French Approach to Rights</i>	41
<i>Assimilation and Integration</i>	44
<i>France and International Human Rights Law</i>	46
<i>How France views Muslims</i>	47
<i>Muslims in France</i>	52
<i>The Wearing of the Headscarf-Hijab in France</i>	61
<i>The Headscarf-Hijab Debate in France: l’Affaire du Foulard</i>	64
<i>The 1989 Opinion of the Conseil d’Etat</i>	68
<i>Cases in the Conseil d’Etat</i>	70
<i>The Neutrality of Civil Servants and Teachers</i>	73
<i>The School Context</i>	76
<i>The Headscarf-Hijab in the Private Sector</i>	80
<i>President Chirac’s Speech of 16 December 2003</i>	81
<i>The Stasi Commission</i>	83
<i>The French Law on Headscarves-Hijab of 2004</i>	90
<i>The Application of the New Law</i>	91
<i>Reactions to the Ban on the Headscarf-Hijab</i>	96
<i>The Law of 2004—Two Years On</i>	100
<i>Concluding Comments</i>	101
3 Comparative State Practice: Germany	107
<i>Introduction</i>	107
<i>The Church and State in Germany</i>	107
<i>The Muslim Community in Germany</i>	109
<i>The Headscarf-Hijab Debate in Germany</i>	110
<i>The Ludin Case</i>	111
<i>The Minority Judgment in Ludin</i>	114
<i>Responses to the Ludin Case</i>	115
<i>Concluding Comments</i>	118
4 Comparative State Practice: Switzerland	120
<i>Church and State in Switzerland</i>	120
<i>Muslims in Switzerland</i>	120
<i>The Dahlab Case</i>	121
<i>The Dahlab Case in the Swiss Federal Court</i>	122
<i>The European Court of Human Rights in Dahlab</i>	129
<i>Concluding Comments</i>	131

CONTENTS

xi

5 Comparative State Practice: Turkey	132
<i>Introduction</i>	132
<i>State and Religion in Turkey</i>	132
<i>The Headscarf-Hijab Debate in Turkey</i>	133
<i>Turkish Cases Before the European Commission on Human Rights</i>	137
<i>Leyla Şahin v Turkey: the Judgment of the European Court of Human Rights</i>	140
<i>The Assessment of the Grand Chamber on Article 9 European Convention on Human Rights: Freedom of Religion</i>	150
<i>The Assessment of the Grand Chamber on Article 2 of Protocol 1: the Right to Education</i>	157
<i>The Assessment of the Grand Chamber on Articles 8 (privacy), 10 (expression) and 14 (non-discrimination)</i>	159
<i>The Dissent of Judge Tulkens' in the Grand Chamber</i>	159
<i>The Significance of the Decision in Leyla Şahin v Turkey</i>	167
<i>The Advocacy of Islamic Headscarves-Hijab in Turkish Politics</i>	169
<i>Concluding Comments</i>	171
6 Comparative State Practice: United Kingdom	173
<i>Introduction</i>	173
<i>State and Church in the United Kingdom</i>	173
<i>Muslims in the United Kingdom</i>	174
<i>Muslims and School Uniforms in England and Wales</i>	176
<i>The Begum Case in the High Court</i>	180
<i>The Begum Case in the Court of Appeal</i>	184
<i>The Begum Case in the House of Lords</i>	190
<i>Concluding Comments</i>	203
7 Comparative State Practice: Spain, Italy, Belgium, the Netherlands, and Other European States	205
<i>Spain</i>	205
<i>Italy</i>	206
<i>Belgium</i>	210
<i>The Netherlands</i>	212
<i>Other European States</i>	214
<i>Concluding Comments</i>	218

8 Comparative State Practice: Non-European States	220
<i>Introduction</i>	220
<i>The United States</i>	220
<i>Uzbekistan</i>	225
<i>Trinidad</i>	230
<i>Afghanistan</i>	232
<i>Singapore</i>	233
<i>Saudi Arabia</i>	233
<i>Iran</i>	234
<i>Concluding Comments</i>	236
9 Applying International Human Rights Standards to the Headscarf-Hijab	237
<i>Introduction</i>	237
<i>Individual Applications to National Courts and International Human Rights Bodies</i>	237
<i>Individual and Group Identities and Rights</i>	241
<i>Negative and Positive Aspects of a Human Right</i>	244
<i>The Right to Freedom of Religion</i>	246
<i>The Human Rights Context of Church-State Relations under the ECHR</i>	247
<i>Limitations on religious freedoms on the basis of the 'protection of public order' and the 'protection of the rights and freedoms of others'</i>	250
<i>Religious Discrimination and Islamophobia</i>	252
<i>Religious Discrimination and the European Union</i>	257
<i>Racial Discrimination</i>	259
<i>Gender Discrimination and Feminist Perspectives</i>	261
<i>Autonomy and Consent</i>	270
<i>Minority Rights and Cultural Rights</i>	275
<i>Children's Rights and Parents' Rights</i>	276
<i>Teachers' Rights and Children's Rights</i>	282
<i>Concluding Comments</i>	286
10 Wider Perspectives on the Headscarf-Hijab	288
<i>Introduction</i>	288
<i>National Identity</i>	288
<i>National Identity and International Human Rights Law</i>	289

CONTENTS

	xiii
<i>Changing National Identity</i>	294
<i>Multiculturalism and Islamophobia</i>	298
<i>Secularism Versus Religion</i>	301
<i>Secularism and International Human Rights Law</i>	303
<i>Secularism and Neutrality</i>	304
<i>Liberalism and Religious Education</i>	305
<i>Liberalism and Religious Fundamentalism</i>	306
<i>Concluding Comments</i>	308
<i>Author Index</i>	311
<i>Index</i>	317

<http://www.pbookshop.com>