

## Secular Law and the Niqab Issue: Analysis of the Face Covering Ban as a Measure to Prevent Islamic Radicalism in Central Asia and the Caucasus

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**Abstract:** The prohibition of wearing in public places Muslim women's face-covering clothing, in particular the niqab, has been discussed in many countries. It is in force not only in a number of European countries, but also in states where the majority of the population is Muslim. Among them: Egypt, Morocco, Tunisia, India, Indonesia, Uzbekistan and Tajikistan. Governments explain the prohibition at the legislative level, first of all, by security measures: there is a problem with identification of a person wearing such clothes. In addition, such elements of clothing are associated with radical religious movements, the likely increase in their influence also encourages states to adopt such laws. The article provides a detailed analysis of legislative measures adopted or under discussion in Central Asian and Caucasian countries to ban the wearing of the niqab and other face-covering garments in public places. The authors examine the history of attitudes towards the niqab in these countries, motivations for banning or not banning it, and attitudes towards other elements of women's religious dress.

**Keywords:** Niqab, Islam, Central Asia, Caucasus, radicalism, secular law

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## A Brief Overview of the Niqab issue

The niqab is a long garment worn by some Muslim women to cover the entire body and face with a cutout for the eyes, it is a type of hijab<sup>4</sup>. Historically, the wearing of the niqab was practiced in Nejdah (where Wahhabism originated) in pre-Islamic times, but has spread throughout the Middle East and North Africa since the 1970s due to the increasing religiosity of the Muslim population. Muslim women who favor the niqab are believed to be adherents of the Salafi<sup>5</sup> strand of Islam (Ferrari and Pastorelli 2013, 14-24) and the niqab itself “has evolved from a symbol of cultural piety, purity and religiosity to a cultural and political statement” (Showdhury et al. 2017, 206).

Muslims attribute the wearing of the niqab to an obligation mentioned in the Qur'an (Al-Qur'an, An-Nur, 24:31)<sup>6</sup> and the example of the Prophet's wives who wore niqabs (Chesler 2010, 33). Today, there is a consensus among most Muslim scholars on the practice of wearing the niqab. In 2009, the Grand Sheikh of Al-Azhar, Sheikh M. S. Tantawi, while visiting a school saw a teenage girl wearing a niqab and told her: “Niqab is a tradition, it has nothing to do with religion.” After this incident, he issued a fatwa (religious edict) against wearing niqabs in schools (The Daily Telegraph 2009; Chesler 2010, 36). Iraqi religious authority Sheikh Ahmad Al-Qubaysi supported this decision and issued his fatwa stating that “people have the right to know the identity of the person they are standing in front of so that they do not feel deceived. Wearing niqab was obligatory only for the wives of the Prophet as they were the mothers of all believers” (Showdhury et al. 2017, 207).

Thus, many countries around the world, including Muslim countries, have taken measures to restrict Muslim women wearing the niqab or even the hijab, as they are considered representatives of radical movements. For example, Turkey was the first Muslim country to officially ban women from wearing the hijab back in 1925<sup>7</sup>, the ban on wearing them in public institutions was lifted only in 2013-2015. Bans on hijab in public institutions exist in Tunisia, Algeria and others. Similar laws exist in France (BBC 2016), Belgium, Denmark (BBC 2018), Austria (BBC 2017) and a number of other countries.

<sup>4</sup> Hijab is a headscarf that covers the hair and neck but leaves the face uncovered.

<sup>5</sup> Despite the variety of interpretations of the term, we define it as a group of Muslims who seek a return to the original norms of Islam, as well as literalist interpretations of the scriptures.

<sup>6</sup> However, there is no specific mention of the niqab here.

<sup>7</sup> The practice of wearing the niqab in Turkey was not practiced.

## Historical background

As part of the Russian Empire, several judicial and administrative norms functioned simultaneously in the peripheral provinces, including the so-called Caucasian, Steppe and Turkestan provinces. The same issues of lower administration could be resolved both by the civil court and administration and by the people's court acting in accordance with the norms of codified adat and sharia. The effect of the latter applied primarily to family and marriage relations and relations within foreign communities<sup>8</sup>. The wearing of clothes by the non-Russian population who were not in public service was the responsibility of the people's court. (Masevisch 1960, 319-321, 325-340, 352-379, 383-400). Regulations on the administration of the respective governor-generalships did not have direct instructions on the solution of this issue. That is, the issue was left to the decision of kazi (qadi)<sup>9</sup> and biys of volosts and other lower administrative subdivisions. In fact, they did not specifically regulate the issues of uniforms, as there was no need in it. The overwhelming majority of the rural population wore traditional clothes. And in the sedentary and agricultural zones of Turkestan and Muslimised parts of Transcaucasia, women's clothes with a completely covered face (paranja<sup>10</sup>, chador<sup>11</sup>) were dominant, while in the Steppe region (Kazakhs, Kyrgyz) and among a significant part of Turkmen and Karakalpak women<sup>12</sup> hair was covered, and the face and often the neck were left open<sup>13</sup>. Girls under 10 years old often went without headdresses at all, which was considered quite permissible by the prevailing customs. In the late 19th and early 20th centuries, European clothing or its separate elements became more and more widespread among city dwellers, while almost all women in public places wore traditional headdresses and outfits.

In the civil service from the 1820s, representatives of the Muslim nobility wore civil uniforms with elements of local traditional dress. The same applied to lower military ranks and officers below the rank of major. Officers and generals wore general imperial uniforms, but were awarded honours without the cross. Since women were not represented among the authorities and military at that time, the issue of Muslim dress (hijabs, niqabs, paranjas, etc.) was not on the

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<sup>8</sup> The official term of the XIX - early XX centuries, which replaced the term 'non-Orthodox'.

<sup>9</sup> A qadi is the magistrate or judge of a *shari'a* court, who also exercises extrajudicial functions such as mediation, guardianship over orphans and minors, and supervision and audition of public works.

<sup>10</sup> Paranja is a woman's outer garment, which is a dressing gown with long false sleeves and a hair net covering the face - chachvan.

<sup>11</sup> Chador is an outer garment or open cloak worn.

<sup>12</sup> In different years, Turkmens, Karakalpaks, some Kazakhs and Kyrgyz were part of various governor-generalships.

<sup>13</sup> The majority of Kazakhs, Kyrgyz, Turkmens and Karakalpaks led a nomadic lifestyle.

agenda.

Representatives of the national intelligentsia<sup>14</sup>, mostly united in the early 20th century around local branches of the Kadet party, which favoured the federal restructuring of the Russian Empire, usually wore European clothes in public places. This included deputies of the Muslim faction of the State Duma. The Soviet government, having declared equal rights for women and men, did not interfere in the first years in the issues of family and marriage relations and the wearing of clothes, but already from the mid-1920s the process of “dressing up” began. In the 1920s, the process of “liberation of women of the East” - hudjum<sup>15</sup> - began, accompanied, among other things, by the refusal to wear the burqa. There were even organised public actions of burning traditional garments. Most women had removed the burqa in Central Asia by the beginning of the Great Patriotic War (Khan 2021, 215-225).

The decree on the introduction of a uniform school uniform was published by the Council of People’s Commissars in 1935, during the pre-war period it was duplicated by local executive committees at various levels, but it was only in 1947-1948 that it was introduced in schools across the Soviet Union. It provided for a headdress for girls in the form of a beret without emblems (Volkov 1938). The uniform did not provide for girls to wear niqabs. The school uniform was modernised in 1962, when headdresses were abolished altogether, and with minor changes (for example, girls were allowed to wear bows) and variations it existed until the late 1980s, when the wearing of school uniform first informally, and in the Russian Federation since 1992 and officially, became optional (Teplova 2017).

In the first years after gaining sovereignty, post-Soviet countries maintained Soviet legal provisions, by-laws and local acts regarding the wearing of clothes in public places, at work and in educational institutions. However, very soon these issues began to transform. In the search for a new identity, national and Muslim traditions, values and attributes were often invoked, which was reflected, among other things, in attempts to authorise the wearing of niqabs in public places, schools, secondary vocational and higher educational institutions. Most often this happened spontaneously, and the principle of ‘what is not forbidden is allowed’ was appealed to.

At the turn of the 1990s, Muslim populations predominated in Uzbekistan,

<sup>14</sup> The intelligentsia is a status class composed of the university-educated people of a society who engage in the complex mental labours by which they critique, shape, and lead in the politics, policies, and culture of their society; as such, the intelligentsia consists of scholars, academics, teachers, journalists, and literary writers.

<sup>15</sup> Hudjum - (from Arabic هوجوم) was a campaign in Soviet Central Asia in the 1920s-1930s to change the status of women.

Tajikistan, Kyrgyzstan, Turkmenistan and Azerbaijan. A significant proportion of Muslims were in Kazakhstan and Georgia's Adjara region. The growth of religiosity, which in some cases was accompanied by a strengthening of the position of radical Islam, gradually began to raise questions among government officials, legislators and the administration of certain institutions, which manifested itself in a variety of legislative, subordinate and local acts and measures aimed at restricting the wearing of religious Muslim dress. See below how this has proceeded and is currently proceeding in the countries of Central Asia and Transcaucasia.

## **Turkmenistan**

The activities of religious organizations are under strict state control in the republic. In September 2016, the Council of Elders of Turkmenistan adopted a new Constitution guaranteeing the right to freedom of religion: to choose a religion, to express and disseminate religious beliefs, and to participate in religious rites. In September 2016, the Council of Elders of Turkmenistan adopted a new Constitution guaranteeing the right to freedom of religion: to choose a religion, to express and disseminate religious beliefs, and to participate in religious rites and ceremonies (Articles 28, 41). At the same time, the new Constitution enshrined the secular nature of the state, prohibiting religious organizations from interfering in the affairs of state bodies and educational institutions (Art. 18) (Constitution 2023).

In March of the same year, the government approved the Law 'On Freedom of Religion and Religious Organizations', which provided for the re-registration of religious organizations with the Ministry of Justice, with registration requiring, among other things, the approval of the Ministries of Foreign Affairs, National Security, Internal Affairs and a number of other bodies (World Religious Freedom Report 2016).

The new President of Turkmenistan S.G. Berdymukhamedov slightly adjusted the internal political course. In particular, in the course of the transformation, bans were introduced for women to wear tight-fitting clothes and jeans, to use many cosmetic and plastic surgery services, the right not only to drive a car but also to ride in the front seat was restricted, a de facto ban on abortion was introduced, etc. (Currenttime 2024).

Prohibitions on wearing niqabs and other religious clothing were not reflected in the criminal, administrative and other codes and laws of Turkmenistan. The Law on Education of Turkmenistan referred the decision on the uniforms of students and the dress of teachers and lecturers to the jurisdiction of the

educational organizations themselves and should be regulated by their charters (Article 43.4) (Education Act of 4 May 2013).

Trends in the interpretation of the above provision of the Law on Education can be seen in the decisions of agencies, including the Ministry of Education, and individual organizations. Thus, according to the recommendations of the Ministry of Education of Turkmenistan, a uniform school uniform has been introduced; all schoolgirls are required to wear a uniform school uniform of green colour and national skullcaps (44.4), while teachers are required to 'have a high-quality and aesthetic appearance' (42.5) (On State Educational Institutions 2019). Female students at Makhtumkuli University are required to attend the university wearing skullcaps, national dresses and dons (dressing gowns) of one color (usually red). Teachers in Turkmenabat (formerly Chardzhou) are strongly advised to wear only national costumes - long-sleeved dresses and scarves (Azathabar 2022). Compliance with these recommendations is monitored by special inspection teams. In Mary, since 2019, the local administration has banned the wearing of not only niqabs but also hijabs by female employees of public institutions and all female citizens in public places (Azathabar 2019).

While the authorities' restrictions on the wearing of the hijab and niqab can be explained by preventive measures against the spread of Islamic radicalism, although this problem is not as acute in the country as in Uzbekistan or Tajikistan, the new head of state's policy of restricting women's rights can be explained by public demand for such a policy.

Turkmenistan is currently the most closed country among the post-Soviet states of Central Asia and Transcaucasia, including in terms of obtaining information on domestic policy and legislation. For this reason, it is difficult to verify information from non-state media sources. The above examples should be treated with this observation in mind.

## **Tajikistan**

The wearing of the niqab is not officially prohibited in Tajikistan: it is never mentioned in the country's legal acts. This is explained by the fact that the wearing of the niqab was not practised by the peoples that historically inhabited the territory of modern Central Asia and Tajikistan; in particular, until about the 1920s, women were covered with burqas instead (Rusaykina 1948, 81-86).

However, there are provisions in the country's legal acts regarding the wearing of the hijab. Thus, the Instruction on the recommended uniform of pupils and students of primary, secondary, special and higher professional institutions, approved by the decision of the Board of the Ministry of Education and Science

of the Republic of Tajikistan on 3 July 2007, No. 14/2, notes that both female students and teachers attending classes in “special clothes of foreigners (Turkish and Arab shirts and trousers)” (Ministry of Education 2018) as well as in hijab is prohibited (Ibidem, 64). These measures are explained by preventing the population from honoring and following the traditions and cultural norms of ‘foreign’ peoples (Ibidem, 6).

In the same Instruction, women are encouraged to follow the traditional style of dress, which involves wearing national skullcaps or headscarves that do not cover most of the face. The practice of wearing the burqa, which ceased in the 1920s and involves covering the entire face, also does not fit into the norms of ‘traditional dress’. However, wearing European styles of dress (trousers, skirts, shirts, dresses, etc.) that are not traditional and national is not prohibited.

Nevertheless, until today, no law has been adopted explicitly prohibiting the wearing of niqab or hijab. Only in 2017, an amendment was made to the Law “On the Regulation of Traditions, Holidays and Rites in the Republic of Tajikistan”, where Article 141 states that ‘individuals and legal entities are obliged to protect the basics of national culture, including the state language and national dress’ (Majlisi Oli 2017). The protection of national dress, based on repeated statements (Sputnik 2023) by the country’s president E. Rahmon, should be understood to mean that female persons should not borrow foreign styles of dress, including the hijab, but wear national dress (RTSU 2023). The President of Tajikistan stated: ‘A limited number of women and girls see religiosity not in the soul but in appearance, dressing in black and thus trampling on our cultural values, forgetting that the Almighty is known with the soul and heart, not with clothes, hijab and beard. In this regard, local executive bodies of state power and other responsible structures need to take concrete measures to prevent the spread of this negative trend’ (Alif 2020). In Dushanbe alone, according to media reports, in August 2017, more than 8,000 women wearing hijab received an official warning to replace the hijab with Tajik-style scarves (Agerholm 2017).

Since 2018, a discussion on the official ban of hijab has started in the country. Thus, the National Centre for Lawmaking proposes to ban women wearing hijabs from access to all public and private institutions (TSUC 2018; Karmazin 2018). In May 2024, amendments to the Law on the Regulation of Traditions, Holidays and Rites were adopted. Formally, it does not stipulate the wearing of niqab or hijab, but there is the following wording: ‘clothing that does not correspond to the national culture’. In practice, with reference to it, according to media reports, they have already started to fine (the fine can be as high as 3,500 somoni (\$325) people for wearing hijab in public places (Rossaprimavera 2024).

Thus, it can be said that Tajikistan has legally banned the wearing of hijab and other 'non-traditional clothing' in public places. The reasons for these steps, in addition to the protection of national values, can be considered the growth of Islamization of the population (Schmitz 2015, 20), in some cases taking a radical character.

## **Uzbekistan**

As in neighboring countries, for a long time the wearing of niqabs and hijabs in Uzbekistan was not regulated in any way. Due to the more serious Islamization of the population of Uzbekistan and Tajikistan, it was in these states that in the early 2000s the majority of women were already wearing hijabs and a significant proportion were wearing niqabs. The activities of radical non-traditional organizations (Urinboyev 2023, 7), a number of terrorist acts (including the assassination attempt on President Karimov), propaganda for the creation of a caliphate and a number of other factors forced the state to pursue a targeted policy to curb the growth of Islamization of society (Schmitz 2023, 12).

In 2009, the authorities banned the hijab in schools and universities located in the south of the country, where radical Islam was more prevalent. Also in August 2009, a Cabinet of Ministers decree introducing compulsory school uniforms for all students in Uzbekistan came into force, banning niqabs, hijabs and long dresses. This decree was duplicated in 2018 with minor adjustments (Gazeta.uz 2018). Exceptions were provided only for medical reasons and for foreign nationals studying in the country. For example, in September 2009, a female student at the International Islamic Academy was given a choice: "hijab or study" (TSUC 2018).

On 5 September 2023, the lower legislative chamber of parliament adopted amendments to a number of laws and the Administrative and Criminal Codes that prohibit the wearing in public places of clothing that conceals the face or makes it difficult to recognize an individual. The press service of the parliament noted at the time that "a measure of administrative responsibility is introduced for wearing in public places clothes that do not allow identifying the identity of citizens." In drafting the legal provisions regulating the wearing of religious clothing, parliamentarians relied on the experience of a number of European and Asian countries (TASS 2023). On 30 September, the draft law was approved by the upper house of parliament and on 31 October 2023, Uzbek President Sh. Mirziyoyev signed the law on amendments and additions to the Criminal Code and the Code of Administrative Responsibility. According to the amendments, being in public places with one's face covered to a degree that does not allow

identification (e.g., wearing a niqab) is punishable by a fine of 10 to 15 BCV<sup>16</sup> (3.3 million - 4.95 million soums or c. \$270-406). The changes, in particular, affected Article 184 of the Criminal Code of the Republic of Uzbekistan (Law 2023). The exception is when a person is covered for medical reasons or by a special headgear worn for road safety or official necessity, or during sporting and cultural events, as well as in other cases permitted by law (1news 2023).

## **Kazakhstan**

At the time of the disintegration of the USSR in Kazakhstan, the titular nation, Kazakhs, did not form an absolute majority — only 40% of the population were ethnically Kazakhs. Muslims were also a minority in this republic. Nowadays, Muslims make up approx. 75% of the population of Kazakhstan, while the share of the titular nation is approx. 70%. (Aubakirova and Alekseenko 2022, 20-24). Moreover, Kazakhstan was one of the least islamized republics in Central Asia. Not surprisingly, the process of spreading hijabs and niqabs has been slower than in neighboring post-Soviet countries. Migration outflow (primarily to Russia and Germany), higher rates of natural increase of Kazakh and Uzbek population, as well as the policy of repatriation of Kazakhs from abroad (Aralmans) already in the early 2000s led to a qualitative change in ethnic and and confessional situation. The first discussions in the media on the expediency of determining the permitted forms of headwear and clothing in general date back to the second half of the first decade of the 21st century, and were reflected in the 2007 Law on Education.

There is an explicit ban on the wearing of hijabs, niqabs and other elements of religious dress by teachers and lecturers in Kazakhstan. Paragraph 5 of Article 51 of the Law on Education of the Republic of Kazakhstan of 28 June 2007 prohibits teaching staff from using the educational process for religious propaganda (Law 2024). All subsequent revisions, including the one that will come into effect on 15 July 2024, retained this provision.

At the level of parliament and government, the debate on the right to wear niqabs and hijabs has intensified since the middle of the second decade of this century. To some extent, this was a response to the 2014 referendum on the status of Crimea. The Kazakhstani leadership seriously feared the growth of separatist tendencies, especially in the so-called northern regions of the republic, where at that time the Russian-speaking population made up about half of the population (currently Russians dominate only in the East Kazakhstan region). The authorities believed that possible causes and reasons for discontent could

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<sup>16</sup> BCV is the basic calculation value. In October 2023, the BRV was set at 340000 uzbek soums.

be harassment in the use of the Russian language, which has official status as a language of inter-ethnic communication, and dissatisfaction with the growth of Islamic influence in the state ideology. The experience of neighboring Central Asian states (the civil war in Tajikistan, the growing influence of non-traditional Islam in Uzbekistan) was also taken into consideration.

In the Kazakhstani parliament, the debate about the ban on wearing niqabs first started in earnest in 2016, when the draft law “On introducing amendments and additions to some legislative acts on countering extremism and terrorism” was put up for discussion. Its development was a consequence of a separate order issued by President Nazarbayev on June 10, 2016 at a meeting of the Security Council. The body responsible for the preparation of the first draft of the law was the National Security Committee of the Republic of Kazakhstan. The law in the proposed version was not adopted (mail.kz 2016). In the same year, 2016, the Ministry of Education issued an order stating that all school students must wear school uniforms, and it is not allowed to include elements of religious clothing (clause 13) (Law 2016). Subsequent editions of Order No. 534 dated 30.12.2022 and No. 250 dated 07.08.2023 retained these statements.

In accordance with paragraph 7 of Article 3 of the Law “On Religious Activity and Religious Associations”, no one has the right to refuse to fulfil the duties stipulated by the Constitution and laws of the Republic of Kazakhstan because of their religious beliefs. In accordance with paras. 3, 6 and 7 of paragraph 2 of Article 49 of the Law of the Republic of Kazakhstan “On Education” parents and other legal representatives are obliged to comply with the rules defined by the charter of the educational organization, the requirements for compulsory school uniform established by the authorized body in the field of education and to observe the form of dress established in the educational organization. In accordance with the current legislation of the Republic of Kazakhstan, administrative penalties may be imposed on parents whose children do not comply with the school uniform (Public services and online information 2023). Failure to fulfil or improper fulfilment of the obligations stipulated by the legislation of the Republic of Kazakhstan in the field of education by parents or other legal representatives is punishable by a fine of 10 MRP<sup>17</sup>.

In the following 2017 year the Ministry of Religious Affairs and Civil Society of the Republic of Kazakhstan developed its own version of amendments to the legislation, primarily the Administrative Code. In particular, they were supposed to prohibit the wearing of clothes that cover the face. During the public discussion of the project, Minister Nurlan Ermekbayev noted:

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<sup>17</sup> MCI - monthly calculation index. Currently it is 1512 tenge.

“The draft law proposes norms that would regulate the provision of religious education abroad; prohibit by law the wearing of items of clothing that prevent facial recognition in public places; ensure financial transparency of religious associations; protect the rights of atheists; regulate state employees’ participation in religious activities; strengthen liability for the illegal children involvement in religious activities” (Kazpravda 2017).

In 2018, Majilis adopted amendments to the law “On Religious Activity” in the first reading. According to the draft, the format of clothing itself was not determined, this issue was to be decided later by three agencies - the National Security Committee, the Interior Ministry and the Ministry of Religious Affairs. Experts noted that the list of forms of headwear prohibited for wearing in public places should necessarily include the burka, niqab and balaclava, which prevent facial recognition (Semey city 2018). The adoption of amendments to Uzbekistan’s codes in autumn 2023 intensified the process of legislative initiative on the issues of banning religious clothing in public places in neighboring Kazakhstan and Kyrgyzstan.

Alongside the discussion in the Uzbek parliament, a member of the Kazakh Majilis, Yermurat Bapi, criticized the state-sponsored ban on religious dress. Bapi criticized state policies that ignore Kazakhstan’s rapid radicalization and expressed concern about the growing religious ideology in society. In October 2023, the Ministry of Culture and Information of Kazakhstan put on the agenda the issue of measures aimed at banning the wearing of hijabs and niqabs in public places. The initiator was Minister Aida Balayeva, who stated in media: “We will definitely study and propose these norms. At least in public places. I already see this practice all over the world, as it is a matter of national security. It is very difficult to identify a person by any signs in the states, where people cover their faces in public places”. Separately, she emphasized the current practice of school uniforms not allowing the inclusion of niqabs and hijabs (TASS 2023). To justify the ban, statistics on the qualitative growth of religious extremist materials were cited. Thus, in Kazakhstan, for the first 10 months of 2023 alone, 14860 such materials were officially identified (Kazinform 2023).

The Minister of Education Gani Beisembayev emphasised the secular nature of the state and school education in the Republic of Kazakhstan, so the demands made by a number of deputies and imams to cancel the order on school uniforms and introduce permission to wear hijabs are, in the Minister’s opinion, illegal (Nurbay 2023). Finally, in the current 2024 year the President of the Republic

of Kazakhstan Kassym-Jomart Tokayev also expressed his attitude to this issue. At the third meeting of the National Kurultai held in Atyrau in March, he said: “The desire of radical neophytes to impose alien religious ideals on society, including in the form of archaic forms of dress, is a blatant challenge to our traditional principles and values. We must rely on the old religious knowledge and spiritual guidelines of our ancestors” (Orda 2024) Among the archaic ones, he classified niqabs in the first place. At the same time, the debate on the right or prohibition to wear niqabs in public places and educational institutions in Kazakhstan continues, including at the level of parliamentary discussions. It is expected that the Administrative Code of the Republic of Kazakhstan may be amended in 2024. An unrepresentative survey conducted in April 2024 showed that 56% of respondents favored a complete ban on religious dress in public places, with another 19% favoring a ban on face-covering clothes and 6% — only niqab ban. Only 6% of respondents were in favor of allowing religious clothing without any restrictions (Anti-Nadan 2024).

## **Kyrgyzstan**

The first attempts to discuss the prohibition of wearing niqabs were made in the Kyrgyz Republic in 2014, then the issue was raised in 2016 and 2017, but there were no further public discussions. As noted above, almost in parallel with the discussion of the issue of allowing or prohibiting the wearing of religious clothing in public places and educational institutions in Uzbekistan and Kazakhstan, this issue began to be discussed in the Jogorku Kenesh - the Parliament of the Kyrgyz Republic.

The deputy Sharapatkan Mazhitova, representing the faction “Yntymak” (Consent), at a meeting in September 2023, noting the growing number of women wearing religious clothing in public places, suggested “banning the hijab and niqab, which do not allow Safe City cameras to identify a person’s identity. I believe that we must think about safety first and foremost.” She noted that the hijab and niqab do not fit Kyrgyz culture and traditions. “Our women have always walked with an open face, and there was no such thing as covering it completely” (Caliber 2023). As a result of the discussion, on 15 November 2023, the Parliament and public discussion received a draft law on the introduction of two new articles to the Code of Offences - “Identification of identity in public places” and “Wearing large beards in public places”, according to which, wearing in public places clothing that covers the face and does not allow to ensure the possibility of identification of identity, will be punishable by a fine of 2,000 soms (more than \$20) or public works up to 30 hours. For a repeated violation,

the fine will be 4,000 soms (more than \$40) or public works up to 40 hours. (Balaeva 2023; Centrasia 2023).

The Mufti of Kyrgyzstan, Zamir Rakiev, commenting on this legislative act, emphasized that women adhering to Islam are not obliged to wear burqas and niqabs: “The duty of a Muslim woman is to wear a hijab, it is necessary to cover the head, but it is not necessary to cover the face completely. The wearing of hijabs is something we support from the beginning. What covers the whole face is called niqab. To wear it or not to wear it is everyone’s right, but not an obligation. The Ulema Council has concluded that we cannot restrict anyone’s rights” (Asiaplustj 2023).

The current President and Prime Minister of the Kyrgyz Republic have not yet expressed their attitude to this draft law. The media periodically publish publications on this issue, and there are both supporters and opponents of the introduction of a legislative ban. At the same time, no decision has yet been made to submit the above-mentioned draft laws to the Parliament of the Kyrgyz Republic for discussion in the first reading.

## **Azerbaijan**

Like all post-Soviet republics, Azerbaijan is constitutionally a secular republic. According to the Constitution, there are no prohibitions or obligations to wear burqas and other elements of dress in public places. The state provides the right of choice to every citizen. The issue of allowing or prohibiting the wearing of the niqab in schools and other secular educational institutions has been debated for a long time.

For the first time the issue was raised at the legislative level in the framework of Article 6 of the Law of the Republic of Azerbaijan “On Freedom of Religion” dated 20.08.1992, which states: “In the Azerbaijan Republic the state educational system is separated from religion. Theology, religious and epistemological, religious and philosophical disciplines, and familiarization with the basics of sacred and cultic books may be included in the curricula of State educational institutions. Citizens may study theology and receive religious education in any language, either individually or together with others. Religious entities in accordance with their charters (regulations) may, in accordance with the procedure established by law, establish educational institutions for the religious education of young people and the elderly and carry out the educational process in the prescribed form” (Independent Azerbaijan, 2016).

The Criminal Code of the Republic of Azerbaijan, which entered into force on 1 January 2000 also does not provide grounds for banning the wearing of

religious clothing. Its subparagraphs regulate only violations of freedom of religion:

“154.1 Violation of equality of citizens on the basis of race, nationality, attitude to religion, language, sex, origin, wealth and professional rank, beliefs, and political parties membership, trade unions and other public associations, which has caused harm to the rights and legitimate interests of citizens, shall be punishable by a fine of one thousand to two thousand manat or by corrective labor for a term of up to one year. 154.2 The same acts committed by an official using his official position shall be punished by a fine in the amount of two thousand to three thousand manat, or correctional labor for up to two years, or imprisonment for up to two years with or without deprivation of the right to hold certain posts or engage in certain activities for up to three years” (Criminal Code of the Republic of Azerbaijan 1999).

The text of Article 71 of the Constitution of Azerbaijan testifies to the same. At the level of management of some educational institutions, there have been bans on wearing hijabs and especially niqabs since the 1990s. In 2018, the former chairman of the State Committee for Work with Religious Education, scholar and theologian Aliyev noted that it was time to introduce a legislative ban on the wearing of niqabs following the example of a number of foreign, including Central Asian, countries (Aleksperova, 2018).

The first case of public application of the ban was recorded in 2007, when female students from Sumgayit who wore the hijab were expelled. This became an occasion for civil pickets in front of the Ministry of Education. Soon the students were reinstated without the ban on wearing religious clothing. After this case, the Minister of Education of that period M.D. Mardanov accused opponents of the ban on religious clothing of co-operating with internal and external “unfriendly forces” (Farhadova, 2010).

The practice of restricting the wearing of religious clothing continued. Protests against this practice continued as well. In particular, protests in Baku were recorded in 2010 and 2011, and in 2011 protests against the ban on hijab in Azerbaijani schools were also held in Tehran (Panorama 2011). Finally, since 15 September 2023<sup>18</sup> a uniform school uniform was introduced in Azerbaijan. Moreover, its implementation was not the decision of the Ministry of Education,

<sup>18</sup> Due to the hot weather the academic year in Azerbaijan starts on 15 September.

but of the Cabinet of Ministers, which approved in 2022 a resolution with the “Description of uniforms for students of state general education institutions of Azerbaijan”. According to it, there are 3 summer and 3 winter variations of school uniform at the choice of the educational institution. At the same time, none of the variants includes niqabs and hijabs (Website of the Cabinet of Ministers of the Republic of Azerbaijan, 2022).

## **Georgia**

In Georgia, about 10 per cent of the population confesses Islam. These include ethnic Georgians in the Adjara region, as well as historically resident Azeris, Kistinians, Avars and others. However, among Muslims living in Georgia after the dissolution of the Soviet Union, it was never customary to wear elements of clothing that completely cover the face (Caucasian house, 15-19). Nowadays, Iranians and Arabs move to Georgia more often for permanent or temporary (seasonal) residence. The number of tourists from the Persian Gulf states has also increased. That’s why the issue of banning clothes covering the face was raised.

In September 2018, the Patriots of Georgia faction, led by Emzar Kvitsiani, brought up for discussion the law banning the wearing of hijabs, burkas and niqabs in public spaces (Rustavi2 2019) . The ban did not apply to diplomatic staff and their family members. It was assumed that a violation would result in a fine of GEL 500 (approx. \$179) and GEL 1,500 (approx. \$538) for repeated offences (Islamic Portal 2018).

According to Kvitsiani, the law was meant to improve security, as there have been repeated problems related to people identification at the airport and at land borders. Women simply refused to show their faces to border control officers due to a religious prohibition. However, the proposal was criticized by Ombudsman Nino Lomjaria. The issue was brought to the consideration of the UN Human Rights Committee, which concluded that such a ban was discriminatory. Explaining her position, the Ombudsman said that women wearing burkas and niqabs are already under pressure from family and society. It is not possible to find out whether they wear such clothes of their own volition or whether they are forced to do so. Banning their habitual dress would not protect their rights, but rather restrict them, as they would not be able to move freely in public spaces. This will only worsen their living conditions.

It should be noted that the Spiritual Board of Muslims of Georgia represented by the Sunni Mufti and Shi’a Sheikh<sup>19</sup> were not opposed to the adoption of

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<sup>19</sup> In Georgia, the Muslim Administration suggests a division of leaders of Shia Islam led by Sheikh and Sunni Islam led by Mufti

such a law, as it would not limit the rights of Muslim women living in Georgia (Rustavi2 2019). The ban would affect only tourists, which would have a negative impact on the tourist flow from the Persian Gulf states. The discussion in the public field continued until 2019. After that, the issue of banning niqabs and burkas in Georgia was not raised again.

## **Armenia**

The percentage of Muslims living in Armenia is insignificant, as well as newcomers from other countries. Due to its irrelevance, the issue of wearing niqabs has never been raised at the state level in Armenia.

## **Conclusion**

Thus, the issue of banning or permitting the wearing of niqabs and other elements of religious dress has been discussed at the official level in almost all post-Soviet Central Asian and Caucasus states. In most cases, it was considered independently by each individual country, and only in the autumn of 2023 was it discussed in parallel in Uzbekistan, Kazakhstan and Kyrgyzstan, with appeal to each other's experience. The reasons for the increased or decreased attention to the issue were more often domestic factors, but sometimes events in neighboring countries also stimulated discussions. The general trend (with the exception of Turkmenistan) is the dominance of the line on the introduction of bans on wearing in public places and educational institutions either all elements of Muslim religious clothing or those that conceal the face and thus do not allow identification.

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## *Секуларни закон и питање никаба: Анализа забране покривања лица као мере за превенцију исламског радикализма у Централној Азији и Кавказу*

**Сажетак:** Забрана ношења одеће која прекрива лице за муслиманке у јавном простору, а посебни никаба, је тема у многим земљама. Ова забрана постоји не само у једном броју европских земаља, већ и у већини муслиманских земаља: Египту, Мароку, Тунису, Индонезији, Узбекистану и Таџикистану. Владе објашњавају да је ова забрана заправо једна од мера безбедности, јер постоји проблем идентификовања особа које носе такву одећу. Поред тога, таква одећа се често доводи у везу са радикалним верским покретима и њиховом растућем утицају у друштву. Овај чланак је детаљна анализа правних мера које су усвојене, или су у дискусији, у правцу забране ношења такве одеће на јавним местима у Централној Азији и кавкавским земљама. Аутори истражују историјску перспективу ставова према никабу у овим земљама, мотивације за увођење забране, али и ставове према другим елементима који се односе на женско верско одевање.

**Кључне речи:** никаб, ислам, Централна Азија, Кавказ, радикализам, секуларно право