

Religion and the Work Environment in Algeria: The legal Protection of Religious Practice in the Workplace

الدين وبيئة العمل في الجزائر:

الحماية القانونية للممارسة الدينية في مكان العمل

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Abstract:

Due to the salience of religion in Algeria's public life and the specific requirements of the Islamic religion, the right to practice religious duties in the workplace is often the subject of controversy. This paper addresses the legal framework for the accommodation of religious beliefs and practices in the workplace in the Algerian context. Through the analysis of two case studies pertaining to performing prayers and wearing full-face veils in the workplace, the paper investigates whether the disputes and controversies surrounding these cases indicate a legal vacuum in this area. The paper sheds light on the legal ambiguity in the two cases, discusses the concept of reasonable accommodation of religion in the workplace and its relevance in the Algerian context, and highlights the need for express provisions regarding the accommodation of religious practice in the workplace.

Keywords : Religion, the workplace, reasonable accommodation, prayer

الملخص:

نظرا لمكانة الدين في الحياة العامة في الجزائر والمتطلبات الخاصة للدين الإسلامي، فإن الحق في ممارسة الواجبات الدينية في مكان العمل غالبا ما يكون موضعاً للجدل. يتناول هذا المقال الإطار القانوني لاستيعاب المعتقدات والممارسات الدينية في مكان العمل في السياق الجزائري. ومن خلال تحليل دراسي حالة تتعلقان بأداء الصلاة وارتداء النقاب في أماكن العمل، تبحث الورقة فيما إذا كان الجدل القائم في الحالتين محل الدراسة مؤشرا على وجود فراغ قانوني في هذا المجال. تسلط الورقة الضوء على الغموض القانوني في القضيتين، وتناقش مفهوم الاستيعاب العقلاني للممارسة الدينية في مكان العمل في السياق الجزائري، كما تسلط الضوء على الحاجة إلى أحكام صريحة فيما يتعلق بحق ممارسة الواجبات الدينية في مكان العمل.

الكلمات المفتاحية: الدين، مكان العمل، الاستيعاب العقلاني، الصلاة

Introduction:

In recent years, issues related to religion in the workplace attracted increased attention from the media and academics, and triggered legal and socio-political controversies, both locally and internationally. Visible expressions of religious beliefs and practices at work and the security concern over some types of religious dress, namely the Islamic *niqab*, caused disputes between employers and employees in the public and private sectors and raised questions about the extent to which freedom of religious expression and practice for the individual should enjoy legal protection in the workplace in particular.

Expressing and practicing religion in the workplace is often the source of controversy and dispute. The need to observe religious obligations at work, whether religious practices like the daily prayers or even wearing religious clothing, may cause potential conflicts between employers and employees. There is a kind of consensus, however, that promoting tolerance at the work place, including tolerance of religious belief and practice is particularly important as it has considerable economic and social consequences. Besides preserving employees' dignity, accommodating the religious practice of individuals who spend many hours at schools, offices and companies can help create the type of work environment that encourages productivity and fosters creativity¹.

People's religious identity accompanies them wherever they go and does not exist solely at home or places of worship. Their religious observances, beliefs and practices often find their way to the workplace. Hence, legal systems in many countries have express provisions on the reasonable accommodation of religion in the workplace and provide mechanisms to avoid discrimination and preserve the employee's dignity. However, despite the salience of religion life in countries like Algeria, and despite the constitutional guarantees to freedom of religion and belief, the debate over the accommodation of religion in the workplace is still ongoing due to the lack of explicit legal provisions that require employers and institutions to accommodate religion in the workplace, which may reflect a need for express provisions to extend the right to worship to the workplace.

Shedding light on two recent controversies over issues pertaining to the accommodation of religion in the workplace, and the right to pray in particular, this paper investigates whether there is a legal vacuum in this area which implies a need to provide legal protection for the freedom of religious practice in the workplace. It seeks to highlight the need for express provisions on the accommodation of religious practice in the Algerian education sector and the workplace in general. The first case relates to prayer at schools and the second to dress code at the work place.

The first case took place in October 2018 when the Algerian authorities issued a document titled "The duties of employees and public servants in dress codes," which forbade women from wearing full-face veils, or *niqabs* at work. The document declared that any clothes

¹ Guillory, William A., *Spirituality in the workplace*. Salt Lake City, UT: Innovations International, 2000.

preventing female employees from carrying out their public duties are banned explaining that the need for identification prompted the decision.¹

The second controversy started in February 2019 when an Algerian school girl was allegedly expelled for praying on school grounds. The case has never been brought before a court but the then Education Minister Dr. Nouria Benghabrit was questioned in parliament about the incident. Her answer to a question about what happened in the incident saying that «this practice [prayer] is meant to be done at home, not at school" caused further debate and controversy across the nation.²

1. Disputes over Religion in the Workplace

The right to perform religious duties, especially the daily prayers at work has often caused confusion due to the lack of express legal protection specific to religious practice and belief in the workplace. Disputes often occur between employers and employees over the recognition of the right to express religious identity while at work and the provision of facilities for ablution and prayer. Some of the disputes turned into big controversies indicating the possibility of the existence of a legal vacuum or at least ambiguity that need to be addressed. The 2018 ban on the wearing of full-face veils for female workers and the 2019 controversy over the right to pray at school are two incidents that caused much controversy in Algeria in recent years.

1.1- The Case of Religious Dress in the Workplace

Since 2017, the Algerian authorities have issued directives enforcing restrictions on some clothing in the workplace, mainly for reasons of identification and security. The directives imposed a ban which included particularly the wearing of facial coverings or full-face veils. The Ministry of National Education prepared, in 2017, a draft resolution on the functioning of educational institutions which included a ban on wearing full-face veils for female employees and pupils in the education sector. According to article 71 of the draft, “the employee must demonstrate exemplary behavior and appearance in a decent manner, in terms of grooming that suits the professional framework of the educator and prevents any clothing that prevents identification of the employee.”³

Subsequently, orders forbidding the wearing of *niqabs* in schools and universities by teachers, employees and students were issued by ministries of national education and higher education in 2017. The motives that prompted the orders according to the ministries are the need to check identities of veiled females and to protect educational institutions from religious extremism.⁴ The orders sparked controversy and triggered resistance. The National Coordination for Teachers of Islamic Sciences (CTIS) issued a statement criticizing the restrictions on religious freedoms in the reforms initiated by the ministry saying the CTIS

¹ Zamira Rahim, “Algeria bans women working in public sector from wearing full-face veils” Independent, October 19, 2018

² Abdel Razek Abdallah, “Algerian official's anti-prayer stance draws fire”, Anadolu Ajansı, Feb 6, 2019

³ “Nouria Benghabrit Is Bracing To Ban “Niqab” In Algerian Schools”, Echoroukonline, Sep 20, 2017, <https://www.echoroukonline.com/nouria-benghabrit-is-bracing-to-ban-niqab-in-algerian-schools>).

⁴ Saber Blidi, Niqab ban triggers reactions from Algerian Salafists” The Arab Weekly, Sep 30, 2019

had “removed the veil on the new (educational) reforms announced by the minister in her efforts to damage educational subjects related to our national identity and to symbols of Islam. Such reforms include removing the *Basmala* (saying ‘In the Name of Allah, the Most Gracious, the Most Merciful’ before quoting or reading the Quran) from textbooks, banning the *niqab* and *qamis* from educational institutions and reducing class hours allocated to teaching Islamic sciences.”¹

Following the ban on wearing full-face veils in schools in 2017, a new directive signed by the prime minister issued in October 2018 banned all women working in the country’s public sector from wearing full-face veils in the workplace. The new directive which came in a letter sent to ministers and regional governors titled "The duties of employees and public servants in dress codes," explained that the need for identification had prompted the decision to forbid women from wearing full-face veils, or *niqabs* at work. The letter specified that any clothes preventing women from carrying out their public duties are banned.²

The decision sparked a heated religious, political and socio-legal debate .Opponents of the new executive order, which came as an answer to questions by some administrations in the public sector about whether covering the face in the workplace was legal, wondered how a *niqab* may obstruct women from doing their jobs and accused the decision of violating personal liberties protected by the law. In the absence of relevant legal provisions addressing situations in which religious belief or practice come into conflict with safety requirements or regulations, the controversy was on how to determine whether wearing the *niqab* could impair workplace safety or affect the employee’s efficiency.

The Association of Algerian Muslim *Ulama* ,the country’s largest organization for religious clerics, responded to the instruction of the authorities on the ban of *niqab* in the workplace, stating that the number of women who wear the *niqab* in public places and the workplace is very limited. The well-respected association published on its official Facebook page a post in which it argued that Algerian women suffer from many problems in the workplace, such as sexual harassment and bargaining, which should better be addressed by the Algerian authorities instead of focusing on their clothing.

The association cast doubts on the real intentions behind the ban on the wearing of the *niqab* especially that most Algerian women do not wear this type of clothing. It argued that the face veil poses no problem in public places or the workplace, as the society, in all its fields and squares is used to women who are veiled or those who wear *niqab*, “What is the purpose of raising the subject, at this time exactly? And when was the *niqab*, in our country, a problem of any kind – professional, social, or cultural, even to be presented in such a rigid form of prevention?”³

¹ Saber Blidi, op. cit.

² Zamira Rahim, op. cit.

³ Echoroukonline, Muslim Scholars Association: “Authorities Should Protect Women From Sexual Harassment in Workplace Instead Of Niqab Banning,” Oct 19,2018, <https://www.echoroukonline.com/muslim-scholars-association-authorities-should-protect-women-from-sexual-harassment-in-workplace-instead-of-niqab-banning>

The Association of Algerian Muslim *Ulama*'s response came after the National Education Ministry hastened to send a new report to its state directorates urging them to prevent female employees in general and teachers in particular from wearing the *niqab* in educational institutions, in accordance with the instructions of the General Directorate of Public Service, that confirmed, in its instruction, that the employees are obliged to wear a "respectable clothing" and to refrain entirely from clothing that expresses political, intellectual and religious beliefs.¹

1.2- The Case of Prayer at School

Salat is hugely important in Muslims' religious life, and Muslims are required to perform *Salat* five times a day, what makes it very likely that some prayers fall during regular work hours. Hence, disputes around the right to perform these prayers and providing facilities to accommodate this religious duty in schools and other institutions often occur between employers and employees. One of the incidents which grabbed media attention, sparked controversy and revitalized debate about the accommodation of *Salat* in the workplace in Algeria took place in February 2019 when the local media reported that a school girl was expelled from her school for openly praying on school grounds.

The incident took place at the Algerian School of Paris (Ecole Algerienne de Paris). The director of the school had reportedly banned praying on the establishment's grounds. In defiance of the new rule, one female student decided to openly pray in the school courtyard. This student was then faced with expulsion if her father refused to sign a document that acknowledged the new ban in the school.²

The expulsion of the student from school stirred a national controversy, leading to a nation-wide debate among the general public, politicians, and legal experts. What caused further controversy was the reaction of the then minister of national education doctor Nouria Benghabrit who supported the decision to dismiss the pupil arguing that the school director's decision was in accordance with the regulations and the school is not a place for praying. The minister told media outlets "Students go to school for education...This practice [prayer] is meant to be done at home, not at school."³

The education minister argued that students, teachers and employees have no right to practice this religious obligation in schools. She had reportedly met with Algerian education officials and directed them not to allow the opening of any new rooms allocated for prayer in schools and to close all existing *Mussallas* throughout the country.⁴

The case has never been brought before a court but was widely debated .The minister was questioned by journalists and even by MPs at parliament about the incident, but her stance caused further controversy about whether performing prayers at schools is legal or not. Many opponents of the ministry's move to forbid praying at schools stood against it and argued that the decision was illegal. Trade unions in the education sector refused the ministry's claim and argued that the right to pray at school is protected under the Algerian law. They particularly

¹ ibid

² Anne-Marie Bissada, "Algeria's Education Minister is target after supporting prayer ban in schools," Feb ,2019, <https://www.rfi.fr/en/africa/20190208-algeria-education-minister-target-retaliation-comments-supporting-no-prayers-schools>

³ Abdel Razek Abdallah, op. cit.

⁴ ibid

referred to Resolution number 778 of 1991 which provided regulations for the functioning of the educational community. In reaction, angry students and teachers in different schools performed collective prayers in schools' courtyards and even in classrooms and posted their pictures and videos in social media.¹

The Association of Algerian Muslim *Ulama* has also expressed its opposition to the decision to forbid praying in educational institutions. It condemned the ministry's approach and considered the new decision illegal .The association insisted in a statement it issued that Algerian law allows for the allocation of prayer spaces at public educational institutions.²

2. International Insights on The Concept of Reasonable Accommodation of Religion

Due to the salience of religion to individuals, there is consensus among scholars that accepting expression of the employees' religious identity and reasonably accommodating their religious practices in the workplace have positive implications for the well-being and effectiveness of employees and organizations.³ Accommodating the religious identities and beliefs of employees helps fostering a work environment of inclusivity, loyalty, and motivation which in turn boosts productivity and job satisfaction.

In addition to the many benefits of allowing employees to express their religious identity and practice their religious duties in the workplace, freedom to express and practice religion is a fundamental human right. Many of us spend many hours at work on a daily basis and we cannot detach the religious aspect of our identity when we are at work.

The right to the free practice of religion is well-established internationally. The fundamental Freedom of religion or belief (FORB) is guaranteed by several domestic and international laws, conventions, and declarations. It is expressly recognized in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It is even recognized as a key human right.⁴

However, the enjoyment of this right in the workplace is still the subject of debate. As a matter of fact, much of the debate in this area is not about whether individuals should have the right to practice aspects of their belief or manifest their religious identity at work but rather about the extent to which this right should be enjoyed in the workplace and whether economic organizations and other institutions have a duty to accommodate the religious needs of their employees⁵. In recent years, many cases of discrimination in the work place in many regions of the world relate to the religious identity of workers. Religious dress and symbols, observing prayers and expressing religious views and beliefs have been reasons for discrimination.

Hence, there is an increasing consensus among scholars of religious freedom and other stakeholders that reasonably accommodating the religious needs of believers in the workplace

¹ Othman Lahyani, "Collective prayer in Algerian schools in reaction to the minister of education," Feb 7, 2019, <https://www.alaraby.co.uk/الجزائر-على-وزير-التربية>

² Abdel Razek Abdallah, op. cit.

³ Ying Fei Héliot, I.H. Gleibs, A. Coyle, D. Rousseau and C. Rojon, "Religious identity in the workplace: A systematic review, research agenda, and practical implications," Human Resource Management, Vol.59(2), 2019,p

⁴ Leonard Hammer, The International Human Right to Freedom of Conscience, London, Taylor & Francis, 2020

⁵ Lucy Vickers, "Religion and the Workplace," The Equal Rights Review, Vol. 14, 2015. p106

is of big importance to preserve the dignity of the workers and to create an atmosphere of inclusion at work, much needed for the well-functioning of any organization or business. The concept of « reasonable accommodation» may be the answer to the questions of how and to what extent should an employer accommodate the religious needs of employees. Understanding what « reasonable accommodation» means varies according to context.

In the United States, for instance, which provides reasonable accommodation for religious reasons ‘unless to do so would impose an undue hardship’, a reasonable accommodation is defined as « any change in the work environment, or the way things are customarily done that would enable...an applicant or employee to practice or observe his or her religion.» According to the U.S. Department of the Interior: «A reasonable religious accommodation is any adjustment to the work environment that will allow an employee to practice their religious beliefs. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons.»¹

In recent years, the debate over extending the right to religious freedom to the workplace by way of providing reasonable accommodations of religious observances and practices has been brought to the international arena. In September 2018, the G20 Interfaith Summit that took place in Buenos Aires, Argentina, produced a policy brief for Accommodating Religion in the Workplace. The document stressed the importance of accommodating religious observances in the workplace worldwide:

Our religious identity travels with us. It does not exist solely in the home or the place where we choose to worship but comprises an important part of who we are and how we self-identify. Over a lifetime, a large percentage of an individual’s time will be spent in a workplace – office, factory, etc. A workforce that feels respected and that it is afforded dignity is a productive workforce. Division, argument, unhappiness and dissent has the potential to compromise the effectiveness of any business or organisation. Denial of religious accommodation is a form of religious discrimination just as is discrimination on the basis of status alone.²

The policy brief suggested strategies that can be deployed by employers for accommodating religious beliefs and practice in the workplace. Rendering the workplace a platform that accommodates the religious needs of employees preserves their dignity and also generates economic profits to the employer, “A workforce that feels respected and that it is afforded dignity is a productive workforce»³. The right to practice religious duties at the workplace is thus very important to the overall effectiveness of any business or organization.

Hence, legal frameworks in some countries, especially in the developed world, adopt legislation to make sure companies and organizations do their best to provide reasonable

¹U.S. Department of the Interior, “Disability and Religious Accommodations”

<https://www.doi.gov/pmb/eeo/disability-and-religious-accommodations#:~:text=A%20reasonable%20religious%20accommodation%20is,employee%20has%20for%20religious%20reasons.>

²G20 Interfaith Forum,”Recommendations Regarding Religion in the Workplace.”. Policy brief, 2018, <https://www.g20interfaith.org/wp-content/uploads/2019/03/App-Item-1-1.pdf>.

³ Ibid.

accommodations for religious beliefs and practice in the workplace for the main aim of creating better conditions for workers to feel comfortable and perform better. The reasonable accommodation of religion in the work place is important for two reasons: it respects the dignity of employees and fosters productivity.

3. Relevant Provisions in the Algerian Legal Framework

Algeria is a largely mono-religious nation with the vast majority of citizens adhering to the religion of Islam. Some practical religious requirements specific to the religion of Islam make demands for accommodation in the workplace even more relevant. Prayer is a particularly important element of the religious life in Islamic communities. Muslims are required to perform *Salat* five times a day. The times of the daily prayers are spread throughout the day and the *dhuhr* (noon prayer) and afternoon (*asr* prayer) often fall during regular work hours. The need to perform ritual ablutions before each ritual prayer also creates a need for facilities to accommodate this practice. For all these reasons, providing prayer and ablution facilities is considered a reasonable workplace accommodation.

Nevertheless, there are no express provisions in the Algerian legal framework as far as religion in the workplace is concerned. Despite the constitutional status of Islam and the several guarantees to freedom of religious practice, there are no laws obliging employers to provide facilities for prayer or accommodate religion in the workplace in any way. There are, however, scant references to the need to provide spaces for prayer in some institutions when possible, in regulations specific to some sectors.

3.1. The Constitution

The Algerian constitution, which is the supreme legal text of the land, provides for freedom of conscience and worship. Article 42 states that freedom of creed and opinion is inviolable, and freedom of worship is guaranteed in accordance with the law. Moreover, Algeria adopts an official state religion. The constitution in its second article declares Islam to be the religion of the state.¹ This should have implications for the observance of religious holidays and other Islamic obligations for employees.

3.2. Labour Law

Algerian labour law makes the Muslim holiday of Friday a mandatory day of rest for employees each week. Article 5 of Labour Relations Act 90-11 enacted on April 21, 1990 which involved the employee's fundamental rights does not include the right to religious accommodation. Article 6 of that act states that the employee has the right to respect his /her physical and moral safety as well as his/her dignity.²

The 2006 Ordinance 06-03 regarding employees in the public sector "Ordonnance n° 06-03 du 15 juillet 2006 portant statut général de la Fonction publique" (presidential order) , under the first chapter titled "Guarantees and Rights of Employees", in articles 26, 27 and 37

¹ Constitution of the People's Democratic Republic of Algeria.

² Labour Relations Act 90-11," La loi n° 90-11 du 21 août 1990 relative aux relations de travail" <https://www.interieur.gov.dz/index.php/fr/le-ministere/le-minist%C3%A8re/textes-legislatifs-et-reglementaires/40-le-dispositif-legal-regissant-la-wilaya-et-la-commune/85-la-loi-n-90-11-du-21-aout-1990-relative-au-x-relations-de-travail.html>

protects the employees' freedom of expression as well as their dignity and moral integrity, and prohibits discrimination on the basis of their views, sex, origin, or any personal or social circumstances.¹

Article 37 emphasizes the need to provide work conditions that guarantee the preservation of the dignity and moral integrity of employees. It states that the employee has the right to practice his duties in circumstances that protect his dignity, health, as well as his physical and moral integrity. Article 26 refers to freedom of expression without specifically mentioning expression of religious beliefs. It states: "The employee's freedom of expression is guaranteed". Article 27 forbids all forms of discrimination against employees stating that discrimination against employees on the basis of their views, sex, origin or any personal or social circumstances is prohibited.²

3.3. Other Specific Regulations

The only few references to the right to the practice of religious duties, namely the five daily prayers, in the workplace do exist in regulations and legislation specific to some labour sectors. Resolution number 778 issued on October 26, 1991 which involved regulations for educational and professional institutions "résolution 778 du règlement de la communauté éducative", states in Article 21: « The institution should, as far as possible, provide a room for prayer, and shall ensure its cleanliness and maintenance.»³

However, a new resolution issued on July 12, 2018 by the ministry of national education did not involve any reference to the allocation of rooms for prayer in educational institutions. Resolution number 65 of 2018 states in article five that among the objectives of the educational community is to implant and promote the values of human rights and fundamental freedoms. As for the employees' dress code, article 75 requires employees to wear clothes that allow them to be identified without specific reference to full-face veils.⁴

Conclusion:

The Algerian constitution guarantees the free exercise of worship under the respect of law. The protection of this constitutional right should extend to all spaces in the Algerian society, including the workplace. This is because of the prime importance given to religious observance by millions of Muslim citizens who spend long hours in their workplace. While at work, employees cannot detach themselves from their religious identity which travels with them and needs to be accommodated.

The controversy that characterized the debate over the two cases discussed in this paper revealed a strong need for the enforcement of the existing regulations in this area and passing new legislation with express provisions on the accommodation of religious practice in the workplace is a necessary step, especially as regards to prayer time and prayer rooms, not least because of the issue's sensitivity.

¹People's Democratic Republic of Algeria, Joradp (Official Journal of the People's Democratic Republic of Algeria), Statut Général de la Fonction Publique, <https://www.joradp.dz/hfr/dgfp.htm>, July,15 2006

² Ibid.

³ Resolution Number 778, regulations for educational and professional institutions, issued on October 26, 1991

⁴ Resolution Number 65, regulation the organization and management of the educational community July 12, 2018

Providing legal protection to religious accommodation means requiring employers, educational institutions and other organizations to adjust the work environment to enable employees to perform their religious obligations, especially providing facilities for ablution and *salat*. Accommodations may also include flexible scheduling or giving time breaks to allow employers to perform *salat* during work hours.

Many people took the right to open *moussallas* (rooms for prayer) in companies , institutions and offices for granted as the practice existed for decades, but the divergence of views over the accommodation of the Muslim prayer in schools in light of ideological polarizations may be an indication of a law vacuum in this area . Hence, new legislation allowing for reasonable accommodation of the employees right to worship would undermine such divisions and be an embodiment of the constitutional guarantee of preserving the employees' dignity.

Such legislation would also create a kind of balance between accommodating the need of individuals to observe their religious duties on the one hand, and maintaining public order on the other hand. Accommodating religious belief and practice reasonably would also have positive effects on employees and the work environment in general. The feeling of being respected, by way of allowing the expression of the salient religious aspect of employees' identity, fosters their loyalty, job satisfaction and productivity. In short, commitment to the reasonable accommodation of religious belief and practice in the workplace through passing new express legal provision will better serve the interests and rights of all parties in the workplace and the society as a whole.

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