

Chapter 2

Discrimination and Claims for Equal Rights Amongst Muslims in Europe

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Introduction

Few would question the existence of negative perceptions and representations of Muslims in Europe, although these feelings are expressed and translated very differently from country to country (Allen and Nielsen, 2002). Indeed, studies of the post 9/11 context have shown that anti-Muslim feeling and hostility – sometimes called ‘Islamophobia’ – is growing all over Europe.¹ Media coverage of the attacks on the USA has been incriminated in the increasing distrust and suspicion experienced by Muslim populations. However, this negative perception of Islam in European public opinion has also opened up new opportunities for Muslims to express their own requirements and interests. Individually and collectively, experiences of discrimination and unequal treatment have been publicly denounced by Muslims and, in a few cases, even taken to the courts. This chapter is an attempt to elaborate on such matters and especially a double dynamic of ‘juridicization’² and ‘judicialization’³ which appears to be emerging. This dialectic designates a general tendency to work towards the resolution of issues that are a source of political conflict through the legal system. My argument, regarding a growing recourse to legal argumentation, concerns both state policies as well as the initiatives of Muslim citizens.⁴

In an age of globalization domestic politics and decision-making is increasingly constrained by international legal provisions. No European state can, for instance, ignore the existence of international conventions protecting human rights or behave as if these have no importance. Nation-states can no longer do as they will on a national level, being embedded in larger frameworks that highlight moral and ethical values (‘common goods’) apparently shared and protected by an ‘international community’. At the same time, citizens also appear to rely more systematically than before upon legal provisions to resolve situations or conflicts, acting in the name of a collective or as private individuals. In this respect, my focus will be the way in which ‘judicial’ treatment may help a cause (for example, equality between Muslims and non-Muslims) to gain political relevance and visibility.

This chapter begins, firstly, by examining the legal conditions framing and determining the social and political life of Muslims in France, Germany, Great Britain and Italy. In terms of a European perspective, I enquire: where do the

national specificities lie? Secondly, the chapter considers the way in which individual claims for equality made by Muslim citizens, in particular their use of anti-discrimination legislation, affects the perception of Islam as a public issue.⁵ Beyond a 'resource mobilization' interpretation, what do such moves indicate in terms of the political commitment of Muslims in public arenas? What is the political impact of this 'juridicization' of the discussion over Islam at national and European levels? Far from being the simple by-product of national migration waves, the presence of Muslims is shaped by the larger framework of European integration. So, what sorts of social dynamics are created by an implementation of 'equality' that relies on courts and trials as the main sites for its construction? What does the 'discrimination repertoire' bring to discussions about Islam in the West?

The Legal Regulation of Religion in Europe and the Fact of Religious Discrimination

Reviewing the settlement processes of Muslims in the European Union (EU), scholars have sought to elaborate a comprehensive and comparative perspective within which it is possible to identify institutional models of relations between Muslims and non-Muslims. A major focus of interest has been existing relations between particular churches and states and the way that this frames the interactions of Muslims in the contexts in which they now reside. Of course, the 'bewildering variety' (Davie, 2000: 15) of church-state relations in Europe is central. The usual classification distinguishes between: a) 'concordat type' regimes (that is, the state recognizes denominations or has signed agreements with representative religious hierarchies as in Italy or Germany); b) systems with official state churches (such as the established Church of England); and c) systems of strict separation between churches and the state (for instance, France).⁶ These different systems of regulation can influence, constrain and even empower Muslims as they participate in the respective national political cultures, although other factors cannot be discounted.

Trying to delimit the apparent uniqueness of the different national 'models' is difficult. Religious freedom, tolerance, the neutrality of the state, and the autonomy of religious hierarchies vis-à-vis the state (the latter being 'incompetent' as far as religious matters are concerned) are all European 'common goods'. Moreover, such principles also follow international standards of law. For instance, when it comes to individual rights, all EU member-states constitutionally protect, both individually and collectively, their citizens' freedom of conscience and religion.⁷ European states are 'neutral' vis-à-vis religious denominations and prohibit discrimination on the basis of an individual's belief.⁸ Indeed, this neutrality 'guarantees' the equal treatment of denominations in European liberal democratic contexts.⁹ Parallel to this protection against all forms of individual or collective discrimination on grounds of religion, freedom to practice one's faith is also guaranteed. However, this general frame of protection does not preclude minority denominations from sometimes experiencing highly differentiated, and thus unequal, treatment. Over the last decade especially Islam and Muslims have gradually become a systematic illustration of this fact.

From a juridical point of view, the stable presence of Islam in European political spaces raises questions about the current compromises and balances inherited from a religious history that was sometimes extremely violent. The central question for European states now incorporating Muslim minorities has most often been presented as a juridical one: in a pluralistic and democratic setting, what place and status should Muslims be allowed as the institutionalization of Islam gathers space? How should equality between faiths and the neutrality of the state be enacted in the case of Islam and Muslims? Even if this 'does not pose legally unsolvable problems or, on close examination, particularly new ones' (Ferrari, 2004: 4), the legal provisions that already exist to address the Muslim presence often need more effective application. Indeed, and this is my main point here, the legal regulation of different religious denominations may also create all sorts of indirect discrimination: administrative and procedural obstacles to the opening of places of worship; strict conditions for the teaching of Islam in public schools;¹⁰ difficulties recognizing Islam on the basis of the 'there-is-no-unique-partner' argument.

In France, for example, the 'neutrality' of the state and the separation and privatization of religion, does structure a certain 'equality' between faith communities. Nevertheless, it also produces indirect discrimination towards certain minority religious communities. Some French MPs interviewed recently confessed their ignorance of the room for manoeuvre actually allowed by the 1905 Law of Separation. Facing demands for new Muslim places of worship, they resorted to arguments about the neutrality of the state in order to construct a convenient legal barrier protecting them from making interventions in discussions about the allocation of a piece of land or the granting of planning permission. Their situation in many ways resembles that of teachers and head-teachers of schools requesting the government's help in defining a coherent and pragmatic position on managing the presence of Muslim students wearing veils in French public schools.

The major change in the position of religion in European public space came as the result of a significant historical shift, which, again, assumed a somewhat different shape from country to country. From the sixteenth to the eighteenth century European history saw the more or less peaceful coexistence of states organized along confessional lines, whether this was formally institutionalized or not. Membership of the political community was often dependent on membership of the dominant religious denomination. Therefore, one major evolution in the emergence of contemporary Europe was the shift from such confessional regimes of citizenship to ultra liberal ones where no such test exists. Religious pluralism and the individualization of religious belonging are directly related to this change. Individuals may now choose to believe or not to believe, exercising a fundamental right protected by constitutional national provisions, European texts and international treaties.¹¹ This fundamental change induces another one: *the integration into national political culture of the idea that religious pluralism should be, if not actively supported, at least tolerated and protected.*

In the management of growing religious pluralism, a distinction seems to be appearing between countries with a dominant Catholic culture (Italy, France) and countries with either a clear Protestant majority (Great Britain) or bi-confessional population (Germany). Here, the degree of intimacy of each national context with

de facto religious diversity remains a key variable which helps to explain why the latter contexts are more sensitive, or at least indifferent, to Muslims' practices and needs,¹² and why the former, on the contrary, would seem to produce explosive controversies such as wearing the veil, the right to open a mosque, or the presence of religious symbols in public buildings. Furthermore, it may be necessary to distinguish between Muslim claims in countries that follow in the footsteps of other denominations (for example, the recognition of Sikhs' right to wear turbans in Great Britain or Jewish slaughter rites in Germany), and countries in which Muslims had have to 'do it for themselves' in environments intolerant to religion such as France.

In Italy, the legitimacy of certain symbols (for example, cribs at Christmas¹³ and the crucifix in public primary schools – see Saint-Blancat and Perocco, this volume) is regularly discussed,¹⁴ and more and more so in connection with the question of religious pluralism and the direct competition between faiths. So, what place should be given to 'Otherness' without alienating the 'Self'? The problem is a highly sensitive one in Europe not only because it raises the issue of pluralism inside a specific nation-state, but also because it highlights, crucially, the religious vitality of the respective religious communities, Christian and non-Christian (Davie, 2002). Moreover, as this chapter demonstrates, some existing national provision for religious freedom and the public administration of worship can produce indirect discrimination as an unintended consequence. The British law of blasphemy, for example, which applies only to Christianity, undoubtedly has some discriminatory implications for other denominations as illustrated by the Rushdie Affair.¹⁵

Nationality, Citizenship and International Crises

Analysing the public regulation mechanisms of religious denominations is thus insufficient in terms of mapping the variety of situations faced by Muslims in Europe. Beyond their position as 'believers', Muslims are also generally 'citizens' of their place of residence and, moreover, 'economic' agents. Here the picture becomes complex as each country offers diverse access to nationality and citizenship. If Muslims are recent minorities in the four countries referred to at the outset of this chapter, they trace their heritage to different countries,¹⁶ sometimes echoing a colonial past as in the French or British cases, sometimes symbolizing a dynamic economic period of recruiting unskilled workers as in Germany, or reflecting the change of status from 'home-country' to 'host-country' as in Italy.

At first glance, the difficulties faced by Muslim populations in Europe are not different from one country to another. Most countries receiving migrant workers in the 1960s had to come to terms with the same practical issues, relating to the different stages of migration and settlement, the educational needs of children, and the move away from policy concerning 'migration' to (in some cases) a policy of 'integration'. For migrants themselves, the price to pay is more or less expensive, depending on whether you lived as a Turk in Solingen during 1989, as a fourth generation member of a family of Algerian migrants in Lille, as a Pakistani

taxi driver in Bradford or as a Moroccan waiter in Milan. Nevertheless, the current situation is one of radical convergence between contexts that have previously always been compared and contrasted.

Independent of the policies implemented in public sectors such as education or housing, of church-state relations, of the origin of the original migrants, and of the degree of secularization, European societies are now converging in constructing Islam as domestic threat to cohesive citizenship. For instance, notwithstanding the reform of the nationality law (applied 1 January 2000) which made it somewhat easier for 'foreign workers' to become 'citizens', public attacks are becoming a daily experience for Muslims in Germany. From 1961 until the end of the 1990s, the public perception of Islam was mostly considered a foreign policy and diplomatic issue. However, immediately after 9/11, the automatic equation between migrants from Muslim backgrounds and a sense of 'threat' to the federal territory gained a new force (see Jonker, Chapter 8, this volume). One of those involved in the 9/11 attacks, M. Attah, had been living and studying in Germany.

Islam and Muslims have certainly gained a new kind of public visibility in Europe during the last two decades (Amman and Göle, 2004). This visibility is not exclusively based on the growing fear of Islamism and terrorism at the international level, or on new political demands for recognition which have been made by Muslims, especially of a younger generation, since the mid-1980s. Part of this 'new' visibility, and in particular the media focus on Muslims, can be related to the impact of international crises on European contexts. International events have an important effect on local perceptions of Muslims by their fellow citizens (Cesari, 2004). These are incorporated into public policy-making, in particular when selecting 'good Muslims' and denouncing 'bad ones' (Bonney, 2003, comparing Britain and France). However, part of this emerging visibility is also tied to the construction of Islam as a public 'problem' in most European contexts, a construction which draws on different narratives stemming from national security policy (especially in the aftermath of 9/11),¹⁷ controversial representations of Muslims as enemies (Cesari, 2001), the institutionalization of Islam in general and more specific controversies (Amiraux, 2004a).

The public character of Islam is therefore multiple: 'As phenomena are open to various modes of conceptualizing them as problems, so too their public character is open to various means of conceiving their resolution' (Gusfield, 1981: 5). The 'public-ization' of Islam in most European countries has thus created a set of narratives that work as a constraint on Muslim citizens. It either forces them to justify their personal choices and ways of life, or invites them to react personally to anything related to Islam, from the Israeli-Palestinian conflict, to the public stoning of women in Iran, to the necessity of wearing the veil as Muslim woman.

Serving the Cause of Equality

Having established some of the context of my argument, I now want to return to my main focus. If Islam requires the same equal treatment from pluralistic European democracies as other confessions, the implementation of this principle of

equality of religions seems to be increasingly elaborated in the courts and local jurisdictions. In particular, it relies upon the fight against all forms of discrimination. This general shift has occurred for various reasons and reflects multiple interests. On the one hand, local and regional Muslim associations or federations have organized in an effort to secure the institutional status that could eventually lead to equal treatment by public authorities at a national level. On the other hand, individuals and collectives have sued in defence of their rights as believers but also as victims of racial injustice and discrimination. In both cases respect for, and tolerance of, 'Otherness' lies at the heart of the relevant discourse. There are different 'registers' however.

The first register, 'mobilization', clearly refers to the 'public recognition' of Islam as a denomination, its claims for equal treatment and a willingness to translate this into the creation of a representative body,¹⁸ with all the associated symbolic and practical outcomes. The discussion here routinely focuses on the realm of religious practice and its public regulation. It has given birth to some very eclectic institutions, each doing their best to cope with the local requirements of their country of residence. For instance, Islamic institutions are often expected to provide public agencies with a hierarchy and it is assumed that they should be able to represent all Muslims.

In respect of the second register, the focus is on two different repertoires, the respect for religious minorities' 'freedom of conscience' and the 'fight against discrimination'. Both types of experience of exclusion are apparent in empirical studies of Islam and Muslims in Europe. This second register also illustrates the way that experiences of injustice and discrimination have affected motives and investments in the judicial and political arenas as a means of resolving potential conflicts between Muslims and non-Muslims in some EU member-states.

Religious identity and the meaning of being a Muslim has changed amongst believers settled in Europe. The entire literature, whichever country is in question, emphasizes the diversity and heterogeneity of Muslim populations, not only in terms of origins and ethnic background, but also in terms of definitions of being a Muslim and the practices and relationships to the community of belief that follow from this (see the chapters in Section III, this volume). The grammar of religious belonging has become more and more complex, depending on the type of identification that the individual wants to prioritise: a strict obedience to rites, the adoption of a 'life ethic', the defence and eventual promotion of a cultural patrimony. Indeed, religious practice alone is no longer a sufficient indicator of the religious 'belonging' of individuals that may choose to be identified as 'Muslims' in certain circumstances but not in others. Of course, certain visible signs become clear markers of 'religious' difference: clothes, names, faces, veils and beards. After 9/11, the study of the resultant rise of Islamophobia identified the profile of the 'ideal victim': 'The headscarf seems to have become the primary visual identifier as a target for hatred, with Muslim women being routinely abused and attacked' (EUMC Newsletter, Issue 13, June 2002: 1).

Again, the relative sensitivity of different European contexts, and the justification for policy makers to take a position against the wearing of the veil in public schools, is totally different in Germany and France. During the 2003-4 episode in France, secularism, gender equality and the precarious situation of

women in certain urban settings were the main arguments motivating the law that eventually banned ostentatious religious symbols from public schools (European Parliament, 2004: 50). By contrast, the stigmatization of the Islamic veil in Germany was essentially because it was perceived as a 'political' rather than a 'religious' symbol (see Jonker, this volume). In a way, the French legal answer appears to be less discriminatory of Muslims than the German interpretation, which saw fit to ban the headscarf amongst civil servants working in the field of education. The January 2004 declaration by the German President, Johannes Rau, that all religious symbols, including the crucifix, should be banned from public schools was an attempt to re-balance this discussion.

Common usage of the term 'discrimination' is rather loose, seeking to unify multilevel experiences that encompass various degrees of intensity, from passivity to hostility, intolerance to racial hatred and violence. Here a distinction should be drawn between reference to 'discrimination' as a means to denounce a situation of unequal treatment of one or more parts of a population, and the mobilization of that constituency in the context of legal action and lawsuits. In this respect, a second distinction between 'direct' and 'indirect' discrimination is crucial to refine the use of the concept in legal terms. With the notion of 'indirect' discrimination, it is no longer necessary to establish the passive (*de jure*) intention motivating discrimination. Rather, judges are invited to assess the concrete effects (*de facto*) of texts and norms on the life of individuals, even when explicit intention does not appear as such in the legal data. Judgements should refer to situations produced by the application of 'neutral criteria' to a specific population which, because of its belonging to a certain group, remains the victim of unequal treatment.

As is the case for women and other vulnerable groups, Muslims are mostly victims of indirect discrimination. The application of the 1905 law and the understanding of the principle of *laïcité* in France, in particular in relation to the opening of places of worship, or the blasphemy law in England, are both good illustrations of this. In France, the text of the law in itself does not contain explicit provisions against non-Catholic denominations, but it was designed as a tool to prevent the Catholic Church from intervening in politics. The principle of *laïcité* and, especially, the neutrality of the state, is most often understood by local public authorities who too often rely on a literal interpretation of the concept of 'separation' that is at the core of the 1905 legislation. Similarly, not being recognized as an 'ethnic' group, Britain's Muslims have historically been denied direct access to important legal rights and public goods.

Religion as a criterion of discrimination has not yet been properly researched and applied to the situation of Muslims in the European Union.¹⁹ When it has been researched, for instance by sociologists, the reference to discrimination is a rather loose one ('discrimination' = 'unequal treatment'), being variously set in the context of: assessing public policies; advocating the replacement of 'integration' discourse with an (anti-racist) 'fight against discrimination' discourse; or simply examining 'representation' amongst groups such as 'Muslims'. Public discussions of Islam were also, until recently, rather confined to debates over the definition of norms and rules of behaviour in a context where Muslims are a minority. Can Muslims be incorporated as citizens? Is Islam compatible with European political values?

In such a context, the emergence of the word ‘discrimination’ in relation to the situation of Muslims in Europe refers to the way that public agencies imagine Islam: an ‘Otherness’ that automatically inspires fear and suspicion. Discrimination must therefore be understood in terms of the tensions between ‘host-societies’, their national history and tradition of citizenship on the one hand, and the specific requests by Muslims on the other. The extensive use of the word ‘Islamophobia’ – no longer limited to the United Kingdom as it was before 2001 – has developed in France, where some Muslims and non-Muslims use it as a legitimate word to describe forms of racism which articulate with religious identity (Geisser, 2003). Considering the blurred border separating racism from discrimination, Islamophobia has been defined as:

a two-stranded form of racism – rooted in both the ‘different’ physical appearance of Muslims and also an intolerance of their religious and cultural beliefs, and should be considered as a modern epidemic of an age-old prejudice towards, and fear of, Islam. (Sheridan, 2002: 87)

What, then, can be the ‘cause’ of ‘Muslims’ in Europe? What can be the common denominator that helps to organize a collective identification ‘of Muslims as Muslims’? If the notion of religious discrimination is new to academic discussions, it is also new to the political vocabulary of Muslim organizations. In England and Wales, religious discrimination is a widespread problem, more prevalent than racial abuse according to some authors (Sheridan, 2002). Used now as a catchword to encompass diverse forms of hatred or distrust vis-à-vis Muslims, the notion of religious discrimination is not without problems or difficulties in terms of its definition, the question of ‘intention’ (is it really about the religious belonging of the victim?) and the lack of data (OSI, 2002: 227, 260).

Since 9/11, the analysis of a growing anti-Muslim and anti-Islamic feeling has been more extensively studied. This is also part of a broader climate of the ‘ethnicization’ of Islam – resulting from the conflation of culture and religion (Roy, 2003: 68-69) – and also, to some extent, part of the competition (at least in the media) between victims of racism. In most of the cases where the religious belonging of the victim of discrimination could be at stake, it remains implicit. There is generally no evidence of the centrality of the religious variables, even if religion ‘appeared to trigger both implicit racism and general discrimination to a greater extent than did race or ethnicity, both before and post-September 11’ (Sheridan, 2002: 90).

A Community of Suffering? Injustice and the Muslim Common Good

Another important and often ignored dimension of the religious discrimination debate is reflected in the fact that experiences of injustice seem to operate as ‘common goods’ between Muslim populations otherwise defined by an intrinsic heterogeneity. ‘Islam’ is inscribed in a form of daily experience that works ‘as a horizontal social imaginary bonding many different Muslim actors, in different

contexts, who act together simultaneously' (Göle, 2003: 814). For the Muslims who choose their religion as a motive for associative commitment, racism and other injustices are often experienced not personally but 'by proxy'. This strong identification with the feelings of victims (relatives or friends but sometimes anonymous individuals) generates a sense of shared experience of vulnerability and exclusion that is perhaps the most striking aspect of the renewal of the idea of the *umma* in a non-Muslim context.²⁰ Indeed, as a member of the community of believers, even if you have never suffered from intolerance, racism or discrimination as a 'Muslim', you may strongly empathize with the victims and therefore adopt discourses and practices of activism, even militancy, that re-connect you with the 'real victims'.²¹ The community ceases simply to be a spiritual imaginary and becomes a shared 'community of suffering' with its own icons and martyrs.²²

To analyse claims structured around repertoires centred on emotions and affects, Göle uses the concept of 'stigma' as used by Goffman. It is an attribute that profoundly discredits the individual, but which is also the subject of public perception 'to the extent that it articulates the private corporeal realm to the public domain of perception, social interaction, and communication' (Göle, 2003: 809). Far from the usual association of stigma with the process of exclusion, she mobilizes the notion of stigma to 'understand the ways in which social difference and public exclusion are carried out by bodily signs and practices' (Göle, 2003: 810). In terms of the technique of systematizing the use of legal resources (texts, laws, case law) to attract the attention of a larger public and create a voice in the public space, the identification with one case, one figure that symbolizes a singular experience, appears as central in this 'juridicization' process. It helps to organize the narrative, to formulate concrete expectations, to seduce different publics. Public opinion relates more easily to individual cases, charged with an emotional capacity to gather people together. Certain cases gain more attention and become 'affairs' while others do not. In 1989 and 2003, for example, the controversies over the veil in France produced a quasi 'iconology' of the victims of unfair treatment or injustice: 'Cases can be part of an effort to elevate an issue to the political agenda, occupying time in Parliament and the newspapers' (Sterett, 1998: 310).

Commitment to the fight against discrimination has aided in the more systematic use of legal tools in the cause of Muslim equality with other citizens. As in the case of anti-racist NGOs, most of the Muslims committed in associations dealing with Islamophobia are familiar with the law, most of them holding degrees in that discipline. At the intersection of law and politics, professional skills serve moral ends. Law firms are being created by Muslims and lawyers are engaging in Muslim associations after they obtain their degree, as was the case of one of the young women working for the recently created *Collectif Contre l'Islamophobie en France* (2004). As law plays a more central role in political regulation and intervenes more systematically in the juridical reformulation of social problems, the mobilization of legal resources to serve the cause of the equality of Muslims is becoming more systematic. In some cases Muslim lawyers act as 'gate-keepers' defining the 'entrance' and 'exit' to particular topics and actors, even controlling the production of media and academic discourse on such matters. In Germany, for example, some members of the Islamische Gemeinschaft Milli Görüş (IGMG) have,

since 9/11, systematized the lawsuits against journalists, writers and scholars that were said to be publishing unverified allegations against Muslims and therefore negatively affecting the public image of the movement. Tribunals and courts become some of the main sites for translating the specific claims and needs of Muslims into politics. This both domesticates Islam as a public issue at a national level and contributes to the Europeanization of the cause of equality for Muslims.

The ability to elaborate a cause such as 'equality' between Muslim and non-Muslim citizens and to promote justice through a defence of rights engaging other types of publics is a new and recent outcome of the equality discourse emerging in Europe. The defence of Muslims' rights to live as 'Muslims' is a cause that can even attract the support of other groups, moving beyond a simple 'community' politics. The emergence of an organized denunciation of Islamophobia and religious discrimination is also opening up a new perspective centred on a more systematic use of judicial tools to gain recognition of rights and specific claims. This process is made possible thanks to the intervention of Muslims, who are not only activists but also professionals working for their fellows' rights. The 'professionalization' of activism is neither a new thing, nor peculiar to Muslims however. Putting one's professional competence in the service of empowering a peculiar (and often vulnerable) group is, for some, at the heart of a moral commitment to the practice of 'lawyering' as a form of advocacy: '(...) their real goal is to contribute to the kind of transformative politics that will redistribute political power and material benefits in a more egalitarian fashion' (Sarat and Scheingold, 1998: 7).

Conclusion

Muslims are not a group of citizens that can easily be understood in terms of the more general banners associated with the study of collective action and other social groups such as gays, women or immigrants. The claim for specific rights based upon collective, ritual and other aspects of their religious life also reduces Muslims' ability to be considered as legitimate actors in the civil rights debate in more or less secularized societies. Muslims are, in a way, 'obliged' to associate with other groups in order to gain legitimacy, credibility and visibility (Bouzar, 2004). However, sustaining and defending a vision of the 'good society' where equality occupies a central position is entirely commensurate with the 'ethic' of Muslims' commitment to associative activity in European countries (Roy, 2003). Moreover, their public claims for equality can also attract non-Muslim fellow citizens who would not 'naturally' feel attracted to their 'motives':

The particular features of a group's culture, which are identified as significant by members and outsiders, and precisely where the boundary is drawn with other groups, especially the majority community, often depend upon the context or situation in which an issue arises. (Poulter, 1998: 7)

Increasing racism, Islamophobia and discrimination indicates the multiple difficulties Muslims are experiencing on a daily basis in many European societies.

Still, the number of people experiencing discrimination that file lawsuits remains low when compared with the increasing and generalized use of the term 'discrimination' in common parlance. Understanding the challenges posed by the settlement of Muslims in the EU requires two processes to be distinguished. The first one is rather institutional and refers to the public regulation of worship. What should individual European states do as far as religious practices and the representation of Islamic communities is concerned? A second process, parallel to the previous one, invites us to focus on the specific tensions that are emerging between Muslims and the rest of society. How do the former produce differences? How do they accept or deny their identification as Muslims? How does the latter deal with this? This second dynamic cannot be treated separately from the first but both should not be considered as equivalents. If the terms 'Islam' and 'Muslims' sometimes overlap, they do not always refer to the same population, nor to the same challenges.

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Notes

- 1 See, for example, ECRI (2000) and EUMC (2001).
- 2 'Juridicization' refers to the use, by individuals, of juridical tools and arenas (courts) to seek satisfaction of their needs, answers to their complaints and, eventually, reparation for damages.
- 3 Stone (2002: 187-188) argues that, 'The 'judicialization of politics' refers to the general process by which legal discourse – norms of behaviour and language – penetrate and are absorbed by political discourse', implementing a 'spectre of court intervention'.
- 4 This is particularly well illustrated by the law of 15 March 2004 banning the wearing of certain religious symbols from French public schools. One could also quote the decision by some of the 15 German Länder (individual states) to ban the wearing of the veil by teachers working in public schools, following the decision, taken by the Constitutional Court in October 2003, not to outlaw the veil at a federal level.

- 5 Discrimination is intended unequal treatment of individuals based on the illegal reference to their real or supposed belonging to a 'race' or ethnic group. Direct discrimination is based on an intention to treat two persons differently because of their racial or ethnic grouping, this motivation being illegal.
- 6 See Ferrari (this volume); Bradney and Ferrari (2000); Shadid and van Koningsveld (2002); and Cesari (2004: 100-117).
- 7 Legal provisions protecting individuals and collectives in terms of 'freedom of conscience', 'of religion' and 'of worship' include: in France, the 1905 law, 1901 law, 1907 law, 1958 Constitution (Article 2 and Preamble of the 1946 Constitution); in Italy, Articles 3, 8 and 9 of the Constitution; in Germany, Articles 4, 3-3, 33-3, 116-2, and 140 are the central references to constitutional provisions; in Great Britain, the Bills of Rights defines the main principles related to religion. The Human Rights Act (1998) includes a section (13) dedicated to religious freedom. The right to change one's religion, the right not to believe in any religion, the right not to practice (even being a believer) are part of religious freedom and therefore constitutionally protected. In some cases, the recognition of these rights may have created difficulties during the negotiations between state representatives and Muslim leaders, in particular, regarding the question of apostasy.
- 8 Each national administration uses its own labels in this respect. For example, 'culte' in France (literally 'worship', designating the institutional and mostly collective aspect of religious life). Elsewhere, 'religion', 'faith', 'community of the faithful', 'denomination'.
- 9 A liberal state does not impose any constraints in terms of defining what a 'good life' may be (Madeley, 2003).
- 10 Even if the way Islam is taught in French public schools has been improving since 1996 (Debray, 2002).
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- 12 To quote but a few examples: dietary requirements; the possibility to pray in public buildings; the recognition of holidays; the presence of chaplains in public services; the right to slaughter animals according to specific religious rules; Muslim plots in cemeteries.
- 13 In December 2004, certain episodes led to the explosion of a polemic on the preparation of cribs in public schools. In particular, the discussion revealed competing positions between representatives of the Catholic Church and non-Catholic citizens.
- 14 In December 2004, concerning the constitutionality of the presence of the crucifix in public primary schools, the Italian Constitutional Court explained that the authority to decide to install such religious symbols or not lay with head-teachers and not any law. However, as pointed out by Margiotta Broglio, the Constitutional Court has replaced the crucifix in its own building with paintings of la Madonna. See www.olir.it/areetematiche/75/documents/Chizzoniti_Corte_e_crocifisso.pdf, [accessed 27 December 2004].
- 15 Without reviewing the law of blasphemy, the British government is currently drafting a new law that should protect all religions.
- 16 Most Muslims in France trace their heritage to North Africa, in Great Britain the Indian sub-continent and in Germany most are Turks. In Italy, Moroccans are the largest group of Muslims, just ahead of Albanians.
- 17 As far as the French context is concerned, some surveys have stressed the relative quietness that dominated public opinion immediately after the 9/11 attacks. This does not mean that racism and xenophobia was not an issue or that the public perception of Islam, both as a faith and as culture, is a positive or tolerant one.

- 18 None of the four European countries discussed have been able to escape the logic of the need to create a representative Muslim body to act as a 'partner' for the public authorities. See Caeiro, Jonker, McLoughlin, and Saint-Blancat and Perocco, this volume.
- 19 With the exception of the British case (Poulter, 2002), few works deal with the question of religious discrimination in other European countries. See Manço (2004) and Marongiu-Perria (2004) for the French case. For an attempt to blend a juridical approach and a sociological reading of the experience of injustice and discrimination, see Amiraux (2004b).
- 20 See McLoughlin (1996) for an account of the impact of the Bosnian war on British Muslims.
- 21 The words of a convert to Islam interviewed by the author and Samir Amghar, Paris, 19 November 2004.
- 22 For example, profaned places (attacks against mosques or tombs) or persons (in Corsica, the personification of racist violence against religious authorities, *imams*). N.B. Werbner (2002) also discusses the idea of a 'community of suffering'.